VOL. 60 – NO. 21 FRIDAY, May 17, 2013

District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Resolution Res 20-114, National Law Enforcement Officers Memorial Fund, Inc., Revenue Bonds Project Approval Resolution of 2013
- DC Council passes Resolution Res 20-133, Saving D.C. Homes from Foreclosure Enhanced Emergency Declaration Resolution of 2013
- District of Columbia Taxicab Commission updates rules regarding the implementation of the Modern Taximeter System
- Office of Human Rights proposes providing guidance and assistance to District of Columbia agencies when serving constituents with Limited English Proficiency/No English Proficiency
- Office of the State Superintendent of Education announces funding availability for the Community Schools Incentive Initiative
- Health Benefit Exchange Authority announces funding availability for the In-Person Assister Program

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act,* D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act,* District of Columbia Official Code, §§2-50l *et seq.*, as amended.

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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ENROLLED ORIGINAL

A RESOLUTION

20-106

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To confirm the reappointment of Mr. Courtney A. Stewart to the Commission on Re-entry and Ex-Offender Affairs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Commission on Re-entry and Ex-Offender Affairs Courtney A. Stewart Confirmation Resolution of 2013".

Sec. 2. The Council of the District of Columbia confirms the reappointment of:

Mr. Courtney A. Stewart
9623 Geena Nicole Drive
Clinton, MD 20735

as a member of the Commission on Re-entry and Ex-Offender Affairs, established by section 4 of the Office on Ex-Offender Affairs and Commission on Re-Entry and Ex-Offender Affairs Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243; D.C. Official Code § 24-1303), for a term to end August 4, 2015.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-107

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To declare the existence of an emergency with respect to the need to approve Modification Nos. 3 and 4 and proposed Modification No. 5 to Contract No. DCPO-2012-T-0368 with Accenture Federal Services, LLC, for services related to the maintenance of the District's Health Insurance Exchange ("HIX") system and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCPO-2012-T-0368 Modifications Approval and Payment Authorization Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists an immediate need to approve Modification Nos. 3 and 4 and proposed Modification No. 5 to Contract No. DCPO-2012-T-0368 with Accenture Federal Services, LLC, for services related to the maintenance of the District's HIX system and to authorize payment for the goods and services received and to be received under the contract.

(b) On September 28, 2012, by Modification No. 3, the Office of Contracting and Procurement ("OCP") exercised a partial option of option year one of Contract No. DCPO-2012-T-0368 with Accenture Federal Services, LLC, in the amount of $560,230.00 for the period from October 1, 2012 through February 28, 2013.

(c) On February 25, 2013, by Modification No. 4, the OCP exercised another partial option of option year one in the amount of $112,047.02 for the period of March 1, 2013 through March 31, 3013.

(d) OCP now proposes Modification No. 5 which will exercise the remainder of option year one of Contract No. DCPO-2012-T-0368 in the total amount of $1,344,560.00 for option year one.

(e) Approval is necessary to allow the continuation of these vital services. Without this approval, Accenture Federal Services, LLC, cannot be paid for services provided in excess of $1 million for option year one.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCPO-2012-T-0368 Modifications Approval and Payment Authorization Emergency Act of 2013 be adopted after a single reading.

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Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

20-108

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To approve Contract No. 20-62 with Thrive Health Plans, Inc., to provide healthcare services for District of Columbia residents enrolled in the D.C. Healthy Families program and D.C. Health Care Alliance program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. 20-62 with Thrive Health Plans, Inc., Approval Resolution of 2013".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves Contract No. 20-62, a one-year, indefinite delivery/indefinite quantity contract with Thrive Health Plans, Inc., to provide healthcare services for District of Columbia residents enrolled in the D.C Healthy Families program and D.C. Health Care Alliance program, in the amount of $542,535,279.

Sec. 3. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. This resolution shall take effect immediately.

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A RESOLUTION

20-109

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To declare the existence of an emergency with respect to the need to clarify eligibility requirements and travel restriction provisions in the School Transit Subsidy Act of 1978 to ensure the prompt establishment of a foster youth transit subsidy program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Foster Youth Transit Subsidy Emergency Declaration Resolution of 2013".

Sec. 2. (a) The District's foster youth transit subsidy program ("Program") was originally created and funded by the Fiscal Year 2013 Budget Support Act of 2012, effective September 20, 2012 (D.C. Law 19-168; 59 DCR 8025).

(b) The Program, which was established to provide subsidized transit passes to foster youth ages 19 and 20 years for travel to work and school, has not yet been implemented because several technical and clarifying amendments to the enabling legislation are required.

(c) Current law allows transit subsidies only for foster youth under the age of 19 years travelling for educational purposes.

(d) The original intent of the legislation was to allow foster youth ages 19 and 20 years to travel for both educational and employment purposes.

(e) This emergency legislation amends the enabling law to comport with its original intent, as seeking and maintaining employment is a common challenge that foster youth face in achieving independence, and the availability of subsidized transit passes would greatly aid in solving this challenge.

(f) Further, since most foster youth already qualify for the student transit subsidy until the age of 18 years, the Program fills a gap in assistance when foster youth ages 19 and 20 years are close to becoming legally independent adults.

(g) Given that the Program was authorized and budgeted to start on October 1, 2012, it is critical that enabling legislation be amended as soon as possible to implement the program as it was originally intended.

(h) The District Department of Transportation and the Child and Family Services Agency are coordinating their efforts and have a clear implementation strategy to ensure that the Program starts as soon as this legislation takes effect.

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Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Foster Youth Transit Subsidy Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-110

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To declare the existence of an emergency with respect to the need to authorize an extension of time to dispose of District-owned real property located at 1421 Euclid Street, N.W., designated for taxation and assessment purposes as Lot 0811 in Square 2665.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Extension of Time to Dispose of Justice Park Property Emergency Declaration Resolution of 2013".

Sec. 2. (a) On April 5, 2011, the Council of the District of Columbia approved the Justice Park Property Disposition Approval Resolution of 2011, effective April 5, 2011 (Res. 19-77; 58 DCR 3199).

(b) At the time, the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") and Euclid Community Partners ("Developer") anticipated that the predevelopment phase of the project would be completed within the statutorily allotted 2- year period. The Developer diligently sought financing for the project and was recently awarded 9% Low Income Housing Tax Credits by the District's Department of Housing and Community Development. Currently, all debt and equity funding have been identified, and the Developer has completed construction documents and is awaiting receipt of a building permit from the Department of Consumer and Regulatory Affairs.

(c) In addition to the building permit, the Developer must submit and obtain approval of the District's Environmental Impact Screening Form ("EISF") process.

(d) Before the expiration of the 2- year period, DMPED submitted a resolution to the Council to extend the time period in which the Mayor may dispose of the Justice Park property to the Developer.

(e) The Committee on Economic Development held a public hearing on the resolution on March 27, 2013 at the John A. Wilson Building to receive testimony regarding the proposed extension of the Mayor's authority to dispose of the property. The community, the Council, and DMPED have been supportive of the project.

(f) After the public hearing, the Council recessed, and the deadline to approve the disposition extension passed before the next legislative meeting.

(g) The proposed legislation will extend the Mayor's authority to dispose of Justice Park from April 5, 2013 to April 5, 2014 to allow the parties to meet the closing and predevelopment deadlines.

ENROLLED ORIGINAL

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Extension of Time to Dispose of Justice Park Property Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-111

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To confirm the appointment of Mr. Alvin L. Jackson to the Real Property Tax Appeals Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Real Property Tax Appeals Commission Alvin L. Jackson Confirmation Resolution of 2013".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Alvin L. Jackson
4314 13th Place, N.E.
Washington, D.C. 20017
(Ward 5)

as a part-time member of the Real Property Tax Appeals Commission, established by D.C. Official Code § 47-825.01a, for a term to end April 30, 2017.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-112

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $19 million of District of Columbia revenue bonds in one or more series, pursuant to a plan of finance, and to authorize and provide for the loan of the proceeds of such bonds to assist the Center for Global Development, in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Center for Global Development Revenue Bonds Project Approval Resolution of 2013".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) "Authorized Delegate" means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor's functions under this resolution pursuant to section 422(6) of the Home Rule Act.

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

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) "Borrower" means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds which shall be the Center for Global Development, a District of Columbia nonprofit corporation organized under the laws of the District of Columbia and exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3).

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

(6) "Closing Documents" means all documents and agreements other than Financing Documents that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan contemplated thereby, and includes agreements, certificates, letters, opinions,

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forms, receipts, and other similar instruments.

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

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

(9) "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.*).

(10) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan contemplated thereby, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Project" means the financing, refinancing or reimbursing of all or a portion of the Borrower's cost of:

(A) Acquiring, constructing, designing, furnishing, and equipping an approximately 33,380 square foot portion of an office building located at 2055 L Street, N.W., Washington, D.C. (condominium unit to be created pursuant to a Plat of Condominiums filed in Plat Book 73 at page 43, amended Plat Book 74 at page 41; Square 100), consisting of approximately 253,487 square feet above grade with below grade parking, and functionally related and subordinated property (the "Facility");

(B) Funding any required debt service reserve fund and/or capitalized interest on the Bonds;

(C) Funding, if necessary, any working capital expenditures associated with the Facility; and

(D) Paying certain costs of issuance of the Bonds, including any bond insurance or credit enhancement fees.

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Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may by resolution authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, pursuant to a plan of finance, in an aggregate principal amount not to exceed $19 million and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of industrial and commercial development within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, pursuant to a plan of finance, in an aggregate principal amount not to exceed $19 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in

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accordance with this resolution in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

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

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

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

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

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

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

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

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

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

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

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

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

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

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Borrower subject to the approval

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of the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series, pursuant to a plan of finance.

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or

ENROLLED ORIGINAL

appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

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

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

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

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

Sec. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and

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agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees or agents to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, nor as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale, or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

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

Sec.12. Maintenance of documents.

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

Sec.13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in

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its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

Sec. 16. Severability.

If any particular provision of this resolution, or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least fourteen (14) days after publication of notice in a newspaper of general circulation in the District.

Sec. 18. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the Home Rule Act.

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Sec. 20. Effective date.
This resolution shall take effect immediately.

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A RESOLUTION

20-113

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $14.5 million of District of Columbia revenue bonds in one or more series and to authorize and provide for the loan of the proceeds of such bonds to assist Two Rivers Public Charter School Inc., in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Two Rivers Public Charter School Revenue Bonds Project Approval Resolution of 2013".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) “Authorized Delegate” means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have sub-delegated any of the Mayor’s functions under this resolution pursuant to section 422(6) of the Home Rule Act.

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

(3) “Bonds” means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this resolution.

(4) “Borrower” means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds which shall be Two Rivers Public Charter School, Inc., a District of Columbia nonprofit corporation exempt from federal income taxes under 26 U.S.C § 501(a) (2004) as an organization described in 26 U.S.C. § 501(c)(3) (2004).

(5) “Chairman” means the Chairman of the Council of the District of Columbia.

(6) “Closing Documents” means all documents and agreements other than Financing Documents that may be necessary and appropriate to issue, sell, and deliver the Bonds and to make the Loan contemplated thereby, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(7) “Financing Documents” means the documents other than Closing Documents

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that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds and the making of the Loan, including any offering document, and any required supplements to any such documents.

(8) "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.*).

(9) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan contemplated thereby, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(10) "Loan" means the District's lending of proceeds from the sale, in one or more series, of the Bonds to the Borrower.

(11) "Project" means the financing, refinancing, or reimbursing of all or a portion of the Borrower's cost of:

(A) A loan from Self-Help Ventures Fund in the amount of $7,552,500, the proceeds of which were used to acquire, construct, renovate, furnish, equip, and related costs, the facilities of the Borrower, located at 1227 4th Street, N.E., (Lot 57, Square 804), a loan from Premier Bank in the amount of $4,513,421, and a loan from the District of Columbia Office of Public Charter School Financing and Support in the amount of $2,000,000, the proceeds of which were used to acquire, construct, renovate, furnish, equip and related costs of the facilities of the Borrower, located at 1234 4th Street, N.E. (Lot 16, Square 772) (collectively, "Facility");

(B) Further rehabilitating, improving, equipping, and furnishing of the Facility;

(C) Funding any required debt service reserve fund or capitalized interest on the Bonds; and

(D) Paying certain costs of issuance of the Bonds, as well as any bond insurance or credit enhancement;

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may, by resolution, authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated

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in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, in an aggregate principal amount not to exceed $14.5 million, and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District within the meaning of Section 490 of the Home Rule Act.

(4) The Project is an undertaking in the area of education within the meaning of section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, in an aggregate principal amount not to exceed $14.5 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

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

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

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

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

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of interest on the Bonds;

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

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

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

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

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

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

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

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

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

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

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

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

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts, and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

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

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

(d) The Mayor's execution and delivery of the Financing Documents and the Closing

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Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents, including those Financing Documents and Closing Documents to which the District is not a party.

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

Sec. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, if required, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees or agents to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, nor as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials,

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officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 11. District officials.

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

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

Sec.12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

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Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

Sec. 16. Severability.

If any particular provision of this resolution, or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least 14 days after publication of notice in a newspaper of general circulation in the District.

Sec. 18. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the Home Rule Act.

Sec. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

20-114

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To authorize and provide for the issuance, sale, and delivery in an aggregate principal amount not to exceed $90 million of District of Columbia revenue bonds in one or more series, pursuant to a plan of finance, and to authorize and provide for the loan of the proceeds of such bonds to assist the National Law Enforcement Officers Memorial Fund, Inc., in the financing, refinancing, or reimbursing of costs associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "National Law Enforcement Officers Memorial Fund, Inc., Revenue Bonds Project Approval Resolution of 2013".

Sec. 2. Definitions.

For the purpose of this resolution, the term:

(1) "Authorized Delegate" means the Mayor or the Deputy Mayor for Planning and Economic Development, or any officer or employee of the Executive Office of the Mayor to whom the Mayor has delegated or to whom the foregoing individuals have subdelegated any of the Mayor's functions under this resolution pursuant to section 422(6) of the Home Rule Act.

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

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, pursuant to a plan of finance, authorized to be issued pursuant to this resolution.

(4) "Borrower" means the owner of the assets financed, refinanced, or reimbursed with proceeds from the Bonds which shall be the National Law Enforcement Officers Memorial Fund, Inc., a District of Columbia nonprofit corporation organized under the laws of the District of Columbia, and exempt from federal income taxes under 26 U.S.C § 501(a) as an organization described in 26 U.S.C. § 501(c)(3).

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

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

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

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

(9) "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.*).

(10) "Issuance Costs" means all fees, costs, charges, and expenses paid or incurred in connection with the authorization, preparation, printing, issuance, sale, and delivery of the Bonds and the making of the Loan, including, but not limited to, underwriting, legal, accounting, rating agency, and all other fees, costs, charges, and expenses incurred in connection with the development and implementation of the Financing Documents, the Closing Documents, and those other documents necessary or appropriate in connection with the authorization, preparation, printing, issuance, sale, marketing, and delivery of the Bonds and the making of the Loan contemplated thereby, together with financing fees, costs, and expenses, including program fees and administrative fees charged by the District, fees paid to financial institutions and insurance companies, initial letter of credit fees (if any), compensation to financial advisors and other persons (other than full-time employees of the District) and entities performing services on behalf of or as agents for the District.

(11) "Loan" means the District's lending of proceeds from the sale, in one or more series, pursuant to a plan of finance, of the Bonds to the Borrower.

(12) "Mayor" means the Mayor of the District of Columbia.

(13) "Project" means the financing, refinancing or reimbursing of all or a portion of the Borrower's cost of:

(A) Constructing, designing, furnishing, and equipping an approximately 53,000 square foot national law enforcement museum, and functionally related and subordinate property, to be located at 444 E Street, N.W., Washington D.C., (Federal Land Reservation #7) ("Facility");

(B) Funding any required debt service reserve fund or capitalized interest on the Bonds;

(C) Paying certain working capital expenditures associated with the Facility; and

(D) Paying certain costs of issuance of the Bonds, as well as any bond insurance or credit enhancement.

Sec. 3. Findings.

The Council finds that:

(1) Section 490 of the Home Rule Act provides that the Council may by resolution authorize the issuance of District revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of undertakings in certain areas designated in section 490 and may effect the financing, refinancing, or reimbursement by loans made directly or

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indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) The Borrower has requested the District to issue, sell, and deliver revenue bonds, in one or more series, pursuant to a plan of finance, in an aggregate principal amount not to exceed $90 million and to make the Loan for the purpose of financing, refinancing, or reimbursing costs of the Project.

(3) The Project is located in the District and will contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District.

(4) The Project is an undertaking in the area of recreation, tourism, and hospitality facilities within the meaning of Section 490 of the Home Rule Act.

(5) The authorization, issuance, sale, and delivery of the Bonds and the Loan to the Borrower are desirable, are in the public interest, will promote the purpose and intent of section 490 of the Home Rule Act, and will assist the Project.

Sec. 4. Bond authorization.

(a) The Mayor is authorized pursuant to the Home Rule Act and this resolution to assist in financing, refinancing, or reimbursing the costs of the Project by:

(1) The issuance, sale, and delivery of the Bonds, in one or more series, pursuant to a plan of finance, in an aggregate principal amount not to exceed $90 million; and

(2) The making of the Loan.

(b) The Mayor is authorized to make the Loan to the Borrower for the purpose of financing, refinancing, or reimbursing the costs of the Project and establishing any fund with respect to the Bonds as required by the Financing Documents.

(c) The Mayor may charge a program fee to the Borrower, including, but not limited to, an amount sufficient to cover costs and expenses incurred by the District in connection with the issuance, sale, and delivery of each series of the Bonds, the District's participation in the monitoring of the use of the Bond proceeds and compliance with any public benefit agreements with the District, and maintaining official records of each bond transaction and assisting in the redemption, repurchase, and remarketing of the Bonds.

Sec. 5. Bond details.

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

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

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

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

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interest on the Bonds;

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

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

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

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

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

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

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

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

(b) The Bonds shall contain a legend, which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary of the District of Columbia's manual or facsimile signature. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the Bonds.

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

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

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series, pursuant to a plan of finance.

Sec. 6. Sale of the Bonds.

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

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

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

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

Sec. 7. Payment and security.

(a) The principal of, premium, if any, and interest on, the Bonds shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Loan, income realized from the temporary investment of those receipts and revenues prior to payment to the Bond owners, other moneys that, as provided in the Financing Documents, may be made available to the District for the payment of the Bonds, and other sources of payment (other than from the District), all as provided for in the Financing Documents.

(b) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents, including a security interest in certain collateral, if any, to the trustee for the Bonds pursuant to the Financing Documents.

(c) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 8. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds and to make the Loan to the Borrower. Each of the Financing Documents and each of the Closing Documents to which the District is not a party shall be approved, as to form and content, by the Mayor.

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

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

(d) The Mayor's execution and delivery of the Financing Documents and the Closing

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Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents, including those Financing Documents and Closing Documents to which the District is not a party.

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

Sec. 9. Authorized delegation of authority.

To the extent permitted by District and federal laws, the Mayor may delegate to any Authorized Delegate the performance of any function authorized to be performed by the Mayor under this resolution.

Sec. 10. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

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

(c) Nothing contained in the Bonds, in the Financing Documents, or in the Closing Documents shall create an obligation on the part of the District to make payments with respect to the Bonds from sources other than those listed for that purpose in section 7.

(d) The District shall have no liability for the payment of any Issuance Costs or for any transaction or event to be effected by the Financing Documents.

(e) All covenants, obligations, and agreements of the District contained in this resolution, the Bonds, and the executed, sealed, and delivered Financing Documents and Closing Documents to which the District is a party, shall be considered to be the covenants, obligations, and agreements of the District to the fullest extent authorized by law, and each of those covenants, obligations, and agreements shall be binding upon the District, subject to the limitations set forth in this resolution.

(f) No person, including, but not limited to, the Borrower and any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District or any of its elected or appointed officials, officers, employees or agents to perform any covenant, undertaking, or obligation under this resolution, the Bonds, the Financing Documents, or the Closing Documents, nor as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

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Sec. 11. District officials.

(a) Except as otherwise provided in section 10(f), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance, sale, or delivery of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents.

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

Sec.12. Maintenance of documents.

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

Sec. 13. Information reporting.

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

Sec. 14. Disclaimer.

(a) The issuance of Bonds is in the discretion of the District. Nothing contained in this resolution, the Bonds, the Financing Documents, or the Closing Documents shall be construed as obligating the District to issue any Bonds for the benefit of the Borrower or to participate in or assist the Borrower in any way with financing, refinancing, or reimbursing the costs of the Project. The Borrower shall have no claims for damages or for any other legal or equitable relief against the District, its elected or appointed officials, officers, employees, or agents as a consequence of any failure to issue any Bonds for the benefit of the Borrower.

(b) The District reserves the right to issue the Bonds in the order or priority it determines in its sole and absolute discretion. The District gives no assurance and makes no representations that any portion of any limited amount of bonds or other obligations, the interest on which is excludable from gross income for federal income tax purposes, will be reserved or will be available at the time of the proposed issuance of the Bonds.

(c) The District, by adopting this resolution or by taking any other action in connection with financing, refinancing, or reimbursing costs of the Project, does not provide any assurance that the Project is viable or sound, that the Borrower is financially sound, or that amounts owing on the Bonds or pursuant to the Loan will be paid. Neither the Borrower, any purchaser of the Bonds, nor any other person shall rely upon the District with respect to these matters.

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Sec. 15. Expiration.

If any Bonds are not issued, sold, and delivered to the original purchaser within 3 years of the date of this resolution, the authorization provided in this resolution with respect to the issuance, sale, and delivery of the Bonds shall expire.

Sec. 16. Severability.

If any particular provision of this resolution, or the application thereof to any person or circumstance is held invalid, the remainder of this resolution and the application of such provision to other persons or circumstances shall not be affected thereby. If any action or inaction contemplated under this resolution is determined to be contrary to the requirements of applicable law, such action or inaction shall not be necessary for the purpose of issuing of the Bonds, and the validity of the Bonds shall not be adversely affected.

Sec. 17. Compliance with public approval requirement.

This approval shall constitute the approval of the Council as required in section 147(f) of the Internal Revenue Code of 1986, as amended, and section 490(k) of the Home Rule Act, for the Project to be financed, refinanced, or reimbursed with the proceeds of the Bonds. This resolution approving the issuance of the Bonds for the Project has been adopted by the Council after a public hearing held at least fourteen (14) days after publication of notice in a newspaper of general circulation in the District.

Sec. 18. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 19. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the Home Rule Act.

Sec. 20. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

20-115

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To approve proposed rules governing the process and criteria through which applicants may prove eligibility for the purpose of gaining enrollment in the DC HealthCare Alliance program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Eligibility Criteria Amendment for the DC HealthCare Alliance Program Rules Approval Resolution of 2013".

Sec. 2. Pursuant to section 7a of the Health Care Privatization Amendment Act of 2001, effective March 30, 2004 (D.C. Law 15-109; D.C. Official Code § 7-1405.01), on March 8, 2013, the Mayor transmitted to the Council proposed rules of the Health Care Safety Net Administration. The proposed rules will preserve the availability of resources and encourage appropriate administration of the DC HealthCare Alliance program by requiring program enrollees to bi-annually certify eligibility status through a face-to-face interview and provide proof of District residency. The Council approves the proposed rules, published at 59 DCR 1791, to amend sections 3304 and 3305 of Title 22 of the District of Columbia Municipal Regulations.

Sec. 3. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor and the Director of the Department of Health Care Finance.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-116

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend section 47-462 of the District of Columbia Official Code to extend the deadline for the final report of the Tax Revision Commission; to amend the Procurement Practices Reform Act of 2010 to allow the Tax Revision Commission to procure goods and services independent of the Chief Procurement Officer pursuant to a streamlined small-purchase procurement process for contracts for goods and services not exceeding $40,000.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Tax Revision Commission Report Extension and Procurement Streamlining Congressional Review Emergency Declaration Resolution of 2013".

Sec. 2. (a) The purpose of the Tax Revision Commission ("Commission") is to conduct a broad and deep review of the District's tax laws, tax expenditures, revenues, tax base, and economy, and to provide the Council and the Mayor with recommendations for reform. The Commission is required by law to submit its recommendations in the form of a report or reports similar in form and scope as those transmitted by the District of Columbia Tax Revision Commission in 1998.

(b) Under current law (D.C. Official Code § 47-462(d)), the Commission was given just 9 months to produce its report and recommendations.

(c) The original Commission required 2 years between passage of the legislation and the publication of its well-researched and in-depth report in 1998.

(d) The members of the Commission are of the opinion that an extension of the time for the Commission to publish its report and recommendations would result in a publication of both depth and breadth comparable to the 1998 report and which would better inform policy decisions in the coming years. This will provide the Commission with the necessary time to commission studies externally and produce the best and most thoughtful product.

(e) The work of the Commission will be most effective if the deadline for the report is extended to the end of fiscal year 2013, or September 30, 2013.

(f) The Commission has experienced difficulty in attempting to execute quick procurements for expert research into particular topics of tax law and policy. With the reporting deadline approaching, the Commission has an urgent need for expedited contracting.

(g) Exempting certain procurements from the requirements of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et*

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seq.), will allow the Commission to accomplish its statutory mandate within the deadline set forth in the Tax Revision Commission Report Extension and Procurement Streamlining Emergency Amendment Act of 2013.

(h) The Tax Revision Commission Report Extension and Procurement Streamlining Emergency Amendment Act of 2013 would allow the Commission to procure goods and services independent of the Chief Procurement Officer pursuant to a streamlined small-purchase procurement process for contracts for goods and services not exceeding $40,000. Limiting the Commission's independent procurement authority to contracts of such a small amount will ensure that the District's policy of favoring competitive procurements is not undermined.

(i) The Council adopted the Tax Revision Commission Report Extension and Procurement Streamlining Emergency Amendment Act of 2013, effective March 1, 2013 (D.C. Act 20-19; 60 DCR 3974), and the Tax Revision Commission Report Extension and Procurement Streamlining Temporary Amendment Act of 2013, effective March 20, 2013 (D.C. Act 20-40; 60 DCR 4667) earlier this year. The emergency legislation is set to expire on May 30, 2013, and the temporary measure is still undergoing the Congressional review period and is not projected to become law until June 3, 2013. Thus, this Congressional review emergency is necessary to prevent a gap in the law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Tax Revision Commission Report Extension and Procurement Streamlining Congressional Review Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-117

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To confirm the reappointment of Mr. John Boardman to the Washington Convention and Sports Authority Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Washington Convention and Sports Authority Board of Directors John Boardman Confirmation Resolution of 2013".

Sec. 2. The Council of the District of Columbia confirms the reappointment of:

Mr. John Boardman
1723 Shepherd Street, N.W.
Washington, D.C. 20011
(Ward 4)

as an organized labor representative of the Washington Convention and Sports Authority Board of Directors, established by section 205 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.05), for a term to end May 16, 2017.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-118

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To confirm the appointment of Mr. Keith A. Anderson as the Director of the District Department of the Environment.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Director of the District Department of the Environment Keith A. Anderson Confirmation Resolution of 2013".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Mr. Keith A. Anderson
614 Randolph Street, N.W.
Washington, D.C. 20011
(Ward 4)

as Director of the District Department of the Environment, established by section 103(a) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(a)), in accordance with section 2(a) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)), to serve at the pleasure of the Mayor.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-119

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To confirm the appointment of Ms. Gladys Mack to the District of Columbia Taxicab Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Taxicab Commission Gladys Mack Confirmation Resolution of 2013".

Sec. 2. The Council of the District of Columbia confirms the appointment of:

Ms. Gladys Mack
7030 Oregon Avenue, N.W.
Washington, D.C. 20015
(Ward 4)

as a public member of the District of Columbia Taxicab Commission, established by the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-304), for a term to end May 4, 2018.

Sec. 3. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the nominee and to the Office of the Mayor.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-120

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To approve multiyear Contract No. 13-OCPS-004-04 with Davis Memorial Goodwill Industries to provide workforce intermediary services for the Washington Convention and Sports Authority

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Proposed Multiyear Contract No. 13-OCPS-004-04 Approval Resolution of 2013".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. 13-OCPS-004-04 between the Washington Convention and Sports Authority and Davis Memorial Goodwill Industries to provide workforce intermediary services to train residents for jobs at the Washington Marriott Marquis hotel, which is being constructed as a headquarters hotel for the Walter E. Washington Convention Center at 9th and Massachusetts Avenue, N.W., in an amount not to exceed $2 million.

Sec. 3. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Washington Convention and Sports Authority and the Mayor.

Sec. 4. The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. This resolution shall take effect immediately.

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A RESOLUTION

20-121

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to approve a contract with Hacienda Cooperative, Inc. to fund housing costs associated with affordable rental housing units for extremely low-income individuals' households with area median incomes at or below 30% under the Local Rent Supplement Program administered by the District of Columbia Housing Authority.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No**.** 104-2008-0016A Approval Emergency Declaration Resolution of 2013".

Sec. 2.(a) In 2007, the District passed Title II of the Fiscal Year 2007 Budget Support Emergency Act of 2006, signed by the Mayor on August 8, 2006 (D.C. Act 16-477; 53 DCR 7068) ("BSA"), to provide funding for affordable housing for extremely low-income households in the District. The passage of the BSA created the Local Rent Supplement Program ("LRSP"), a program designed to provide affordable housing and supportive services to extremely low-income District residents, including those who are homeless or in need of supportive services, such as elderly individuals or those with disabilities, through project-based, tenant-based, and sponsored-based LRSP affordable housing units. The BSA provided for the District of Columbia Housing Authority ("DCHA") to administer the LRSP of behalf of the District.

(b) Pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-201 *et seq*.), DCHA procured housing providers to provide affordable housing units under the LRSP. Upon selection of housing providers, DCHA will enter into an Agreement to Enter Into Long Term Subsidy Contract ("ALTSC") with each LRSP housing provider for housing services provided thereunder.

(c) There exists an immediate need to approve an ALTSC with Hacienda Cooperative, Inc. under the LRSP to address the urgent need for immediate renovation and repairs to the properties and to provide long-term affordable housing units for extremely low-income households in the District for units at 100, 102, 104, 108, and 110 58th Street, S.E.

(d) The emergency legislation to approve the contracts will authorize an ALTSC between DCHA and Hacienda Cooperative, Inc. and allow the owner to commence urgently needed rehabilitation to house District of Columbia extremely low-income households with

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incomes at 30% or less of the area median income.

(e) Failure to approve the ALTSC with Hacienda Cooperative, Inc. could result in loss of the affordable rental housing for extremely low-income District residents with incomes at 30% or less of the area median income.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Local Rent Supplement Program Contract No. 104-2008-0016A Emergency Approval Resolution of 2013 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

20-122

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To approve, on an emergency basis, the award of an Agreement to Enter into a Long Term Subsidy Contract for a multi-year term of 15 years in support of the District's Local Rent Supplement Program ("LRSP") to fund housing costs associated with affordable housing units for Contract No.104-2008-0016A with Hacienda Cooperative Inc., for LRSP units located at 100, 102, 104, 108, and 110 58th Street, S.E., in the District and to authorize payment for housing services to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 104-2008-0016A Emergency Approval Resolution of 2013".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 7, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves an Agreement to Enter into a Long Term Subsidy Contract ("ALTSC") with Hacienda Cooperative, Inc. under the Local Rent Supplement Program ("LRSP") to address the urgent need for immediate renovation and repairs to properties located on 58th Street, S.E. and to provide long term affordable housing units for extremely low-income households in the District, and authorizes an initial monthly subsidy amount of $10,222 for services to be received under the contract
.

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

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

20-123

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to amend An Act For the retirement of public-school teachers in the District of Columbia to allow for involuntary retirement for all excessed permanent status teachers without regard to whether a teacher chose to reject other options available to him or her.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Teachers' Retirement Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists an immediate need to implement Bill 20-64, the Teachers' Retirement Amendment Act of 2013, which was approved by the Committee of the Whole on April 30, 2013 and is scheduled for first reading on May 7, 2013.

(b) Bill 20-64 provides that for purposes of involuntary retirement, the term "involuntarily separated" includes the excessing of a permanent status teacher, without regard to whether the teacher chose to reject options available to him or her, such as finding placement elsewhere in the District of Columbia Public Schools ("DCPS").

(c) Bill 20-64 defines "excessing" as the elimination of a teacher's position at a particular school, when such an elimination is not a reduction in force or abolishment, due to a: decline in student enrollment; reduction in the local school budget; closing or consolidation; restructuring; or change in the local school program. This definition mirrors that in the Collective Bargaining Agreement between the Washington Teachers' Union and the District of Columbia Public Schools ("CBA").

(d) According to the CBA, excessed teachers whose most recent performance review was "effective" or higher have options available to them after an excess, including a cash buy-out or an extra year to find another placement.

(e) Because of the existence of these options, teachers rated "effective" or higher are not given a separation notice at the time of an excess, as teachers with less than "effective" ratings are. Thus, teachers that are rated "effective" or higher typically do not have access to the involuntary retirement provisions in the law until one year later, after the extra year has expired.

(f) Bill 20-64 clarifies that all excessed permanent status teachers have access to involuntary retirement after an excessing, regardless of whether the teacher had other options

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available and rejected them. This ensures that all excessed permanent status teachers will have access to an early retirement option, with certain penalties already in the law, after an excessing occurs.

(g) Bill 20-64 is particularly important in light of DCPS's plan to consolidate 13 schools at the end of the 2012-2013 school year, and 2 schools at the end of the 2013-2014 school year, which will result in the excessing of a significant number of teachers.

(h) The last day of the current school year is June 21, 2013, which will be the effective date of an excessing for affected teachers. Immediate implementation of Bill 20-64 will ensure that all eligible affected teachers will have access to an early retirement option.

(i) This emergency would implement all of the provisions of Bill 20-64.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Teachers' Retirement Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-124

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to enact an emergency version of the Reckless Driving Amendment Act of 2012 to ensure its provisions are in effect as of June 1, 2013.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Reckless Driving Emergency Declaration Resolution of 2013".

Sec. 2. (a) On December 4, 2012, the Council approved Bill 19-823, the Reckless Driving Amendment Act of 2012. Due to lengthy administrative delays, this legislation was not transmitted to Congress until February 26, 2013 and is not expected to complete Congressional review until mid to late June.

(b) Section 2 of this bill clarifies the offense of reckless driving and creates a new offense of aggravated reckless driving. Section 8 contains an applicability date of June 1, 2013. Because this bill would apply before it will take effect, this bill would violate the prohibition against *ex post facto* laws in Article I of the U.S. Constitution.

(c) As a result, it is necessary to enact an emergency version of the Reckless Driving Amendment Act of 2012, signed by the Mayor on January 22, 2013 (D.C. Act 19-630; 60 DCR 1713) ("Act"), so that the provisions of the Act become applicable on June 1, 2013, which was the intended applicability date of the Act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Reckless Driving Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-125

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to state that it is the sense of the Council that, in 2013, any student resident of the District of Columbia who wishes to enroll in the District's summer learning program should have the opportunity to do so.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council on Participation in the Summer Learning Program Emergency Declaration Resolution of 2013".

Sec. 2. The Council finds that:

(1) On Thursday, May 2, 2013, the Committee on Education held a hearing on the District of Columbia Public Schools ("DCPS") budget.

(2) At the hearing, government witnesses testified before committee members. Members asked a number of questions regarding the District's summer learning program.

(3) After the hearing, there remained unanswered questions regarding DCPS's commitment to summer education and learning programs.

(4) Because it is already May and students are making decisions regarding their summer learning education, this is a time-sensitive issue that must be addressed immediately.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Sense of the Council on Participation in the Summer Learning Program Emergency Resolution be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-126

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the sense of the Council that, in 2013, any student resident of the District of Columbia who wishes to enroll in the District's summer learning program should have the opportunity to do so.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Sense of the Council on Participation in the Summer Learning Program Emergency Resolution of 2013".

Sec. 2. The Council finds that:

(1) In 2012, the Mayor and the Chancellor of the District of Columbia Public Schools ("DCPS") announced an aggressive plan to, by 2017, increase District-wide math and reading proficiency to 70% while doubling the number of students who score at advanced levels of proficiency.

(2) The results from the 2012 administration of the DC Comprehensive Assessment System show that the District has a long way to go to achieve this goal, as the percentage of students proficient in reading and math tested grade levels was far below 50%.

(3) According to Rand Education, a unit of the Rand Corporation, "[s]ummer learning programs have the potential to help children and youth improve their academic and other outcomes. This is especially true for children from low-income families who might not have access to educational resources throughout the summer months and for low-achieving students who need additional time to master academic content."

(4) In 2013, based on reading assessment performance, the DCPS flagged more than 10,000 students in grades K-8 as potential candidates for the District's summer learning program.

(5) Previously, the summer learning program has been open to all students on a first-come, first-served basis.

(6) However, in 2013, only a short time before the summer learning program enrollment deadline, and without notice to parents or students, DCPS announced that its summer learning program enrollment policy has changed. Now, only those students who are invited to enroll in summer school may enroll on a first-come, first-served basis. Specifically, according to the DCPS's website, the District is "strategically inviting certain students to enroll" in the summer learning program and making judgments as to "who will benefit most from the program."

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(7) In 2013, the District will enroll up to 2,700 of the 10,000 students that the District has flagged as potential candidates for the K-8 summer learning program.

(8) In 2012, the District's revenues exceeded its expenses by more than $400 million. The 2012 budget surplus was added District's reserve fund.

(9) In February 2013, the Council learned that revenues will exceed the approved fiscal year 2013 budget by $190 million.

(1) According to the Mayor, as of January 2013, the reserve fund totals $1.5 billion.

Sec. 3. It is the sense of the Council that in light of the DCPS's late announcement of its new invitation-only policy for summer education, the District's 70% proficiency goals, and the District's financial position, in 2013, any student resident who wishes to enroll in the summer learning program should have the opportunity to do so.

Sec. 4. The Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

20-127

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. CW20202 to provide hauling and disposal of municipal solid waste inclusive of white goods and tires to licensed solid waste disposal facilities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW20202 Approval Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists an immediate need to approve multiyear Contract No. CW20202.

(b) The District proposes to enter into multiyear Contract No. CW20202 with Lucky Dog, LLC to provide hauling and disposal of municipal solid waste, including white goods and tires, to licensed solid waste disposal facilities for a base period of 3 years, with 2 one-year options. The value of the base period is $11,371,500.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. CW20202 Emergency Approval Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-128

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To approve, on an emergency basis, multiyear Contract No. CW20202 with Lucky Dog, LLC to provide hauling and disposal of municipal solid waste inclusive of white goods and tires to licensed solid waste disposal facilities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. CW20202 Emergency Approval Resolution of 2013".

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves Contract No. CW20202, a multiyear agreement with Lucky Dog, LLC to provide hauling and disposal of municipal solid waste, including white goods and tires, to licensed solid waste disposal facilities, in an amount of $11,371,500 for a base period of 3 years.

Sec. 3. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 4. The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. This resolution shall take effect immediately

ENROLLED ORIGINAL

A RESOLUTION

20-129

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to declare the District-owned real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0813, Square 2985 as no longer required for public purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul School Surplus Property Declaration Emergency Declaration Resolution of 2013".

Sec. 2. (a) The property is a school building located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985 ("Property").

(b) The District has not used the Property as a non-charter public school for many years.

(c) The Department of General Services has determined that the Property is surplus to the District's needs.

(d) The Paul Public Charter School ("Paul School") has occupied the Property since 2003 pursuant to a lease that expires on August 31, 2018. The Paul School approached the District through the Department of General Services about entering into a new long- term lease in exchange for completely renovating and remodeling the Property without any District funds and expanding it into a high school program benefiting many of the residents of Ward 4. Given the current use as a high-performing charter school, it is not in the best interest of the District to change the use of the Property.

(e) An expeditious declaration by the Council that the Property is no longer required for public purposes is necessary to facilitate the execution of a new lease of the Property to the Paul School and to facilitate the Paul School's ability to secure financing and commence the proposed improvements to the Property. Further delay could jeopardize the Paul School's ability to complete construction on schedule.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Paul School Surplus Property Declaration Emergency Resolution of 2013 be adopted on an emergency basis.

ENROLLED ORIGINAL

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-130

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare, on an emergency basis, as no longer required for public purposes the District-owned real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul School Surplus Property Declaration Emergency Resolution of 2013".

Sec. 2. Findings.

(a) The District is the owner of the real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985 ("Property"). The Property is comprised of a building containing approximately 128,400 square feet.

(b) The Property is currently occupied by the Paul Public Charter School ("Paul School"), and has been since 2003, pursuant to a lease that expires on August 31, 2018. The Paul School approached the District through the Department of General Services about entering into a new long-term lease in exchange for completely renovating and remodeling the Property without any District funds and expanding its operation to include a high school program benefiting many of the residents of Ward 4.

(c) The Paul School is the only charter school conversion in the District, which began as a public school. The Property has served as a public school, either traditional or charter, since approximately 1930. Given the current use of the Property as a high-performing charter school, it is not in the best interest of the District to change the use of the Property.

(d) The most viable option for the Property is to maintain its continued use as a public education facility. Declaring that the Property is no longer required for public purposes and disposing of it under a long-term ground lease, or other method, is the most expedient and cost-effective solution to:

(1) Reactivate the Property;

(2) Provide public benefits, such as a charter school;

(3) Allow the District to retain long-term fee-simple ownership of the Property; and

(4) Provide residents with outstanding educational services.

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(e) Pursuant to section 1(a-1)(4) of an Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801(a-1)(4)) ("Act"), a public hearing was held on January 10, 2012, regarding the finding that the real property is no longer required for public purposes.

Sec. 3. Pursuant to section 1(a-1) of the Act, the Council finds that the Property is no longer required for public purposes.

Sec. 4. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-131

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to approve the disposition of District-owned real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul School Property Disposition Approval Emergency Declaration Resolution of 2013".

Sec. 2. (a) The property is a school building located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985 (" Property").

(b) The District has not used the Property as a non-charter public school for several years.

(c) The Department of General Services has determined that the Property is surplus to the District's needs.

(d) The Paul Public Charter School ("Paul School") has occupied the Property since 2003 pursuant to a lease that expires on August 31, 2018. The Paul School approached the District through the Department of General Services about entering into a new long-term lease in exchange for completely renovating and remodeling the Property without any District funds and expanding it into a high school program benefiting many of the residents of Ward 4. Given the current use as a high-performing charter school, it is not in the best interest of the District to change the use of the Property.

(e) There is a vital need for the Council to expeditiously approve this disposition to facilitate the execution of a new lease of the Property to the Paul School and to facilitate the Paul School's ability to secure financing and commence the proposed improvements to the Property. Any delay could jeopardize the Paul School's ability to complete construction on schedule.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Paul School Property Disposition Approval Emergency Resolution of 2013 be adopted on an emergency basis.

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Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

20-132

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To approve, on an emergency basis, the disposition of District-owned real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul School Property Disposition Approval Emergency Resolution of 2013".

Sec. 2. Definitions.

For the purposes of this resolution, the term:

(1) "CBE Agreement" means an agreement with the District governing certain obligations of the Lessee or the developer of the Property under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("CBE Act"), including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a).

(2) "Certified business enterprise" means a business enterprise or joint venture certified pursuant to the CBE Act.

(3) "First Source Agreement" means an agreement with the District governing certain obligations of the Lessee or any developer of the Property pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265 (November 9, 1983)), regarding job creation and employment generated as a result of the construction on the Property.

(4) "Lessee" means the Paul Public Charter School, a District of Columbia nonprofit corporation, or its successor.

(5) "Property" means the real property located at 5901 9th Street, N.W., commonly known as the Paul School and designated for tax and assessment purposes as Lot 0814, Square 2985.

Sec. 3. Approval of disposition.

(a) Pursuant to subsections 1(b) and (b-1) of an Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code §10-801(b) and (b-1)) ("Act"), the Mayor transmitted to

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the Council a request for Council to authorize a lease of the Property to the Lessee.

(b) The proposed disposition would occur through a negotiated ground lease of greater than 20 years to the Lessee, whose primary address is 5901 9th Street, N.W., Washington, D.C. 20011.

(c) Lessee has been in possession of the Property since August 2003 pursuant to a lease that expires on August 31, 2018.

(d) The proposed disposition is expected to include the following terms and conditions, in addition to such other terms and conditions as the Mayor considers necessary or appropriate:

(1) The Lessee shall redevelop the Property in accordance with plans approved by the District and shall use the Property primarily as a charter school and educational facility.

(2) The Lessee will enter into a CBE Agreement with the District. The CBE Agreement will require the Lessee to contract with certified business enterprises for at least 35% of the contract dollar volume of the redevelopment of the Property, if any, and if possible, will require at least 20% equity and development participation of local, small, and disadvantaged business enterprises.

(3) The Lessee will enter into a First Source Agreement with the District.

(e) The Council finds that the Property is not required for public purposes.

(f) The Council finds that the Mayor's analysis of economic and other policy factors supporting the disposition of the Property justifies the lease proposed by the Mayor.

(g) All documents submitted with this resolution shall be consistent with the executed term sheet transmitted to the Council pursuant to section 1(b-1)(2) of the Act.

(h) The Council approves the disposition of the Property.

Sec. 4. Transmittal

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Office of the Mayor, the Department of General Services, and the Chief Financial Officer.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

This resolution shall take effect immediately.

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A RESOLUTION

20-133

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to amend the Saving D.C. Homes from Foreclosure Amendment Act of 2010 to provide a borrower the same rights for a defective notice of default on residential mortgage as the law provides for a defective notice of Intention to foreclose on a residential mortgage; to provide that a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate; to provide for a new definition of residential mortgage; to provide for several technical changes to the text; and to amend the Foreclosure Mediation Fund to allow mortgage-related or foreclosure-related settlement funds to be transferred into the fund and allow those funds to be used for specified mortgage-related or foreclosure-related matters.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Saving D.C. Homes from Foreclosure Enhanced Emergency Declaration Resolution of 2013".

Sec. 2. (a) This emergency legislation is necessary to provide borrowers the same rights for the defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage. It also provides that a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate, and it provides for a new definition of residential mortgage.

(b) This emergency legislation clarifies the rights and obligations of the borrower and lender under Subchapter Two of Chapter Sixteen of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code § 42-801 *et seq.*).

(c) The current law is extremely broad and makes the subsequent sale of property that is the subject of a foreclosure action void for any deficiency in the law. The emergency legislation narrows the applicability of the current law to attempts to foreclose without a mediation certificate.

(d) The emergency legislation also protects the homeowner in the event of notice of defects, but does not expand the risk beyond what title insurers already assume for a defective notice of intention to foreclose on a residential mortgage.

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(e) In addition, the emergency legislation provides clarification regarding what constitutes a residential mortgage.

(f) Current law defines a residential mortgage as a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single-family dwellings, including condominium or cooperative units, at least one of which is the principal place of abode of the debtor or his immediate family. This definition does not provide lenders and the title insurance industry with a sufficient framework which would allow them to determine when a residential property is actually owner-occupied.

(g) The emergency legislation also amends the Foreclosure Mediation Fund ("Fund") to allow for mortgage-related or foreclosure-related settlement funds to be transferred into the Fund and allows those funds to be used for the specified mortgage-related or foreclosure-related matters.

(h) Recently, Citibank, N.A., Wells Fargo Bank, N.A., Ally Financial Inc. successor of GMAC Mortgage, LLC, Bank of America Corporation and the J.P. Morgan Chase & Co. entered into consent judgments.

(i) Pursuant to the terms of the consent judgments, the District of Columbia's share of those proceeds shall be used to fund one or more of the following purposes:

(1) Mortgage-related or foreclosure-related counseling;

(2) Mortgage-related or foreclosure-related legal assistance or advocacy;

(3) Mortgage-related or foreclosure-related mediation;

(4) Outreach or assistance to help current and former homeowners secure the benefits for which they are eligible under mortgage-related or foreclosure-related settlements or judgments; and

(5) Enforcement work in the area of financial fraud or consumer protection.

(j) Due to the ambiguity in the current law and the need to expand the use of the Fund by enabling it to accept settlement funds which are subject-matter appropriate, the Council has determined that the emergency legislation is necessary.

(k) This emergency legislation would clarify that all properties that are residential (4 units or less) would be subject to mediation.

(l) This emergency legislation will result in all residential properties threatened with foreclosure be subject to mediation and obtain a mediation certificate before a foreclosure can proceed legally.

(l) This emergency legislation will provide for greater use of the Foreclosure Mediation Fund.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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A RESOLUTION

20-134

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to approve Modification Nos. 6, 7, 8, and 11 to Contract No. DCRK-2008-C-0042 with Sedgwick Claims Management Services, Inc., to provide third party claims administration services for the District's Self-insured Workers' Compensation Program and to authorize payment for the goods and services received and to be received under that contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCRK-2008-C-0042 Modifications Approval and Payment Authorization Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists a need to approve Modification Nos. 6, 7, 8, and 11 to Contract No. DCRK-2008-C-0042 with Sedgwick Claims Management Services, Inc. ("Sedgwick"), to provide third party claims administration services for the District's Self-insured Workers' Compensation Program and to authorize payment for the goods and services received and to be received under the contract.

(b) On October 26, 2012, by Modification No. 6, the Office of Contracting and Procurement ("OCP"), on behalf of the Office of Risk Management, exercised a partial option of option year 2 of Contract No. DCRK-2008-C-0042 with Sedgwick in the amount of $603,084.50 for the period from December 1, 2012, through January 31, 2013.

(c) On January 8, 2013, by Modification No. 7, OCP exercised another partial option of option year 2 in the amount of $301,542.25 for the period of February 1, 2013, through February 28, 2013.

(d) On February 27, 2013, by Modification No. 8, OCP exercised partial option of option year 2 in the amount of $603,084.50 for the period of March 1, 2013, through April 30, 2013, which increased the total amount for option year 2 to $1,507,711.25.

(e) On April 25, 2013, by Modification No. 11, OCP exercised another partial option of option year 2 in the amount of $904,626.75, which increased the total amount for option year 2 to $2,412,338.00.

(f) Approval is necessary to allow the continuation of these vital services. Without this approval, Sedgwick cannot be paid for services provided in excess of $1 million for option year 2.

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Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCRK-2008-C-0042 Modifications Approval and Payment Authorization Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-135

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To declare the existence of an emergency with respect to the need to adjust certain allocations requested in the Fiscal Year 2013 Budget Request Act pursuant to the Omnibus Appropriations Act, 2009.

RESOLVED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fiscal Year 2013 Revised Budget Request Emergency Declaration Resolution of 2013".

Sec. 2. (a) On February 22, 2013 the Office of the Chief Financial Officer provided a revised revenue estimate which showed an increase of $190 million in fiscal year 2013. This revenue is bolstered by an additional $2.7 million which will be available from a refund from the Mandarin Hotel bond trustee, and an additional $8 million from U.S. Department of Transportation PILOT refunds. Combining this revenue with a $20 million reduction related to 31-35 K Street, N.E. not being suitable for sale, $3.4 million being provided to fund previously unfunded legislation, and $1.1 million being expended on repealing the tax on out-of-state municipal bonds, this leaves a total available revenue pool of $176.2 million.

(b) Along with this new revenue, the Mayor has identified $99.7 million of critical spending items that are being proposed. These include funding for affordable housing, as well as pay raises for the entire government through workforce investments. Combining these expenditure items with a $20 million budget savings adjustment required to meet projected revenues, the Mayor is proposing to spend $79.7 million. This leaves an unspent balance of $96.5 million, all of which will be carried over into fiscal year 2014 to be used in accordance with the Fiscal Year 2014 Budget Request Act of 2013.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal Year 2013 Revised Budget Request Emergency Adjustment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-16

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 5, 2013

To posthumously recognize and honor the life of Edra R. Derricks of Ward 1, and to declare January 5, 2013 as "Edra R. Derricks Day" in the District of Columbia.

WHEREAS, Edra R. Derricks was born in the District of Columbia on December 17, 1919 to Gabriel M. Johnson and Willie Mae Bacon Johnson;

WHEREAS, Edra R. Derricks spent her early school years at the Sisters of the Blessed Sacrament in Bensalem, Pennsylvania;

WHEREAS, Edra R. Derricks returned to the District at age 16 to attend and graduate in 1940 from Cardozo High School in Ward 1;

WHEREAS, Edra R. Derricks attended Miner Teachers College in the District;

WHEREAS, Edra R. Derricks married Herbert Fred Ball, Sr. and together they had 9 children;

WHEREAS, Edra R. Derricks started her working life as an operator at the C & P Telephone Company and chose a career of teaching in the District of Columbia Public Schools system at the Bertie Backus Middle School from 1970 to 1993 in the math and science departments, and also taught at St. Augustine Catholic School in the 1970s and 1980s;

WHEREAS, Edra R. Derricks married Horace Derricks, Sr. in 1971;

WHEREAS, Edra R. Derricks, in her later years, helped to operate the Nation House Positive Action Center Watoto School from 1994 to 2008, where she was lovingly known as "Mama Derricks" and where she shared her love of African drum and dancing;

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WHEREAS, Edra R. Derricks received numerous awards, including the International Training in Communications Louise C. Devault Community Service Award on December 12, 2006, an award from then Councilmember Adrian Fenty for Service to the Citizens of the District of Columbia on October 7, 2006, and an award of appreciation for her contributions to the District of Columbia Public Schools system upon her retirement on July 8, 1994;

WHEREAS, Edra R. Derricks served her community as an Advisory Neighborhood Commissioner in the 1970s in Ward 5, a member of an Orange Hat Patrol, and worked extensively with numerous councilmembers, including Councilmember Jim Graham and former Councilmember Douglas Moore;

WHEREAS, Edra R. Derricks graduated from the first class of the Metropolitan Police Department's Senior Citizens Police Academy Program on October 12, 2005;

WHEREAS, Edra R. Derricks was a dedicated member of St. Augustine Catholic Church and served on multiple church committees working to help children and teens in the community; and

WHEREAS, "Mama Derricks" was loved, admired, and respected by all.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Edra R. Derricks Posthumous Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes and honors Edra R. Derricks for her unconditional love, energy, dedication, and lasting contributions to this world and declares January 5, 2013 as "Edra R. Derricks Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-17

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 5, 2013

To recognize Jerry "Iceman" Butler for his 35 years of performing at the Blues Alley Jazz Club, and to declare February 14, 2013, as "Jerry "Iceman" Butler Day" in the District of Columbia.

WHEREAS, Jerry "Iceman" Butler's career spans over 6 decades, and his smooth, cool, and effortless voice has made its mark on a variety of American music styles, including gospel, doo-wop, funk, blues, and soul music;

WHEREAS, February 14, 2013 marks the 35th anniversary of Jerry "Iceman" Butler's continuous and yearly performance at Blues Alley for its annual Valentine's Week concerts;

WHEREAS, over the last 35 years, Blues Alley's Valentine Week performances with Jerry "Iceman" Butler has become one of the most popular, highly anticipated, and sought after events at the club;

WHEREAS, every year since 1978, Jerry "Iceman" Butler has help to rekindle love, romance, and memories, for citizens throughout the Greater Washington, D.C. area;

WHEREAS, Jerry Butler, born Jerry Butler, Jr. on December 8, 1939 in Sunflower, Mississippi, began singing in his church choir in Chicago, where he met his childhood friend and future music collaborator Curtis Mayfield, who together would have a lasting impact on African American and American popular music;

WHEREAS, Jerry Butler and Curtis Mayfield began singing together in a R & B group called the Roosters, which in 1957 later became Jerry Butler and the Impressions, and are credited with giving birth to the "Soul" music style of R & B music;

WHEREAS, Jerry Butler's ability to write hit songs began at the age of 16, when, in 1958, he wrote "For Your Precious Love" for the Impressions;

WHEREAS, Jerry Butler's songwriting continued throughout his career, with hits such as: "He Will Break Your Heart," "Find Another Girl," "Hey – Western Union Man," "Only the Strong Survive," "Ain't Understanding Mellow," "One Night Affair," and many, many others;

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WHEREAS, Jerry Butler has recorded over 50 albums, written, produced, and sung hundreds of songs with many topping the R & B and Top 40's charts; hosted several music specials for the Public Broadcast Service, including, "*Doo Wop 50* and *51*, *Rock Rhythm and Doo Wop*, and *Soul Spectacular: 40 years of R&B*;

WHEREAS, Mr. Butler continues to actively be involved in issues and organizations that concern him, and has served as the Chairman of the Rhythm and Blues Foundation, been a strong supporter of Harold Washington - Chicago's first African American Mayor; and since 1985 has served as the Commissioner of Cook County, IL - the 2nd largest county in the United States; and

WHEREAS, Jerry "Iceman" Butler is being honored on February 14, 2013 by management and staff of Blues Alley, family, friends, citizens, and fans of the Greater Washington, D.C. area.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Jerry 'Iceman' Butler Day Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes and honors the many years of R & B recordings and concert performances, and declares February 14, 2013, as "Jerry "Iceman" Butler Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-18

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To declare April 14, 2013 as "Lemonade Day" in the District of Columbia and to highlight the importance of setting goals, developing business plans, securing investors, creating products, generating profits, and giving back to the community.

WHEREAS, only one-third of the adult population in the United States understands basic financial literacy concepts;

WHEREAS, approximately 34% of parents teach their children how to balance a checkbook, and 93% of parents report concerns that their children might make financial missteps such as overspending or living beyond their means;

WHEREAS, research indicates that people who have had financial education participate more often in retirement programs, make larger contributions to the program, and have a much higher savings rate than others;

WHEREAS, youth are more likely to develop a budget when they learn how to create one;

WHEREAS, Lemonade Day, created in 2007, is a nationwide effort that teaches children how to start, operate, and own a business;

WHEREAS, by running a lemonade stand, participants learn goal setting, develop a business plan, establish a budget, secure investors, provide customer service, and give back to the community;

WHEREAS, on Sunday, April 14, participants of Lemonade Day will produce, consume, and sell delicious lemonade, learn a set of skills to make informed and effective decisions with their financial resources, contribute to a fun and rewarding event, and assist in creating a brighter future for the residents of the District of Columbia; and

ENROLLED ORIGINAL

WHEREAS, the Council wishes to further promote financial literacy and entrepreneurialism for the District of Columbia's youth.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Lemonade Day Declaration Resolution of 2013".

Sec. 2. The Council of the District of Columbia hereby declares its support for Lemonade Day, encourages the public to purchase lemonade on Lemonade Day, and declares April 14, 2013 as "Lemonade Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-19

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize and celebrate O'Conner Anderson III, age 14, for winning the Gold Medal at the 2013 Pyeong Chang Special Olympics World Winter Games in Gangneung, South Korea

WHEREAS, O'Conner Anderson III is one of the fastest athletes on ice in speed skating competition and is a 2-time Ice-A-Thon Champion at the DC Open;

WHEREAS, O'Conner Anderson III is a student at Woodson High School and trains with his coach Nathaniel Mills, a 3-time Winter Olympian, at the Friends of Fort Dupont Ice Arena in Washington, D.C.;

WHEREAS, O'Conner Anderson III competed in the 2013 Special Olympics World Winter Games in Gangneung, South Korea, where he represented his country and the District of Columbia;

WHEREAS, O'Conner Anderson III won 2 gold medals – men's 500-meter short track speed skating and the men's 333-meter short track speed skating – and a bronze medal – men's 777-meter short track speed skating; and

WHERAS, O'Conner Anderson III participated on a Short Track Speed Skating Relay Team with United States Olympic gold medalist and world-renowned short track speed skater Apolo Ohno, joining other Special Olympics athletes and Olympic speed skaters in a Unified Sports Experience exhibition race.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "O'Conner Anderson III Gold Medal Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia celebrates the accomplishments of O'Conner Anderson III and extends special congratulations to him and his family for their hard work and support of this young man's exceptional accomplishments.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-20

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize and honor the Greater Washington Urban League's 75 years of service to the residents of the District of Columbia and celebrate the 75th Annual Gala.

WHEREAS, the National Urban League was founded in New York City in 1929 as a non-partisan civil rights organization;

WHEREAS, the National Urban League is the oldest and largest community-based organization of its kind in the nation;

WHEREAS, the mission of the Urban League is "to enable African Americans to secure economic self-reliance, parity, power and civil rights";

WHEREAS, the Greater Washington Urban League was founded in Washington, D.C. in 1938 to reflect the same mission as the national headquarters;

WHEREAS, the Greater Washington Urban League is the largest interracial, nonpartisan, nonprofit social services and civil rights organization in the District of Columbia area and headquartered in the District of Columbia;

WHEREAS, the Greater Washington Urban League provides direct services and advocacy to more than 65,000 individuals annually;

WHEREAS, the Greater Washington Urban League is led by 2 of the city's most dynamic people ever to serve in the city, Ms. Maudine Cooper and Jerry Moore, III; and

WHEREAS, under their leadership, the Greater Washington Urban League has now grown to a wise and strong 75 years in 2013 and this March 13, 2013 Gala will be its Diamond Anniversary.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Greater Washington Urban League 75th Anniversary Recognition Resolution of 2013".

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Sec. 2. The Council of the District of Columbia recognizes and thanks the Greater Washington Urban League for 75 years of service and success to the city, and congratulates and honors the organization on its Diamond Jubilee.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-21

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize the many contributions of people with developmental disabilities and the importance of a fully inclusive community for all people in every aspect of life in the District of Columbia, and to declare the month of March 2013 as "Developmental Disabilities Awareness Month" in the District of Columbia.

WHEREAS, developmental disabilities affect more than 7 million Americans and their families in the United States;

WHEREAS, the Arc of the District of Columbia, the District of Columbia Department on Disability Services, the District of Columbia Developmental Disabilities Council, Georgetown University Center for Child and Human Development University Center for Excellence in Developmental Disabilities, Project ACTION!, Quality Trust for Individuals with Disabilities, and University Legal Services continue to participate in the national observance of Developmental Disabilities Awareness Month and provide service to District residents with intellectual and developmental disabilities so they may be welcomed into our community without prejudice;

WHEREAS, when people with disabilities are welcomed in our neighborhoods, workplaces, schools, places of worship, and recreational venues, everyone benefits; and

WHEREAS, the District of Columbia working with advocacy and service organizations is committed to increasing awareness of intellectual and developmental disabilities and supporting people as vital and contributing members of our community.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Developmental Disabilities Awareness Month Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the contributions of people with developmental disabilities, and declares the month of March as "Developmental Disabilities Awareness Month" in the District of Columbia as a confirmation of the District's continued

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support to our residents with intellectual and developmental disabilities and those who support them to achieve their goals.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-22

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize the contributions of Dovey Johnson Roundtree to the community, and to declare March 10, 2013, as "Dovey Johnson Roundtree Day" in the District of Columbia.

WHEREAS, Dovey Johnson Roundtree is a trailblazing lawyer, minister, and Army veteran, born in Charlotte, North Carolina on April 17, 1914, and resided in Washington, D.C., for 50 years, until her retirement to Charlotte in 1996;

WHEREAS, Dovey Johnson Roundtree made history as a member of the first class of African American women to train as officers in the newly formed Women's Army Auxiliary Corps (later the Women's Army Corps, or WAC), having been selected for this honor by Mary McLeod Bethune;

WHEREAS, Dovey Johnson Roundtree served her country faithfully and honorably from 1942-1945 as a member of the WAAC/WAC, achieving the rank of Captain;

WHEREAS, on November 7, 1955, Dovey Johnson Roundtree made legal history in the field of transportation with her groundbreaking case before the Interstate Commerce Commission, *Sarah Keys v. Carolina Coach Company*, which mandated an end to Jim Crow seating in buses traveling across state lines, and which in 1961 empowered then Attorney General Robert F. Kennedy to permanently end segregated bus travel during the Freedom Riders' campaign;

WHEREAS, in 1962, Dovey Johnson Roundtree became the first African American member of the Women's Bar Association of the District of Columbia;

WHEREAS, from 1951 until her retirement in 1996, Dovey Johnson Roundtree served the community with distinction as a lawyer of extraordinary commitment and dedication, representing the disadvantaged of Washington, D.C.;

WHEREAS, Dovey Johnson Roundtree served as General Counsel, pro bono, to the National Council of Negro Women;

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WHEREAS, in her capacity as a leader in the legal community, Dovey Johnson Roundtree generously mentored the generation of younger lawyers who followed her;

WHEREAS, in 1961, Dovey Johnson Roundtree led the vanguard of women in the ministry with her ordination as an Itinerant Deacon in the African Methodist Episcopal Church, and in 1964, with her ordination as an Itinerant Elder in that church;

WHEREAS, from 1961 until her retirement in 1996, Dovey Johnson Roundtree served on the ministerial staff of Allen Chapel A.M.E. Church in Southeast Washington, in which capacity she counseled, mentored, and advised members of the church as well as the greater Southeast community;

WHEREAS, Dovey Johnson Roundtree has received many awards, both locally and nationally, including the 2000 American Bar Association's Margaret Brent Women Lawyers of Achievement Award, and the 2011 Janet B. Reno Torchbearer Award from the Women's Bar Association of the District of Columbia; and

WHEREAS, Dovey Johnson Roundtree will be honored on March 10, 2013 by the dedication of the senior housing complex known as The Roundtree Residences in her name.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Dovey Johnson Roundtree Day Declaration Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes and honors the contributions of Dovey Johnson Roundtree, and declares March 10, 2013, as "Dovey Johnson Roundtree Day" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-23

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize the contributions of Harriet Ross Tubman on the centennial of her death.

WHEREAS, Harriet Tubman was born on the Eastern Shore of Maryland around 1820 on a plantation in Dorchester County, Maryland, and escaped from slavery in 1849;

WHEREAS, upon gaining her freedom, Harriet Tubman initially settled in Philadelphia, Pennsylvania, where she met William Still, the Philadelphia Stationmaster of the Underground Railroad, who, along with the Philadelphia Anti-Slavery Society, introduced Harriet Tubman to the inner workings of the Underground Railroad;

WHEREAS, Harriet Tubman made over 13 missions to rescue more than 70 slaves using the network of antislavery activists and safe houses known as the Underground Railroad;

WHEREAS, in 1850, Harriet Tubman became a conductor on the Underground Railroad and eventually became the most influential of all the conductors by returning to the South many times, freeing hundreds of the enslaved population;

WHEREAS, it has been stated that Harriet Tubman never ran her train off the track and never lost a passenger, thereby gaining the title Black Moses of Her People;

WHEREAS, when the Civil War began, Harriet Tubman worked as a cook in the Union Army in South Carolina and served as a nurse, a scout for raiding parties, a leader of troops, and a spy behind Confederate lines;

WHEREAS, Harriet Tubman was successful in bringing countless African American slaves out of bondage;

WHEREAS, after the Civil War, she became active in the women's suffrage movement until she became too ill and then lived in a home she had helped found for elderly African Americans; and

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WHEREAS, Harriet Tubman is an inspiration to many people, and her dedication and commitment to the numerous slaves held in bondage have proven her to be the epitome of true leadership.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Harriet Ross Tubman Centennial of Her Death Commemoration Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the 100th anniversary of the passing of Harriet Ross Tubman.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-24

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize and congratulate Frances Kirby Williams on the celebration of her 100th birthday.

WHEREAS, Frances Kirby Williams was born in Danville, Virginia in 1913 into the family of a Baptist minister and pastor father, a mother, 6 half-brothers, and 3 half-sisters;

WHEREAS, Frances Kirby Williams began her elementary education in Danville, and later moved with her widowed mother to Philadelphia, Pennsylvania, where her education continued through high school;

WHEREAS, Frances Kirby Williams attended Hampton Institute in Virginia, and later left college after the death of her mother;

WHEREAS, Frances Kirby Williams began work in the Government Printing Office in Washington, D.C. shortly after World War II began;

WHEREAS, Frances Kirby Williams met and married Emmett B. Williams upon his return from service in the United States Army;

WHEREAS, Frances Kirby Williams was led to join the Catholic Church at Holy Redeemer parish in Washington, D.C.;

WHEREAS, Frances Kirby Williams answered the call to service through various activities and memberships, such as the Third Order Secular of Our Lady of Mt. Carmel, the Archdiocesan Sodality and Parish Sodality, the Archdiocesan and West Deanery of the Council of Catholic Women, and the Archdiocesan Catechist Program;

WHEREAS, Frances Kirby Williams was appointed coordinator of the Holy Redeemer Religious Education Program, a position she held for many years;

WHEREAS, Frances Kirby Williams was honored as the Black Catholic Women of the Year for 2003 by the Archdiocese of Washington; and

ENROLLED ORIGINAL

WHEREAS, Frances Kirby Williams always prays, “Thanks be to God for the gifts and talents, I’ve endeavored to use for the praise and glory of his Church.”

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Frances Kirby Williams 100th Birthday Recognition Resolution of 2013”.

Sec. 2. The Council of the District of Columbia celebrates Frances Kirby Williams on her 100th birthday.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-25

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize and celebrate the 5th anniversary of Greater Greater Washington.

WHEREAS, five years ago, Greater Greater Washington made its debut;

WHEREAS, after it launched, Greater Greater Washington gradually grew with links from a number of local bloggers as well as some national ones;

WHEREAS, soon other bloggers started volunteering to post articles, edit, redesign the site, do links each day, and much more;

WHEREAS, a lively and intelligent community of commenters formed on the site;

WHEREAS, David Alpert, considered by many bloggers and blog advocates as an online reporter, goes to meetings, researches, investigates, and interviews before he argues his own take on an issue and has made Greater Greater Washington the centerpiece of his work and his life;

WHEREAS, an important goal of David Alpert's advocacy is to get people involved in their neighborhoods and the city; and

WHEREAS, Greater Greater Washington's blog, in the last 5 years, has had 6,548 blog posts from 243 distinct authors and has seen 156,145 comments posted to the site by readers.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "5th Anniversary of Greater Greater Washington Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia commends David Alpert and the many contributors to Greater Greater Washington and congratulates Greater Greater Washington on its resounding success as it celebrates its 5th anniversary.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-26

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize, honor, and support the Girl Scouts affiliated with Peoples Congregational United Church of Christ, and the Girl Scout Council of the Nation's Capital.

WHEREAS, the Girls Scouts organization encourages girls' healthy living through combating Relational Aggression, promotes girl-positive media images, ensures girls feel emotionally and physically safe, promotes girls' involvement in science, technology, engineering, and math , develops financial literacy skills, and gives a voice to girls in underserved communities;

WHEREAS, the Girl Scouts Advocacy Network provides a tool for girls to become the voices for young ladies to make a difference in their communities and across the nation;

WHEREAS, Girl Scout members, volunteers, boards, staff, and supporters have educated policymakers and community leaders on issues that directly affect girls and the Girl Scouts;

WHEREAS, the Girl Scouts affiliated with Peoples Congregational United Church of Christ ("Peoples Church") has provided community outreach through Girl Scouts (and Boy Scouts) for over 40 years;

WHEREAS, the Girl Scouts of Peoples Church, steeped in tradition, provides opportunities to develop young people into productive citizens and provide outdoor and community experience for all levels of scouting in the nation's capital;

WHEREAS, the Girl Scouts of Peoples Church work vigilantly in the community on a regular basis to ensure that the basic tenants of Girl Scouting is achieved; and

WHEREAS, by May 2013, members of Junior Troop 4461 will receive the coveted Bronze Award, the highest level of achievement in community service that Junior Scouts can achieve.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Girl Scouts of Peoples Congregational United Church of Christ Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the Girl Scouts affiliated with Peoples Congregational United Church of Christ and the Girl Scout Council of the Nation's Capital and honors them for their contributions.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-27

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize the Greater Washington Hispanic Chamber of Commerce for promoting and facilitating the success of Hispanic and other minority-owned businesses and the communities they serve through networking, outreach, advocacy, and education.

WHEREAS, the Greater Washington Hispanic Chamber of Commerce ("GWHCC") was founded in 1976, and has been committed to the economic development of the Washington, D.C. metropolitan region by facilitating the success of Hispanic and other minority-owned businesses and the communities they serve for over 36 years through networking, advocacy, education, and access to capital;

WHEREAS, the GWHCC strives to empower members, business leaders, and entrepreneurs through networking opportunities throughout the year;

WHEREAS, these events successfully strengthen partnerships among commercial, nonprofit, and governmental institutions;

WHEREAS, the GWHCC's President and CEO Angela Franco will be honored at the 6th Annual Minority Business Leader Awards as one of the area's top minority business leaders who has exhibited outstanding performance;

WHEREAS, the GWHCC and its foundation, the Greater Washington Hispanic Chamber of Commerce Foundation, have partnered with Carlos Rosario International Public Charter School to provide educational technical assistance and training to the school's students, individuals, or businesses that are interested in opening or growing a business in the District of Columbia;

WHEREAS, the Annual Business Expo is the GWHCC's premier event for showcasing businesses and building connections with participating government agencies, corporations, embassies, nonprofits, small businesses, and individuals in the local Hispanic business community, and has brought District minority-owned businesses unparalleled opportunities;

ENROLLED ORIGINAL

WHEREAS, the GWHCC hosts monthly bilingual educational seminars that provide educational and informational sessions with interpretation in Spanish;

WHEREAS, additionally, sponsors and members share their expertise in relevant topics in an effort to further educate small business owners;

WHEREAS, the GWHCC established the Technical Assistance Program for Small Businesses and Start-ups though partnerships with the District Department of Housing and Community Development, the Deputy Mayor for Planning and Economic Development, and the District of Columbia Office of Human Rights to develop and implement programs that help Hispanic entrepreneurs successfully start and grow their businesses; and

WHEREAS, in the last fiscal year, the GWHCC helped more than 1,200 entrepreneurs and small business owners through one-to-one technical assistance and business education.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Greater Washington Hispanic Chamber of Commerce Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia honors the Greater Washington Hispanic Chamber of Commerce for its contributions to the success of Hispanic and other minority-owned businesses.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-28

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize and honor the Public Service Commission of the District of Columbia as it celebrates 100 years of service in the regulation of electric, gas, and telecommunications industries in the District.

WHEREAS, the Public Utility Commission of the District of Columbia ("PUC") was established as a quasi-judicial agency by Act of Congress on March 4, 1913 after United States President William Howard Taft signed into law the District of Columbia Appropriations Act;

WHEREAS, the Act authorized the PUC to require utilities to "furnish service and facilities reasonably safe and adequate" and to ensure that any charges were "reasonable, just, and nondiscriminatory;"

WHEREAS, the law designated the appointment of the 3 members of the District of Columbia Board of Commissioners as the PUC Commissioners and on March 10, 1913, Cuno H. Rudolph and Chester Harding were sworn in as PUC Commissioners, while the third Commissioner was deemed to be ineligible;

WHEREAS**,** initially, the PUC had jurisdiction over electric, gas, and telephone companies in addition to mass transit, such as street cars and buses, and public motor vehicles, such as taxicabs;

WHEREAS, in 1926, President Calvin Coolidge signed into law legislation that revamped the PUC by giving it 2 full-time, dedicated Commissioners in addition to the Engineer DC Commissioner;

WHEREAS**,** in 1960, jurisdiction over street cars and buses was transferred to the Washington Metropolitan Area Transit Commission;

WHEREAS, in 1964, the name of the PUC changed to Public Service Commission of the District of Columbia ("PSC") with the enactment of Public Law No. 88-503, the District of Columbia Securities Act;

ENROLLED ORIGINAL

WHEREAS**,** the 1974 Home Rule Act affirmed the PSC as an independent charter agency, added a third full-time Commissioner position, and provided that all Commissioners would be appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia;

WHEREAS**,** in 1986, jurisdiction of taxicabs was transferred to the newly created Taxicab Commission, and, in 1997, jurisdiction over securities was transferred to a new Department of Insurance and Securities;

WHEREAS, 67 men and women have served as Commissioners over the PSC's first 100 years of service to the District;

WHEREAS, for 100 years, the men and women of the PSC have worked to protect the public interest by ensuring safe, reliable, and quality utility services for District consumers; by ensuring that rates for monopoly utility services are reasonable, fair, and just; by resolving disputes among consumers and utility service providers; and by providing information to consumers and the public;

WHEREAS, for nearly 50 years, the PSC has promoted energy conservation and the preservation of the environment through the design of energy rates and the approval of programs and policies that promote demand-side management, energy efficiency, and renewable energy, including solar;

WHEREAS**,** the PSC was the first state commission in the nation to create a Consumer Bill of Rights and it was one of the first to establish low-income discount programs for residential electric, natural gas, and local telephone customers, aiding thousands of customers each year;

WHEREAS, for over 30 years, the PSC has fostered competitive utility markets for natural gas, local telecommunications, and electric generation so that all customers, including residential, can benefit from multiple choices of suppliers; and

WHEREAS**,** the PSC has worked collaboratively with the D.C. Energy Office and the District Department of the Environment, the Office of the People's Counsel, and the utility companies to educate and inform the public on the role of the PSC, how to understand utility bills, the availability of low-income discount and energy efficiency programs, customer choice, and the benefits of solar energy and the smart grid.

RESOLVED**,** BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Public Service Commission of the District of Columbia Centennial Recognition Resolution of 2013".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia applauds the Public Service Commission for its contribution and dedication to its mission to serve the public interest by ensuring that financially healthy utility companies provide safe, reliable, and quality services at reasonable, fair, and just rates for District of Columbia residential, business, and government customers.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-29

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 5, 2013

To recognize Dr. Gwendolyn Elizabeth Boyd and declare March 9-10, 2013 as "Dr. Gwendolyn Elizabeth Boyd D.C. Centennial Torch Weekend" in the District of Columbia.

WHEREAS, Delta Sigma Theta Sorority, Inc. was founded on January 13, 1913 by 22 African American college-educated women on the campus of Howard University;

WHEREAS, the Centennial Torch of Delta Sigma Theta Sorority, Inc. will be in the District of Columbia from March 9-10, 2013 to honor Dr. Gwendolyn Elizabeth Boyd for her significant work in, and contributions to, the areas of science, technology, engineering, and mathematics;

WHEREAS, Dr. Gwendolyn Elizabeth Boyd, born on December 27, 1955 in Montgomery, Alabama, is an engineer, activist, and civic leader here in the District of Columbia;

WHEREAS, Dr. Gwendolyn Elizabeth Boyd is the 22nd National President of Delta Sigma Theta Sorority, Inc., and a past Chapter President of the Washington DC Alumnae Chapter of Delta Sigma Theta Sorority, Inc.;

WHEREAS, Dr. Gwendolyn Elizabeth Boyd is a member of the Society of Women Engineers, The Links, Inc., and United Way of the National Capital Area;

WHEREAS, in December 2009, President Obama nominated Dr. Gwendolyn Elizabeth Boyd to serve as a member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation, a position to which she was subsequently confirmed by the Senate in March 2010;

WHEREAS, a few of Dr. Gwendolyn Elizabeth Boyd's accomplishments during her tenure as 22nd National President of Delta Sigma Theta Sorority, Inc. (from 2000-2004) included completing the work and payment of the $6.5 million dollar renovation of the National Headquarters in District of Columbia; securing a $1.6 million grant from the National Science

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Foundation to establish Project SEE (*Science in Everyday Experiences*) to promote math and science for middle school African American girls, helping the sorority achieve Non-Governmental Organization (NGO) status at the United Nations (UN) with the Economic & Social Council making, Delta Sigma Theta Sorority, Inc. the second African American organization to obtain this designation; building a group home for AIDS orphans in Swaziland called "The Delta House," and providing funding for orphans living in the home; instituting the Sorority's International Day of Service where all chapters throughout the world conduct a service initiative on the same day, on the same issue or topic; advocating for education and awareness about HIV/AIDS in Africa and in the United States of America as a part of the first International Day of Service; establishing the Delta Computer Training Center in Lesotho, opening the center with 10 donated computers; adopting the Adelaide Tambo School for the Disabled in Soweto and also providing the school with a bus to transport disabled students, and leading 2 delegations to South Africa to provide training for teachers on every grade level in Swaziland and Lesotho in conjunction with the Minister of Education; and establishing the Delta Homeownership initiative; and

WHEREAS, Dr. Gwendolyn Elizabeth Boyd, in her career as an engineer and the Executive Assistant to the Chief of Staff at the Johns Hopkins Applied Laboratory, has been dedicated to community service, has been a tireless advocate for women's equality, and proactive in recruitment of African Americans and underrepresented Americans into the fields of science, technology, engineering and mathematics.

RESOLVED, BY THE COUNICL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Dr. Gwendolyn Elizabeth Boyd D.C. Centennial Torch Weekend Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia declares March 9-10, 2013 as "Dr. Gwendolyn Elizabeth Boyd D.C. Centennial Torch Weekend" in the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-30

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2013

To recognize and preserve the cultural history and heritage of the District of Columbia and to formally recognize the 151st anniversary of District of Columbia Emancipation Day on April 16, 2013 as an important day in the history of the District of Columbia and the United States..

WHEREAS, on April 16, 1862, President Abraham Lincoln signed the District of Columbia Compensated Emancipation Act during the Civil War;

WHEREAS, the District of Columbia Compensated Emancipation Act provided for immediate emancipation of 3,100 enslaved men, women, and children of African descent held in bondage in the District of Columbia;

WHEREAS, the Act authorized compensation of up to $300 for each of the 3,100 enslaved men, women, and children held in bondage by those loyal to the Union, voluntary colonization of the formerly enslaved to colonies outside of America, and payments of up to $100 to each formerly enslaved person who agreed to leave America;

WHEREAS, the District of Columbia Compensated Emancipation Act authorized the federal government to pay approximately $1 million, in 1862 funds, for the freedom of 3,100 enslaved men, women, and children of African descent in the District of Columbia;

WHEREAS, the Act ended the bondage of 3,100 enslaved men, women, and children of African descent in the District of Columbia, and made them the "first freed" by the federal government during the Civil War;

WHEREAS, nine months after the signing of the District of Columbia Compensated Emancipation Act, on January 1, 1863, President Lincoln signed the Emancipation Proclamation of 1863, to begin to end institutionalized enslavement of people of African descent in Confederate states;

ENROLLED ORIGINAL

WHEREAS, on April 9, 1865, the Confederacy surrendered, marking the beginning of the end of the Civil War, and on August 20, 1866, President Andrew Johnson signed a Proclamation—Declaring that Peace, Order, Tranquility and Civil Authority Now Exists in and Throughout the Whole of the United States of America;

WHEREAS, in December 1865, the 13th Amendment to the United States Constitution was ratified establishing that " Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction";

WHEREAS, in April 1866, to commemorate the signing of the District of Columbia Compensated Emancipation Act of 1862, the formerly enslaved people and others, in festive attire with music and marching bands, started an annual tradition of parading down Pennsylvania Avenue, proclaiming and celebrating the anniversary of their freedom;

WHEREAS, the District of Columbia Emancipation Day Parade was received by every sitting President of the United States from 1866 to 1901;

WHEREAS, on March 7, 2000, at the Twenty Seventh Legislative Session of the Council of the District of Columbia, Councilmember Vincent B. Orange, Sr. (D-Ward 5) authored and introduced, with Carol Schwartz (R-At large) the historic District of Columbia Emancipation Day Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-237; D.C. Official Code §§ 1-612.02a and 32-1201);

WHEREAS, the District of Columbia Emancipation Day Emergency Amendment Act of 2000 was passed unanimously by the Council, and signed into law on March 23, 2000 by Mayor Anthony A. Williams to establish April 16th as a legal private holiday;

WHEREAS, on April 16, 2000, to properly preserve the historical and cultural significance of the District of Columbia Emancipation Day, Councilmember Orange hosted a celebration program in the historic 15th Street Presbyterian Church, founded in 1841 as the First Colored Presbyterian Church;

WHEREAS, on April 16, 2002, after a 100-year absence, the District of Columbia, spearheaded by Councilmember Orange with the support of Mayor Anthony Williams, returned the Emancipation Day Parade, to Pennsylvania Avenue, N.W., along with public activities on Freedom Plaza and evening fireworks (D.C. Official Code § 1 -182);

WHEREAS, the District of Columbia Emancipation Day Parade and Fund Act of 2004, effective March 17, 2005 (D.C. Law 15-240; D.C. Official Code § 1-181 *et seq*.), established the Emancipation Day Fund to receive and disburse monies for the Emancipation Day Parade and

ENROLLED ORIGINAL

activities associated with the celebration and commemoration of the District of Columbia Emancipation Day;

WHEREAS, on May 4, 2004, Councilmember Orange introduced the District of Columbia Emancipation Day Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-288; D.C. Official Code § 1- 612.02(a)(11)), which established April 16th as a legal public holiday;

WHEREAS, on April 16, 2005, District of Columbia Emancipation Day was observed for the first time as a legal public holiday, for the purpose of pay and leave of employees scheduled to work on that day (D.C. Official Code § 1-612.02(c)(2));

WHEREAS, April 16, 2013, is the 151st anniversary of District of Columbia Emancipation Day, which symbolizes the triumph of people of African descent over the cruelty of institutionalized slavery and the goodwill of people opposed to the injustice of slavery in a democracy;

WHEREAS, the Council of the District of Columbia remembers and pays homage to the millions of people of African descent enslaved for more than 2 centuries in America for their courage and determination;

WHEREAS, the Council of the District of Columbia remembers and pays homage to President Abraham Lincoln for his courage and determination to begin to end the inhumanity and injustice of institutionalized slavery by signing the District of Columbia Compensated Emancipation Act on April 16, 1862;

WHEREAS, the alignment of the re-election of the first African American President of the United States, Barack H. Obama, the 151st anniversary of the District of Columbia Emancipation Day, and the 150th anniversary of the Emancipation Proclamation on January 1, 2013 are historically important for the District of Columbia and for the United States; and

WHEREAS, the 151st anniversary of District of Columbia Emancipation Day is a singularly important occasion that links the historic Presidency of Abraham Lincoln with the equally historic Presidency of Barack H. Obama, as the first President of the United States of African descent.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Emancipation Day 151st Anniversary Recognition Resolution of 2013".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia finds the 151st anniversary of District of Columbia Emancipation Day is an important, historic occasion for the District of Columbia and the nation and serves as an appropriate time to reflect on how far the District of Columbia and the United States have progressed since institutionalized enslavement of people of African descent; and, most importantly, the 151st anniversary reminds us to reaffirm our commitment to forge a more just and united country that truly reflects the ideals of its founders and instills in its people a broad sense of duty to be responsible and conscientious stewards of freedom and democracy.

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

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

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

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

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COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILL

B20-284 Employment Testing Translation Act of 2013

Intro. 05-07-13 by Councilmember Orange and referred to the Committee on Workforce and Community Affairs

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PROPOSED RESOLUTIONS

PR20-279 District of Columbia Water and Sewer Authority Board of Directors Mr. Obiora "Bo" Menkiti Confirmation Resolution of 2013

Intro. 05-06-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR20-280 Health Services Planning Program Regulations Approval Resolution of 2013

Intro. 05-07-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-9, THE "EMERGENCY MEDICAL SERVICES AMENDMENT ACT OF 2013"

AND

BILL 20-122, THE "VIDEO VISITATION MODIFICATION ACT OF 2013"

Thursday, July 11, 2013
10:00 a.m.
Room 120 John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-9, the "Emergency Medical Services Amendment Act of 2013"; and Bill 20-122, the "Video Visitation Modification Act of 2013". The hearing will be held on Thursday, July 11, 2013, beginning at 10:00 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

Bill 20-9, would clarify the ability to allow civilian, single-role emergency medical service providers to participate in the Police Officers' and Fire Fighters' Retirement Program and establish a District of Columbia Advisory Paramedic Review Board.

Bill 20-122, would modify the video visitation program in the Department of Corrections to also allow in-person visitation.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Tuesday, July 9, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5:00 pm Thursday, July 25, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-48, THE "CIVIL ASSET FORFEITURE AMENDMENT ACT OF 2013"

AND

BILL 20-107, THE "CHARLES AND HILDA MASON'S ELDER ABUSE CLARIFICATION ACT OF 2013"

Monday, July 8, 2013
11:30 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-48, the "Civil Asset Forfeiture Amendment Act of 2013"; and Bill-20 107, the "Charles And Hilda Mason's Elder Abuse Clarification Act of 2013". The hearing will be held on Monday, July 8, 2013, beginning at 11:30 a.m. in Room 500, of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

Bill 20-48, would ensure property owners are promptly notified after their property is seized and held for a civil forfeiture proceeding; To ensure that property owners are promptly notified after their property is seized and held for a civil forfeiture proceeding; to ensure that all property seized for purposes of a civil forfeiture proceeding is inventoried and cataloged by the Metropolitan Police Department; to eliminate the bond requirement as a prerequisite to a civil forfeiture proceeding; to ensure that property owners have a preliminary hearing to contest the seizure of their property; to remove the burden of proof on property owners to show that their property is not subject to forfeiture; to amend the Firearms Control Regulations Act of 1975, the Illegal Dumping Enforcement Act of 1994, an Act to establish a code of law for the District of Columbia, and an Act For the suppression of prostitution in the District of Columbia to clarify the reforms to the burden of proof and the compliance procedures.

Bill 20-107, would establish stricter penalties for elder abuse or failure to report abuse, create more autonomy for elders, increase criminal penalties for elder abuse, establish financial abuse as a form of elder abuse, and prevent a convicted abuser from inheriting from their victims.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Wednesday, July 3, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5:00 p.m. on Friday, July 19, 2013, to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

REVISED

NOTICE OF PUBLIC HEARING ON

Bill 20-61, the Non-Driver's Identification Card/Driver's Licensed Amendment Act of 2013

Bill 20-177, the Older Adult Driver Safety Amendment Act of 2013

Bill 20-231, the Veteran Status Designation on Driver's License Amendment Act of 2013

Bill 20-275, the District of Columbia Drivers Safety Amendment Act of 2013

Bill 20-279, the Commercial Driver's License Skills Test Amendment Act of 2013

Thursday, June 6, 2013
at 11:00 a.m.
in Room 123 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Thursday, June 6, 2013, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public hearing on Bill 20-61, the Non-Driver's Identification Card/Driver's Licensed Amendment Act of 2013; Bill 20-177, the Older Adult Driver Safety Amendment Act of 2013; and Bill 20-231, the Veteran Status Designation on Driver's License Amendment Act of 2013. The hearing will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. **This notice is revised to include Bills 20-275 and 20-279, which were introduced after this hearing was scheduled.**

Bill 20-61, the Non-Driver's Identification Card/Driver's Licensed Amendment Act of 2013, would prohibit the Mayor from requiring a Social Security number from residents who apply for a driver's license or identification card. Bill 20-177, the Older Adult Driver Safety Amendment Act of 2013, would lower from 55 to 50 the eligible age for residents to take a driver safety course that qualifies them for an insurance discount, allow the course to be taken online, and reduce the required hours for the course. Bill 20-231 would require the District to indicate a resident's veteran status on his or her driver's license. Bill 20-275, would authorize the Mayor to issue a driver's license to a person who is unable to present documentation authorizing the person's presence in the country. Bill 20-279 would decrease the time that an applicant must wait to retake a commercial driver's license skills test and increase the number of times a year that an applicant may take the test.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to

present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on Wednesday, May 29, 2013.

Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-193, THE "ADMINISTRATIVE BIRTH CERTIFICATE AMENDMENT ACT OF 2013"

THURSDAY, JUNE 6, 2013
10:00 a.m.
Council Chamber, Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-193, the "Administrative Birth Certificate Amendment Act of 2013". The hearing will be held on Thursday, June 6, 2013, beginning at 10:00 a.m. in the Council Chamber Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

The purpose of this hearing is to receive public comments on Bill 20-193, which would establish that birth certificates are adequate proof of parentage.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Tuesday, June 4, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5:00 p.m. on Thursday, June 20, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-216, THE "UNIFORM DEPLOYED PARENTS VISITATION AND CUSTODY ACT OF 2013"

BILL 20-217, THE "UNIFORM PREMARITAL AND MARITAL AGREEMMENT ACT OF 2013"

BILL 20-218, THE "UNIFORM ASSET FREEZING ORDERS ACT OF 2013"

BILL 20-219, THE "UNIFORM PARTITION OF HEIRS ACT OF 2013"

BILL 20-221, THE "UNIFORM ELECTRONIC LEGAL MATERIAL ACT OF 2013"

Monday, July 1, 2013
1:30 p.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-216, the "Uniform Deployed Parents Visitation and Custody Act of 2013"; Bill 20-217, the "Uniform Premarital Agreement Act of 2013"; Bill 20-218, the "Uniform Asset Freezing Orders Act of 2013"; Bill 20-219, the "Uniform Partition of Heirs Act of 2013"; and Bill 20-221, the "Uniform Electronic Legal Material Act of 2013". The hearing will be held on Monday, July 1, 2013, beginning at 1:30 p.m. in Room 412, of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

Bill 20-216, would standardize and simplify the rules covering custody and visitation issues for deployed parents. Bill 20-217 would bring clarity and consistency across a range of agreements between spouses and those who are about to become spouses. Bill 20-218 establishes a uniform process for the issuance of in personam orders freezing the assets of a defendant, and imposing collateral restraint on nonparties in order to preserve the assets from dissipation pending judgment.

Bill 20-219 would require that in the event a co-tenant requests a partition, that the co-tenant give notice to other co-tenants; that the property's fair market value be determined by a court-ordered appraisal; that the other co-tenants be given a right of first refusal; that if no other co-tenant elects to purchase, the court order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group; and if the court determines that a partition-in-kind is inappropriate and orders a partition-by-sale; that the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner.

Bill 20-221 would establish a provision for the official designation, authentication, and preservation of certain legal material in electronic records by an official publisher.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Thursday, June 27, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by on 5 pm Monday, July 15, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on Human Services
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

THE COMMITTEE ON HUMAN SERVICES
JIM GRAHAM, CHAIR

ANNOUNCES A PUBLIC HEARING ON

BILL 20-281, THE "HOMELESS SERVICES REFORM AMENDMENT ACT OF 2013"

MONDAY, JUNE 3, 2013 AT 11:00 A.M.

ROOM 500
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Jim Graham, Chair of the Committee on Human Services, announces a Public Hearing on Bill 20-281, the "Homeless Services Reform Amendment Act of 2013." The hearing will be held on Monday, June 3, 2013 at 11:00 a.m. in Room 500 of the John A. Wilson Building.

Bill 20-281 would amend the Homeless Services Reform Act of 2005 by amending the definitions of "homeless" and "transitional housing," adding the terms "Provider premises", "Provisional Placement Status", and "Rapid Re-housing" as well as their respective definitions, clarify that transitional housing is for up to two years, give the Mayor the authority to require homeless services clients to establish and contribute to savings and escrow accounts and to draft corresponding rules, authorize the Department or its designee to place homeless services clients in Provisional Placement Status while it determines eligibility and priority, and allow for the discharge of services when a homeless services client is absent due to relocation to other program or facility, abandons his or her unit, or receives services for the length of the program. This bill contains the Mayor's proposals that Councilmember Graham has recommended dropping for the Budget Support Act in favor of the regular legislative process.

Those who wish to testify should contact Mr. Malcolm Cameron of the Committee on Human Services by e-mail at mcameron@dccouncil.us or by telephone at (202) 724-8191 by Friday, May 31, 2013. E-mail contacts to Mr. Cameron should include the residential ward, full name, title, and affiliation -- if applicable -- of the person(s) testifying. Witnesses should bring 15 copies of their written testimony to the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the

Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004, no later than 5:30 p.m., Thursday, June 13, 2013. The record will close at 6:00 p.m. on Thursday, June 13, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON, COMMITTEE OF THE WHOLE ANNOUNCES A PUBLIC HEARING

on

PR 20-263, Compensation Agreement between the District of Columbia Government and Compensation Units 1-2, FY 2013-2017 Emergency Approval Resolution of 2013;
PR 20-265, Compensation and Working Conditions Agreement between the District of Columbia DOT, OSSE and the Teamsters Local 639 Emergency Approval Resolution of 2013;
PR 20-267, Compensation Agreement between the District of Columbia Department of Mental Health and NUHHCE 1199, AFSCME Local 3758, Emergency Approval Resolution of 2013;
PR 20-269, Compensation Agreement between the District of Columbia Department of Mental Health and 1199 SEIU United Healthcare Workers East MD/DC Region Emergency Approval Resolution of 2013;
PR 20-271, Compensation Agreement between the District of Columbia Department of Mental Health and Committee of Interns and Residents/SEIU, CTW, CLC Emergency Approval Resolution of 2013; &
PR 20-273, Compensation Agreement between the District of Columbia and AFSCME Local 2095 and AFGE Local 383 Emergency Approval Resolution of 2013

on

Thursday, June 6, 2013
12:30 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on **PR 20-263**, Compensation Agreement between the District and Compensation Units 1-2, FY 2013-2017 Emergency Approval Resolution of 2013; **PR 20-265**, Compensation and Working Conditions Agreement between the District Department of Transportation, Office of the State Superintendent of Education, and the International Brotherhood of Teamsters, Local 639 Emergency Approval Resolution of 2013; **PR 20-267**, Compensation Agreement between the District DMH and NUHHCE 1199, AFSCME Local 3758, Emergency Approval Resolution of 2013; **PR 20-269**, Compensation Agreement between the District DMH and 1199 SEIU United Healthcare Workers East MD/DC Region Emergency Approval Resolution of 2013; **PR 20-271**, Compensation Agreement between the District DMH and Committee of Interns and Residents/SEIU, CTW, CLC (CIR/SEIU) Emergency Approval Resolution of 2013; and **PR 20-273**, Compensation Agreement between the District and AFSCME Local 2095 and AFGE Local 383 Emergency Approval Resolution of 2013. The hearing will be held at 12:30 p.m. on Thursday, June 6, 2013 in Room 412 of the John A. Wilson Building.

The stated purpose of PRs 20-263, 20-265, 20-267, 20-269, 20-271, and 20-273 is to approve the above collective bargaining compensation agreements between the District and the parties named above. The purpose of this hearing is to receive testimony regarding the suitability of these agreements.

Those who wish to testify should contact Ms. Christina Setlow, Legislative Counsel, at (202) 724-8196, or via e-mail at csetlow@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, June 4, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, June 4, 2013 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of the PRs can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 9:00 a.m. on June 17, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s)

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

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 5, Washington, D.C. 20004. Copies of reprogramming requests are available in Legislative Services, Room 10. Telephone: 724-8050

Reprog. 20-50: Request to reprogram $10,000,000 of capital funds budget authority and allotment from various agencies to the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on May 13, 2013. This reprogramming is needed to support the costs of implementing improvements to 32 playgrounds in various neighborhoods throughout the District of Columbia.

RECEIVED: 14 day review begins May 14, 2013

Reprog. 20-51: Request to reprogram $585,951 of Fiscal Year 2013 Local Funds budget authority within the Office of the Chief Technology Officer (OCTO) was filed in the Office of the Secretary on May 13, 2013. This reprogramming is needed to enable OCTO to meet its programmatic needs for the remainder of the year.

RECEIVED: 14 day review begins May 14, 2013

Reprog. 20-52: Request to reprogram a total of $2,265,000, consisting of $2,000,000 of Local funds budget authority from the Department of Corrections (DOC) to Pay-As-You-Go (PAYGO) Capital agency and $265,000 of Capital funds budget authority and allotment from the Department of Consumer and Regulatory Affairs (DCRA) to the Department of General Services (DGS) was filed in the Office of the Secretary on May 13, 2013. This reprogramming is needed to enable OCTO to meet its programmatic needs for the remainder of the year.

RECEIVED: 14 day review begins May 14, 2013

Reprog. 20-53: Request to reprogram $67,355,618.90 of Capital Funds Budget Authority and Allotment from various agencies to the District of Columbia Public Schools was filed in the Office of the Secretary on May 14, 2013. This reprogramming is needed to support the cost of completing 18 DCPS capital improvement projects.

RECEIVED: 14 day review begins May 15, 2013

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 22, 2013
2000 14TH STREET, N.W., SUITE 400S,
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members:
Nick Alberti, Donald Brooks, Herman Jones, Mike Silverstein

Show Cause Hearing (Status) **9:30 AM**
Case # 12-AUD-00067;KYW, Inc., t/a Wah Sing Restaurant, 2521 Pennsylvania Ave SE, License #514, Retailer CR, ANC 7B
Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CC-00117; Arias, Inc., t/a My Brother's Place, 237 2nd Street NW License #71593, Retailer CR, ANC 6C
Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00003; Astede Corporation, t/a Nile Market & Kitchen; 7815 Georgia Ave NW, License #60432, Retailer CR, ANC 4B
Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00558(a);Justin's Café, LLC, t/a Justin's Café, 1025 1st Street SE, License #83690, Retailer CR, ANC 6D
Substantial Change in Operation (Increase in Occupancy), Violation of Settlement Agreement

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00735; Bread & Chocolate, Inc., t/a Bread & Chocolate, 5542 Connecticut Ave NW, License #7792,Retailer CR,ANC 3G
No ABC Manager on Duty, Failed to Post ABC License, Substantial Change in Operation (No Summer Garden Endorsement)

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00633; Good Life, 1831 M, LLC, t/a The Mighty Pint, 1831 M Street NW, License #84184, Retailer CT, ANC 2B
Operating After Board Approved Hours

Show Cause Hearing (Status) **9:30 AM**
Case # 12-AUD-00057; Garay Corporation, t/a Corina's Restaurant, 831 Kennedy Street NW, License #79873, Retailer CR, ANC 4D

Board's Calendar
Page -2- May 22, 2013

Failed to File Quarterly Statements

Fact Finding Hearing **9:30 AM**

Cadence, LLC, t/a Legends; 1836 Columbia Road NW, License #86083, Retailer CR , ANC 1C

License in Safekeeping

Show Cause Hearing **10:00 AM**

Case # 12-AUD-00010; HML Rose, Inc., t/a Lindy's Bon Appétit, 2040 I Street NW, License #23533, Retailer CR, ANC 2A

Failed to Comply With the Terms of the Offer in Compromise, dated August 1, 2012

Show Cause Hearing **11:00 AM**

Case # 12-CMP-00443; AVC Solutions Corp, t/a Baja Fresh, 1333 New Hampshire Ave NW, License #83801, Retailer CR, ANC 2B

Failed to File Quarterly Statements (1st Quarter 2012)

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Public Hearing **1:30 PM**

14th & U Street Moratorium Zone

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 1, 2013
Roll Call Hearing Date: July 15, 2013
Protest Hearing Date: September 11, 2013

License No.: ABRA-092159
Licensee: Ima Pizza Store 2, LLC
Trade Name: & Pizza
License Class: Retailer's Class "C" Restaurant
Address: 1250 U St., NW
Contact: Paul Pascal, Esquire 202-544-5839

WARD 1 ANC 1B SMD 1B12

Notice is hereby given that this applicant has applied for a 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 at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30 pm on September 11, 2013.

NATURE OF OPERATION
New Restaurant to prepare and sale Pizza and prepared pizzeria food products.
Seating Capacity is 10.
Total occupancy load is 13.

PROPOSED HOURS OF OPERATION FOR PREMISES:
Sunday through Thursday 7:00 am – 2:00 am; Friday and Saturday 7:00 am – 3:00 am.

PROPOSED HOURS OF SALES/SERVICE/CONSUMPTION FOR PREMISES:
Sunday through Thursday 8:00 am – 2:00 am; Friday and Saturday 8:00 am – 3:00 am.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 01, 2013
Hearing Date: July 15, 2013
Protest Hearing Date: September 11, 2013

License No.: ABRA-092094
Licensee: Agua 301, Inc.
Trade Name: Agua 301
License Class: Retailer's Class "C" Restaurant
Address: 301 Water Street, S.E.
Contact: Michael D. Fonseca, 202-625-7700

WARD 6 ANC 6D SMD 6D07

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 4:00 pm on September 11, 2013.

NATURE OF OPERATION
New restaurant. Latin/Mexican bistro style restaurant serving to diverse clientele including families and Capitol Hill residents. Live entertainment. Occupancy load is 199. Summer Garden with 47 seats.

HOURS OF OPERATION
Sunday through Thursday 11 am – 2 am: Friday and Saturday 11 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11 am – 2 am: Friday and Saturday 11 am – 3 am

HOURS OF OPERATION, SALES/SERVICE/CONSUMPTION OF SUMMER GARDEN
Sunday through Thursday 11 am – 2 am: Friday and Saturday 11 am – 3 am

HOURS OF ENTERTAINMENT
Sunday through Thursday 6 pm -1 am: Friday and Saturday 6 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 1, 2013
Hearing Date: July 15, 2013

License No.: ABRA-060605
Licensee: 2321 18th Street, LLC
Trade Name: Bourbon
License Class: Retailer's Class "C" Restaurant
Address: 2348 Wisconsin Ave., NW
Contact: William Thomas (202) 262-5637

WARD 3 ANC 3B SMD 3B02

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: 2321 18th Street, LLC t/a Bourbon and Kalorama Citizens Association

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

CORRECTION **ON**

4/12/2013

Notice is hereby given that:
License Number: ABRA-085100 **License Class/Type: C Restaurant**
Applicant: Bullfeathers, LLC
Trade Name: Bullfeathers
ANC: 6B

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

410 1ST ST SE, WASHINGTON, DC 20003

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

5/28/2013

HEARING WILL BE HELD ON

6/10/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS: Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 11 pm	11 am -11 pm	-
Monday:	11 am - 11 pm	11 am - 11 pm	-
Tuesday:	11 am - 11 pm	11 am - 11 pm	-
Wednesday:	11 am - 11 pm	11 am - 11 pm	-
Thursday:	11 am - 11 pm	11 am - 11 pm	-
Friday:	11 am - 2 am	11 am - 2 am	-
Saturday:	11 am - 2 am	11 am - 2 am	-

Days	Hours of Sidewalk Cafe Operation	Hours of Sales Sidewalk Cafe
Sunday:	11:15 am - 10 pm	11:15 am - 10 pm
Monday:	11:15 am - 10 pm	11:15 am - 10 pm
Tuesday:	11:15 am - 10 pm	11:15 am - 10 pm
Wednesday:	11:15 am - 10 pm	11:15 am - 10 pm
Thursday:	11:15 am - 10 pm	11:15 am - 10 pm
Friday:	11:15 am - 10 pm	11:15 am - 10 pm
Saturday:	11:15 am - 10 pm	11:15 am - 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/17/2013
PETITION DATE: 7/1/2013
HEARING DATE: 7/15/2013

License Number: ABRA-060510 **Applicant: Amde Sofenias**

License Class/Type: C Restaurant **Trade Name: Queen Makeda**

ANC: 1B **Premise Address: 1917 9TH ST NW**

Endorsements: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	11 am - 2 am	11 am -2 am	7 pm - 2 am
MON:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
TUE:	11 am - 2 am	11 am - 2 am	7 pm - 2am
WED:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
THU:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
FRI:	11 am - 3 am	11 am - 3 am	7 pm - 3 am
SAT:	11 am - 3 am	11 am - 3 am	7 pm - 3 am

License Number: ABRA-026389 **Applicant: F.G. Farah & Partners, LLC**

License Class/Type: C Restaurant **Trade Name: Listranis Italian Gourmet**

ANC: 3D **Premise Address: 5100 MACARTHUR BLVD NW**

Endorsements:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	11 am - 10 pm	11 am -10 pm	-
MON:	11 am - 10 pm	11 am - 10 pm	-
TUE:	11 am - 10 pm	11 am - 10 pm	-
WED:	11 am - 10 pm	11 am - 10 pm	-
THU:	11 am - 10 pm	11 am - 10 pm	-
FRI:	11 am - 11 pm	11 am - 11 pm	-
SAT:	11 am - 11 pm	11 am - 11 pm	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/17/2013
PETITION DATE: 7/1/2013
HEARING DATE: 7/15/2013

License Number: ABRA-020455 **Applicant: Potomac Party Cruises, Inc.**
License Class/Type: C Marine Vessel **Trade Name: Nina's Dandy**
ANC: **Premise Address: 0 PRINCE ST**

Endorsements:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	9 am - 12 am	11 am -11 pm	-
MON:	9 am - 12 am	11 am - 11 pm	-
TUE:	9 am - 12 am	11 am - 11 pm	-
WED:	9 am - 12 am	11 am - 11 pm	-
THU:	9 am - 12 am	11 am - 11 pm	-
FRI:	9 am - 12 am	11 am - 11 pm	-
SAT:	9 am - 12 am	11 am - 11 pm	-

License Number: ABRA-087595 **Applicant: P25, LLC**
License Class/Type: C Restaurant **Trade Name: Piola**
ANC: 1B **Premise Address: 2208 14TH ST NW**

Endorsements: Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Summer Garden Operation	Hours of Sales Summer Garden	Hours of Entertainment
SUN:	11 am - 12 am	11 am -12 am	11 am - 12 am	11 am - 12 am	-
MON:	11 am - 12 am	11 am - 12 am	11 am - 12 am	11 am - 12 am	-
TUE:	11 am - 12 am	11 am - 12 am	11 am - 12 am	11 am - 12 am	-
WED:	11 am - 12 am	11 am - 12 am	11 am - 12 am	11 am - 12 am	-
THU:	11 am - 12 am	11 am - 12 am	11 am - 12 am	11 am - 12 am	-
FRI:	11 am - 2 am	11 am - 2 am	11 am - 2 am	11 am - 2 am	-
SAT:	11 am - 2 am	11 am - 2 am	11 am - 2 am	11 am - 2 am	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/17/2013
PETITION DATE: 7/1/2013
HEARING DATE: 7/15/2013

License Number: ABRA-088504 **Applicant: 1541 Q LLC**
License Class/Type: C Restaurant **Trade Name: TBD**
ANC: 2F **Premise Address: 1541 14TH ST NW**

Endorsements:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	8am - 1:30am	8am -1am	-
MON:	8am - 1:30am	8am - 1am	-
TUE:	8am - 1:30am	8am - 1am	-
WED:	8am - 1:30am	8am - 1am	-
THU:	8am - 1:30am	8am - 1am	-
FRI:	8am - 2:30am	8am - 2am	-
SAT:	8am - 2:30am	8am - 2am	-

License Number: ABRA-084607 **Applicant: Sook & Ho, Inc.**
License Class/Type: C Restaurant **Trade Name: West Wing Cafe**
ANC: 6C **Premise Address: 300 NEW JERSEY AVE NW**

Endorsements:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	9 am - 11 pm	10 am -11 pm	-
MON:	7 am - 11 pm	8 am - 11 pm	-
TUE:	7 am - 11 pm	8 am - 11 pm	-
WED:	7 am - 11 pm	8 am - 11 pm	-
THU:	7 am - 11 pm	8 am - 11 pm	-
FRI:	7 am - 11 pm	8 am - 11 pm	-
SAT:	9 am - 11 pm	10 am - 11 pm	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 01, 2013
Hearing Date: July 15, 2013

License No.: ABRA-086013
Licensee: Ugly Mug, LLC
Trade Name: Jakes American Grille
License Class: Retailer's Class "C" Restaurant
Address: 5016-5018 Connecticut Avenue. NW
Contact: Gaynor Jablonski, Managing Member 202-966-5253

WARD 3 ANC 3F SMD 3F06

Notice is hereby given that this applicant has applied for a substantial change to its 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 Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request to change the Hours of Operation, Hours of Alcoholic Beverage Sales/Service/Consumption and Hours of Entertainment.

CURRENT HOURS OF OPERATION AND HOURS OF SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 10:00 am – 12:00 am; Friday and Saturday 10:00 am – 1:00 am.

CURRENT ENTERTAINMENT HOURS
Sunday through Thursday 10:00 am – 12:00 am; Friday and Saturday 10:00 am – 1:00 am.

PROPOSED HOURS OF OPERATION AND HOURS OF SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am.

PROPOSED ENTERTAINMENT HOURS
Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 17, 2013
Petition Date:	July 1, 2013
Hearing Date:	July 15, 2013

License No.:	ABRA-077812
Licensee:	TGR, Inc.
Trade Name:	LOOK
License Class:	Retailer's Class "C" Restaurant
Address:	1909 K Street, NW
Contact:	Michael Kosmides (202) 331-1050

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this applicant has applied for a substantial change to its 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 Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request is for an expansion to increase capacity load from 186 to 419.

APPROVED HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION FOR PREMISES
Sunday through Thursday 11:30 am - 2:00 am; Friday and Saturday 11:30 am – 3:00 am

APPROVED HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION FOR THE SIDEWALK CAFÉ
Sunday 5:00 pm - 11:00 pm; Monday through Friday 11:00 am – 11:00 pm; Saturday 5:00 pm – 11:00 pm

APPROVED HOURS FOR ENTERTAINMENT
Sunday through Thursday 6:00 pm – 2:00 am; Friday and Saturday 6:00 pm - 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 1, 2013
Hearing Date: July 15, 2013

License No.: ABRA-060347
Licensee: Meze, Inc.
Trade Name: Meze
License Class: Retailer's Class "C" Restaurant
Address: 2437 18th Street, NW
Contact: Andrew Kline 202-686-7600

WARD 1 ANC 1C SMD 1C07

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: Meze, Inc. t/a Meze, ANC 1C and Kalorama Citizens Association

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

CORRECTION**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 17, 2013***
Petition Date:	July 1, 2013****
Hearing Date:	July 15, 2013****
License No.:	ABRA 000460
Licensee:	Balances Columbia Restaurant, Inc.
Trade Name:	Millie and Al's Balances Columbia Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	2440-18th St., NW
Contact:	Barbara Shapiro: 202-387-8131

WARD 1 ANC 1C SMD 1C03

Notice is hereby given that this licensee has applied for a substantial change to its License under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such change on the Hearing Date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, D.C. 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request is for Sidewalk Café with 8 seats.

APPROVED HOURS OF OPERATION AND APPROVED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE:
Sunday 12:00 pm – 2:00 am; Monday through Thursday 4:00 pm – 2:00 pm; Friday 4:00 pm – 3:00 am; Saturday 12:00 pm – 3:00 am.

APPROVED HOURS OF LIVE ENTERTAINMENT:
Sunday through Thursday 9:30 pm -1:45 am; Friday and Saturday 6:00 pm – 2:30 am.

PROPOSED HOURS OF OPERATION FOR SIDEWALK CAFÉ:
Sunday 12:00 pm – 2:00 am; Monday through Thursday 3:00 pm – 2:00 pm; Friday 3:00 pm – 3:00 am; Saturday 12:00 pm – 3:00 am.

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE FOR SIDEWALK CAFÉ:
Sunday 12:00 pm – 1:45 am; Monday through Thursday 4:00 pm – 1:45 pm; Friday 4:00 pm – 2:45 am; Saturday 12:00 pm – 2:45 am.

RESCIND

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 10, 2013
Petition Date:	June 24, 2013
Roll Call Hearing Date:	July 8, 2013
License No.:	ABRA 000460

Licensee:	Balances Columbia Restaurant, Inc.
Trade Name:	Millie and Al's Balances Columbia Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	2440-18th St., NW
Contact:	Barbara Shapiro: 202-387-8131

WARD 1 ANC 1C SMD 1C03

Notice is hereby given that this licensee has applied for a substantial change to its License under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such change on the Hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, D.C. 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request is for Sidewalk Café with 8 seats.

APPROVED HOURS OF OPERATION AND APPROVED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE:
Sunday 12:00 pm – 2:00 am; Monday through Thursday 4:00 pm – 2:00 pm; Friday 4:00 pm – 3:00 am; Saturday 12:00 pm – 3:00 am.

APPROVED HOURS OF LIVE ENTERTAINMENT:
Sunday through Thursday 9:30 pm -1:45 am; Friday and Saturday 6:00 pm – 2:30 am.

PROPOSED HOURS OF OPERATION FOR SIDEWALK CAFÉ:
Sunday 12:00 pm – 2:00 am; Monday through Thursday 3:00 pm – 2:00 pm; Friday 3:00 pm – 3:00 am; Saturday 12:00 pm – 3:00 am.

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE FOR SIDEWALK CAFÉ:
Sunday 12:00 pm – 1:45 am; Monday through Thursday 4:00 pm – 1:45 pm; Friday 4:00 pm – 2:45 am; Saturday 12:00 pm – 2:45 am.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 1, 2013
Hearing Date: July 15, 2013

License No.: ABRA-075944
Licensee: Oyamel DC, LLC
Trade Name: Oyamel
License Class: Retail Class "C" Restaurant
Address: 401 7th Street NW
Contact: Andrew Kline 202-686-7600

WARD 2 ANC 2C SMD 2C03

Notice is hereby given that this applicant has applied for a substantial change to its 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 Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. All petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Expansion of the premises to include an additional 50 seats.

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11:30 am – 2:00 am; Friday and Saturday 11:30 am – 3:00 am

HOURS OF SIDEWALK CAFÉ OPERATION AND SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11:30 am – 2:00 am; Friday and Saturday 11:30 am – 3:00 am

HOURS OF ENTERTAINMENT
Sunday through Thursday 6:00 pm -2:00 am; Friday and Saturday 6:00 pm -3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 17, 2013
Petition Date:	July 01, 2013
Roll Call Hearing Date:	July 15, 2013
License No.:	ABRA-086012
Licensee:	The Juniper Group, LLC
Trade Name:	The Blaguard
License Class:	Retailer's Class "C" Restaurant
Address:	2003 18th Street, NW
Contact:	Nicolas Makris, Member (elizabeth.r.makris@gmail.com)

WARD 1 ANC 1C SMD 1C07

Notice is hereby given for a request to terminate the settlement agreement dated November 20, 2012, as approved and incorporated into an order by the Board, for the following.

Parties to the Settlement Agreement: ANC 1C, KCA and a group of six (6) residents.

Protest Petitions: Objectors are entitled to be heard before the granting of such request on the hearing date at 10:00am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 17, 2013
Petition Date: July 1, 2013
Hearing Date: July 15, 2013
Protest Date: September 4, 2013

License No.: ABRA-091912
Licensee: Black Strap Bakery, LLC
Trade Name: Union Kitchen
License Class: Retailer's Class "C" Tavern
Address: 1100 3rd St. NE
Contact: Jonas Singer 202-573-8272

WARD 6 ANC 6C SMD 6C06

Notice is hereby given that this applicant has applied for a 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 hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on September 4, 2013.

NATURE OF OPERATION
New outdoor Tavern with Food Trucks serving a variety of fare with a seating capacity for 50 patrons and total occupancy load of 200. Entertainment Endorsement featuring live and acoustic music.

HOURS OF OPERATION `
Sunday 10:00 am – 5:00 pm, Monday – Wednesday 4:00 pm – 12:00 am,
Thursday & Friday 12:00 pm – 2:00 am, Saturday 8:00am – 2:00 am

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION
Sunday 10:00 am - 5:00 pm Monday – Wednesday 4:00 pm – 12:00 am,
Thursday & Friday 12:00 pm – 2:00 am, Saturday 8:00am – 2:00 am

HOURS OF ENTERTAINMENT
Sunday 10:00 am – 5:00 pm Monday – Wednesday 4:00 pm – 10:00 pm,
Thursday 12:00pm – 10:00 pm, Friday & Saturday 12:00 pm – 12:00 am

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF A PUBLIC HEARING

D.C. Statewide Independent Living Council (DCSILC) to Hold General Meeting

Tuesday, June 25, 2013, from 1-4 pm
Department on Disability Services
Rehabilitation Services Administration
1125 15th St., NW
1st floor; Conference Room 1A
Washington, DC 20005

Pursuant to Title VII requirements of the Rehabilitation Act of 1973, as amended, the Department on Disability Services Rehabilitation Services Administration (DDS-RSA), the District of Columbia Statewide Independent Living Council (DCSILC), and the District of Columbia Center for Independent Living, Inc. (DCCIL) hereby give notice of a public hearing to be held to obtain input into the 2014 to 2016 State Plan for Independent Living.

A public hearing on the new State Plan for Independent Living to solicit community input will be held on Tuesday, June 25, 2013, from 1-4 pm at DDS-RSA, 1125 15th St., NW, 1st Floor, Meeting Room 1A, Washington, DC 20005. Recommendations are sought from consumers, service providers, advocacy organizations and other interested individuals on how to expand and improve independent living services to District of Columbia residents with significant disabilities.

Persons wishing to review the State Plan for Independent Living may access it online by visiting the agency's website at www.dds.dc.gov or in person at the Martin Luther King, Jr. Memorial Library, 901 G Street, N.W., Washington, DC 20001. A hard copy and CD of the State Plan will be located at the Reference Desk of Adaptive Services, Washingtonian Division at the Martin Luther King, Jr. Memorial Library.

Individuals who wish to testify should contact Ms. Dahlia Johnson, no later than 4:45pm by June 12, 2013, and should provide the following: name(s); address (es); telephone number(s); organizational affiliation(s); accommodation need(s); if any, and two (2) copies of the proposed testimony. Ms. Johnson can be reached via email at dahlia.johnson@dc.gov or via telephone 202-442-8748; 711 Relay; or 202-540-8468 (VP). All testimony will be limited to ten (10) minutes.

Individuals who wish to submit their comments as part of the official record should send copies of written statements no later than 4:45 p.m. on June 18, 2013 to:

Dahlia Johnson
Administrative Assistant
D.C. Statewide Independent Living Council
1125 15th St., NW
Washington, DC 20005
202-442-8748

Individuals who require special accommodations such as an American Sign Language interpreter and/or CART service **should contact Dahlia Johnson at 202-442-8748 by June 18, 2013.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF PUBLIC HEARING

D.C. Department on Disability Services, Rehabilitation Services Administration to Hold a Public Hearing on the Title I State Plan Vocational Rehabilitation Services and the Title VI-B State Plan Supplement for Supported Employment Services

Friday, June 18, 2013, 1-4 pm
Washington DC Metropolitan Transit Authority (WMATA)
Jackson Graham Building
600 5th Street, N.W.
1st Floor Lobby Level Meeting Room
Washington, DC 20005

Pursuant to the Rehabilitation Act of 1973, as amended, and its implementing federal regulations, the D.C. Rehabilitation Services Administration will hold a public hearing on June 18, 2013, from 1-4 pm to obtain input on RSA's Title I State Plan for Vocational Rehabilitation Services and the Title VI-B State Plan Supplement for Supported Employment Services. (*See* 34 C.F.R. §361.20) **Prior to the hearing, the public will have 30 calendar days to submit comments on the State Plan.**

The purpose of the hearing is to ensure that recommendations are received from consumers, service providers, advocacy organizations and other interested individuals on how the agency can better achieve the following:

- Provide more help to consumers with disabilities in finding employment;
- Provide more information about RSA goals and activities to consumers;
- Provide better information on the vocational rehabilitation program and its processes;
- Identify barriers to employment;
- Improve and expand vocational rehabilitation services to minorities;
- Expand vocational rehabilitation services for persons with significant disabilities; and
- Increase employer utilization of the vocational rehabilitation program.

Persons wishing to review the State Plan may access it online by visiting the Agency's website at www.dds.dc.gov or in person at the Martin Luther King, Jr. Memorial Library, 901 G Street, N.W., Washington, DC 20001. A hard copy and CD of the State Plan will be located at the Reference Desk of Adaptive Services, Washingtonian Division at the Martin Luther King, Jr. Memorial Library.

Individuals who wish to testify should contact Ms. Cheryl Bolden, no later than 4:45pm by June 5, 2013, and should provide the following: name(s); address (es); telephone number(s); organizational affiliation(s); accommodation need(s); if any, and two (2) copies of the proposed testimony. Ms. Bolden can be reached via email at cheryl.bolden@dc.gov or via telephone 202-442-8411; 711 Relay; or 202-540-8468 (VP). All testimony will be limited to ten (10) minutes.

Individuals who wish to submit comments can begin doing so starting May 20, 2013. Comments can be submitted two ways: either by email or mail to:

District of Columbia Department on Disability Services
Rehabilitation Services Administration
1125 15th Street, NW
9th Floor
Washington, DC 20005

Comments sent via email must be received by 5:00 pm June 13, 2013; mailed documents must be postmarked by the same sate. All questions should be directed to Ms. Cheryl Bolden, 202-442-8411; 711 Relay; or 202-540-8468 (VP) can be reached Monday through Friday, from 9-3 pm.

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

The D.C. Historic Preservation Review Board will hold a public hearing to consider an application to designate the following properties as a historic landmark in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 13-16: Town Center East
1001 and 1101 3rd Street SW
Square 542, Lots 79, 816, 817, 821, 835-869 and 2001-2251

The hearing will take place at **9:00 a.m. on Thursday, June 27, 2013**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10A DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

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

If the Historic Preservation Review Board designates the properties, they will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects

affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JULY 23, 2013
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

9:30 A.M. MORNING HEARING SESSION

A.M.

WARD FIVE

18592 ANC-5A **Application of Craig Meskill**, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory apartment in a one-family detached dwelling under subsection 202.10, in the R-2 District at premises 4401 14th Street, N.E. (Square 3994, Lot 32).

WARD TWO

18593 ANC-2B **Application of Glenn M. Engelmann,** pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, and a variance from the nonconforming structure requirements under subsection 2001.3, to allow a rear deck addition to an existing row dwelling in the DC/R-5-B District at premises 1412 Hopkins Street, N.W. (Square 96, Lot 93).

WARD SIX

18595 ANC-6A **Application of Eva R. Sanchez,** pursuant to 11 DCMR § 3103.2, for a variance from the definition of yard under section 199, to allow a rear deck addition to a row dwelling occupying more than fifty (50%) percent of the rear yard area in the R-4 District at premises 620 9th Street, N.E. (Square 913, Lot 846).

WARD SIX

18591 ANC-6A **Application of Adolfo Briceno,** pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under subsection 771.2, a variance from the off-street parking requirements under subsection 2101.1, and a variance from the loading requirements under subsection 2201.1, for

a proposed restaurant in the HS-A/C-2-A District at premises 1255 H Street, N.E. (Square 1004, Lot 343).

WARD SIX

18594 ANC-6E **Application of John and Julie Lippman,** pursuant to 11 DCMR § 3103.2, for a variance from the nonconforming structure provisions under subsection 2001.3, to allow an addition to an existing four (4) unit apartment house, not meeting the lot occupancy (section 403) requirements in the R-4 District at premises 471 M Street, N.W. (Square 513, Lot 920).

WARD SIX

THIS APPLICATION WAS POSTPONED FROM THE MARCH 12, 2013 AND MAY 21, 2013, PUBLIC HEARING SESSION:

18514 ANC-6A **Application of Andrew Daly and Patty Jordan**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception under section 223, not meeting the lot occupancy requirements (section 403), a variance from the parking space dimensions requirement under subsection 2115.1, and a variance from the garage setback requirement under subsection 2300.2(b), to allow a detached garage addition serving a one-family dwelling in the R-4 District at premises 1120 Park Street, N.E. (Square 987, Lot 8).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board. Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**. This form may be obtained from the Office of Zoning at the address stated below

or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION ---------- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, July 11, 2013, @ 6:30 P.M.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 12-02 (B&B 50 Florida Avenue, LLC and Bush at 50 Florida Avenue Associates, LLLP - Consolidated PUD & Related Map Amendment @ Square 3516)

THIS CASE IS OF INTEREST TO ANC 5E

On February 23, 2012, the Office of Zoning received an application from B&B Florida Avenue, LLC requesting approval of a consolidated PUD and related zoning map amendment from the C-2-A and C-M-2 Zone Districts to the C-3-B Zone District for Lots 134 and 819 in Square 3516. The Applicant submitted revised application materials on June 4, 2012. Bush at 50 Florida Avenue Associates, LLLP and B&B 50 Florida Avenue, LLC are joint venture partners for developing this project and are now collectively the Applicant in this case.

The Office of Planning submitted a report on June 15, 2012. At its June 25, 2012 public meeting, the Zoning Commission voted to set the application down for a public hearing.

The Applicant provided its prehearing statement on April 22, 2013.

The property that is the subject of this application is located on the north side of Florida Avenue, N.E. with approximately 186 linear feet of frontage on Florida Avenue, N.E. The property is bounded by a 16-foot wide public alley to the north, private property to the east, Florida Avenue, N.E. to the south, and private property to the west. A 12-foot wide public alley running north to south separates Lot 134 from Lot 819. The property has a combined land area of approximately 42,223 square feet. The property is located in Ward 5 and within the boundaries of Advisory Neighborhood Commission 5E.

The proposed project is a mixed-use development that includes approximately 203,887 square feet of total gross floor area, with 185 residential units (plus or minus 10%) and approximately 7,858 square feet of gross floor area devoted to retail users. The overall project will have a density of 4.83 FAR, which is less than the maximum permitted density of 6.0 FAR (utilizing IZ bonus density) in the C-3-B Zone District, and less than the maximum permitted density of 5.5 FAR under the C-3-B PUD requirements. The building will have varying heights and cornice lines, ranging from 60 feet to a maximum height of 90 feet. The project will include 200 to 220 parking spaces which will be located in a below-grade garage.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations 11 DCMR, § 3022.

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

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusions in the record.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR § 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

Pursuant to § 3020.3, 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.

Information should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, 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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED[1] PUBLIC HEARING

TIME AND PLACE: **Monday, July 22, 2013, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 13-06 (Office of Planning - Text Amendments to Define and Regulate Retaining Walls in R-1 through R-4 Districts)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning ("OP"), in a report dated March 29, 2013, petitioned the Zoning Commission for the District of Columbia ("Zoning Commission" or ""Commission") for text amendments to the Zoning Regulations to define and regulate retaining walls. The OP report also served as a prehearing statement.

At its regular public meeting held April 8, 2013 the Zoning Commission set the case down for a public hearing.

The proposed amendments to the Zoning Regulations, Title 11 DCMR, are as follow:

AMEND CHAPTER 1 by adding the following definition to § 199 in alphabetical order:

> Retaining Wall - a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls or other retaining structures.

AMEND CHAPTER 4 by adding a new § 412, Retaining Walls, to read as follows:

412 RETAINING WALLS

412.1 In R-1, R-2, R-3, and R-4 Districts a retaining wall may be erected in accordance with § 412.2 through 412.7.

412.2 A retaining wall may be erected within any required side or rear yard provided the retaining wall or structure does not exceed four feet (4 ft.) in height.

412.3 A retaining wall taller than four feet (4 ft.) shall not be located in any required yard as measured from the property line inward, or along a street frontage.

[1] This hearing was previous scheduled for July 15, 2013.

412.4 The maximum height of a retaining wall regardless of location shall be six feet (6 ft.).

412.5 A retaining wall four feet (4 ft.) or more in height that elevates the terrain and is back filled with dirt or other fill material shall be considered a structure, included in lot occupancy, and its area shall be as follows:

412.6 The length of the retaining wall multiplied by the length of the area containing fill that is being held by the retaining wall.

412.7 Retaining walls may be tiered or terraced provided there shall be a four foot (4 ft.) landscape area between walls. The landscape area shall be pervious and may not be paved or otherwise covered.

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of 11 DCMR § 3021. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All individuals, organizations, or associations wishing to testify in this case should file their intention to testify in writing. Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record.

Information should be forwarded to Sharon S. Schellin, the Secretary of the Zoning Commission, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C., 20001. Please include the number of this particular case and your daytime telephone number. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, 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.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(b)(1) (C), (D), (E), (F), (G), (I), (J), 14, and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1) (C), (D), (E), (F), (G), (I), (J) and 50-319 (2009 Repl.)); D.C. Official Code § 50-313 (2009 Repl.; 2012 Supp.); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Supp.); Section 12 of the 1919 District of Columbia Taxicab Act, approved July 11, 1919 (41 Stat. 104; D.C. Official Code § 50-371 (2009 Repl.)); and Section 6052 of the District of Columbia Taxicab Commission Fund Amendment Act of 2012 (Commission Fund Amendment Act), effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 50-320(a) (2012 Supp.)), hereby gives notice of its intent to amend Chapter 4 (Hearing Procedures Applicable to Notices of Infractions) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules amending Chapter 6 (Taxicab Parts and Equipment) of DCMR Title 31 were originally approved for publication on January 31, 2013, and published in the *D.C. Register* on February 8, 2013, at 60 DCR 1566. The Office held a public hearing on the proposed rules on February 15, 2013, to receive oral comments on the proposed rules. The Office received valuable comments from the public at the hearing and throughout the comment period, which expired on March 9, 2013.

A second proposed rulemaking was drawn from the original proposed rulemaking for Chapter 6 and divided into proposed rulemakings amending Chapters 6 (Taxicab Parts and Equipment), 8 (Operation of Taxicabs), and creating a new Chapter 4 (Taxicab Payment Service Providers). The second proposed rulemakings, to include Chapters 4, 6 and 8, were approved for publication on March 20, 2013, and published in the *D.C. Register* on April 5, 2013 at 60 DCR 5173, 5187 and 5196, respectively. The Commission held another public hearing on the proposed rules on April 17, 2013, to receive oral comments. The Commission reviewed and considered the comments received at the April 17 hearing and throughout the comment period, which expired on May 4, 2013, but made no substantive changes.

The rulemaking for Chapter 4 establishes substantive rules for the administration and operation of payment service providers (PSPs) consistent with the implementation of the Modern Taximeter System (MTS). This final rulemaking was adopted on May 8, 2013 and will take effect upon publication in the *D.C. Register*.

Chapter 4 [RESERVED] is amended to read as follows:

CHAPTER 4 TAXICAB PAYMENT SERVICE PROVIDERS

400 APPLICATION AND SCOPE

400.1 The purpose of this chapter is to establish substantive rules for the administration and operation of payment service providers (PSPs) who provide the modern taximeter systems (MTSs) required by § 603 of this title, including rules to ensure the safety of passengers and operators, for consumer protection, and to collect a taxicab passenger surcharge.

400.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97, D.C. Official Code §§ 50-301 *et seq.*).

400.3 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control.

401 GENERAL REQUIREMENTS

401.1 Each PSP interested in providing an MTS under § 603 shall apply for and obtain approval of its proposed MTS under this chapter before marketing its MTS units to interested taxicab companies and independent owners.

401.2 All costs associated with an MTS, including development costs (including those which may arise in the review process under § 404 and those associated with adding the passenger console and safety feature required by § 603.8(n)), compliance with any provision of this title or other applicable law, compliance with an Office order, service and support, upgrade, installation, operation, repair, and maintenance, shall be the responsibility of the PSP, but may be allocated by a written agreement among the PSP and the taxicab companies and independent owners to whom the PSP markets its MTS units.

401.3 Nothing in this chapter shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

402 RELATED SERVICES

402.1 A PSP may be operated by a person that offers other services regulated by this title, such as a taxicab company or a dispatch service, provided such other services are in compliance with all applicable provisions of this title and other applicable laws, and may share a place of business with such service(s) if the place of business is in compliance with this title and other applicable laws, including the requirement for a certificate of occupancy provided by the Department of Consumer and Regulatory Affairs.

402.2 Each PSP may associate with one or more dispatch services to allow such services to provide dispatches to taxicab operators, or to allow digital dispatch services to process digital payments, provided that such dispatch services are in compliance with all applicable provisions of this title, and other applicable laws. Each taxicab

company, independent owner, and operator, may associate with one or more dispatch services as provided in § 603.4, subject to any written agreement between the PSP and such taxicab company, independent owner, or operator, which shall require that all fares, rates, charges, and payments comply with the applicable provisions of this title, including this chapter, and §§ 603 and 801.

403 PROPOSED MODERN TAXIMETER SYSTEMS – APPLICATIONS

403.1 No person shall operate as a PSP in the District, provide payment card processing services for taxicabs to any person in the District, market its MTS units for use in the District, or allow another person to use its MTS units in the District, unless such person is a PSP with current approval of its MTS under this chapter. The approval of the MTS shall constitute the PSP's operating authority under this title.

403.2 A PSP shall file with the Office an application for review of a proposed MTS that includes the following information and documentation:

(a) The PSP's name, business address, and business telephone number, and the name(s) of its owner and operator;

(b) The name, business address, and business telephone number for other services offered by the person that operates the PSP which are subject to regulation under this title, such as a taxicab company or a dispatch service, if any;

(c) Information and documentation demonstrating that the proposed MTS would meet the MTS equipment requirements of § 603.8, including the requirement of § 603.8(n) that a passenger console be incorporated not later than December 1, 2013, and the requirement of § 603(n)(3) that a safety feature be incorporated not later than June 1, 2014;

(d) Information and documentation demonstrating that the proposed MTS would meet the MTS service and support requirements of § 603.9;

(e) Information and documentation about the forms of cashless payment that the PSP would offer to passengers (including payment cards and other forms of non-cash payment such as near-field communications);

(f) Information and documentation showing that the PSP is in compliance with federal and District licensing, permitting, registration, anti-discrimination, and taxation requirements applicable to a business operating in the District;

(g) The address and telephone number for the PSP's bona fide administrative office or for its registered agent authorized to accept service of process, and information and documentation showing that the PSP's bona fide

administrative office, if any, is in compliance with all laws, rules, and regulations concerning the operation of a place of business in the District;

(h) The customer service telephone number that the PSP will provide for passengers;

(i) The technical support telephone number that the PSP will provide for taxicab owners and operators;

(j) The URL for the PSP's website, if any;

(k) The trade name for the proposed MTS and any related service it wishes to offer within the District, such as a dispatch service, if any;

(l) A certification that the PSP is in compliance with the Clean Hands Before Receiving a License or Permit Act of 1996 ("Clean Hands Act"), effective May 11, 1996 (D.C. Law 11-118, D.C. Official Code § 47-2862);

(m) An initial inventory of the vehicles and operators associated with the PSP, as required by § 408.12;

(n) Information and documentation showing the PSP will collect from the passenger and pay to the Office the taxicab passenger surcharge for each taxicab trip, in the manner required by § 408.13;

(o) A sample agreement used by the PSP to associate with taxicab companies, independent owners, and operators;

(p) If the PSP, or the taxicab companies, independent owners, or operators with which it associates, would associate with one or more dispatch services, the PSP shall provide information and documentation:

(1) Showing such dispatch service is operating in compliance with all applicable provisions of this title and other applicable laws;

(2) Explaining the forms of dispatch and digital payment that would be available to passengers;

(3) Showing that the applicable provisions of this title, including this chapter, § 603, and § 801, would be met when a passenger makes a digital payment; and

(q) Such other information and documentation related to establishing compliance with this chapter or § 603 as the Office may require at the time of application or during the review process.

403.3 Each application shall be made under penalty of perjury, accompanied by an application fee of one-thousand dollars ($1,000) and by a security bond of fifty-thousand dollars ($50,000) which shall be payable to the D.C. Treasurer and effective while the MTS remains approved and for one (1) year thereafter.

403.4 A request for approval may be denied if an application contains or was submitted with materially false information provided orally or in writing for the purpose of inducing approval.

404 REVIEW PROCESS

404.1 The PSP shall bear the burden of establishing to the satisfaction of the Office that its proposed MTS meets all the requirements of this chapter and §§ 603.8 and 603.9.

404.2 An applicant may be scheduled for one or more demonstrations of its proposed MTS equipment, where the Office's technical staff shall examine and test the equipment and ask questions of the PSP's technical staff, who shall attend.

404.3 A request for approval may be denied if the applicant does not cooperate with the Office during the review process, or if applicant provides materially false information orally or in writing during the review process for the purpose of inducing approval.

404.4 The Office may use any information or documentation it acquired from the applicant during an MTS pre-approval process, if such process was used by the PSP. Pre-approval of a proposed MTS shall not entitle a PSP to approval under this chapter.

405 DECISION TO GRANT OR DENY

405.1 The Office shall complete the review process and issue its decision to grant or deny approval of a proposed MTS within fourteen (14) days after the application is filed, provided however, that such period may be extended by the Office for no more than ten (10) days with notice to the PSP whenever the Office has five (5) proposed MTSs under review.

405.2 If the Office denies approval on any ground, it shall state the reasons for its decision in writing.

405.3 A decision to deny approval may be appealed to the Chief of the Office within fifteen (15) business days, and, otherwise, shall constitute a final decision of the Office. The Chief shall issue a decision on such appeal within thirty (30) days. A timely appeal of a denial shall extend an existing MTS approval pending the Chief's decision. A decision of the Chief to affirm or reverse a denial shall constitute a final decision of the Office. A decision of the Chief to remand to the

Office for further review of the MTS shall extend an existing MTS approval pending the final decision of the Office.

405.4 An approval shall continue in effect for twelve (12) months, during which time no substantial change shall be made to an approved MTS without written approval from the Office. A PSP shall promptly inform the Office of a proposed substantial change that would require written approval.

405.5 Each approved MTS shall be listed on the Commission's website.

406 RENEWAL APPLICATIONS

406.1 Each approved MTS shall be submitted for renewal of its approval at least sixty (60) days prior to the expiration of the approval, unless the Office provides otherwise in writing. The procedures applicable to new applications shall apply to renewal applications, except as otherwise required by the Office.

406.2 An approval shall continue in force and effect beyond its expiration period during such time as an application for re-approval is pending in proper form.

406.3 Renewal of MTS approval shall require that the MTS be in compliance with all applicable provisions of this title, and other applicable laws in effect at the time renewal is sought.

407 SUSPENSION OR REVOCATION OF APPROVAL

407.1 The approval of an MTS may be suspended or revoked by the Office with reasonable notice and an opportunity to be heard if the Office learns that the MTS or the associated owners or operators using it are not in substantial compliance with this title, or if the MTS is being used in a manner that poses a significant threat to passenger or operator safety, or consumer protection.

408 OPERATING REQUIREMENTS

408.1 Each PSP shall operate in compliance all applicable provisions of this title and other applicable laws.

408.2 Each PSP shall comply with all applicable federal and District licensing, permitting, registration, anti-discrimination, and taxation requirements for a business operating in the District.

408.3 Each PSP shall either maintain a bona fide administrative office, consisting of a physical office in the District, in the same manner required of a taxicab company under Chapter 5 of this title and in compliance with all laws, rules, and regulations concerning the operation of a place of business in the District, or shall maintain a registered agent authorized to accept service of process, provided,

however, that a PSP operated by a person that provides another service regulated by this title requiring such person to maintain a bona fide administrative office in the District shall operate such bona fide administrative office as a bona fide administrative office for the PSP as well.

408.4 Each PSP shall maintain a customer service telephone number for passengers with a "202" prefix or a toll-free area code that shall be available during normal working hours 365 days per year.

408.5 Each PSP shall maintain a technical support telephone number for vehicle owners and operators with a "202" prefix or a toll-free area code that shall be available 24 hours per day, 365 days per year.

408.6 Each PSP shall operate only in compliance with §§ 508-513 of this title, to the same extent as if the PSP were a taxicab company.

408.7 Each PSP shall:

(a) Store its business records in a safe and secure manner, and in compliance with industry best practices and applicable federal and District law;

(b) Make its business records available for inspection and copying during regular business hours at the Office or at its bona fide administrative office, if maintained, within five (5) business days of its receipt of a written demand from the Office; and

(c) Retain its business records for at least five (5) years.

408.8 Each PSP and its owners, operators, officers, employees, agents, and representatives shall, at all times, cooperate with the instructions of public vehicle enforcement inspectors, other law enforcement officers, other authorized officials of the Office, and General Counsel to the Office, including a request in connection with a possible violation of this title or other applicable law by any person seeking an operator's identification (Face Card) number or a vehicle's PVIN, previously reported in anonymous format under § 603.

408.9 Each PSP shall notify the Office if it learns of a security breach as to which a report must be made pursuant to the D.C. Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237; D.C. Official Code §§ 28-3851, *et seq*.) or other applicable law.

408.10 Each PSP shall allow passengers to make their choice of cash payments or cashless payments, which may include forms of methods of payment other than payment by payment card, such as near-field communications, if approved by the Office as part of its MTS.

408.11 Each PSP shall remain in compliance with all MTS service and support requirements in Chapter 6 and all requirements of this chapter throughout the period that its MTS has a current and valid approval from the Office.

408.12 Each PSP shall pay each taxicab company or independent owner with which it is associated the portion of such PSP's revenue to which such taxicab company or independent owner is entitled within twenty-four (24) hours or one (1) business day of when such revenue is received by the PSP.

408.13 Inventory of vehicles and operators.

(a) Each PSP shall maintain an accurate inventory of its associated vehicles and operators containing the following information—

(1) For each vehicle: the name of and contact information for its owner(s), including work and cellular telephone numbers; the vehicle's PVIN, make, model, and year of manufacture; certification by the PSP that the vehicle is in compliance with the insurance requirements of Chapter 9 of this title; an indication of whether the vehicle is wheelchair accessible; an indication with whether the vehicle is in active use; and, if the vehicle is associated with a taxicab company, association, or fleet, the name of and contact information for such company, association, or fleet; and

(2) For each operator: the name of and contact information for such operator, including work and cellular telephone numbers; his or her DCTC operator license (Face Card) number; an indication of whether such operator is actively using the MTS; and, if he or she is associated with a taxicab company, association, or fleet, the name of and contact information for such company, association, or fleet.

(b) The Office may remove a vehicle or operator from a PSP's inventory at any time with reasonable notice and an opportunity to be heard if a vehicle or operator on the inventory is not legally authorized to operate, or in the event an MTS unit is not legally authorized for use (such as where a vehicle inspection reveals the MTS unit has been tampered with).

408.14 Taxicab passenger surcharge payments.

(a) Each PSP shall ensure that the taxicab passenger surcharge is collected from the passenger as an authorized additional charge under § 801.7 (b)(2), and paid to the Office for each trip, regardless of whether the fare is paid by a digital payment, and shall—

(1) Remit a payment to the D.C. Treasurer at the end of each seven (7) day period reflecting the sum of all taxicab passenger surcharges owed to the Office for taxicab trips made during such period, based on the trip data provided during such period, and sending contemporaneously via email a report to the Office certifying its payment and providing a basis for the amount thereof; and

(2) Cooperate with the Office in the event of a discrepancy between a payment and the trip data from the MTS, provided however, that if the PSP and Office are unable to agree on a resolution of a dispute within thirty (30) days, the Office may, in its discretion, make a claim against the security bond to satisfy the amount of the discrepancy.

(b) The bond given to the Office at the time of application for approval under § 403.2 shall be returned to the PSP within thirty (30) days following an event that causes an MTS to no longer be approved, provided, however, that the bond shall not be returned while there remains a discrepancy in the amount owed for taxicab passenger surcharges, which shall be resolved as provided in this subsection.

408.15 Each PSP associated with a digital dispatch service to allow passengers to make digital payments shall ensure that when a passenger makes a digital payment—

(a) The fare, rates, charges, and payments comply with the all applicable provisions of this title, including this chapter and §§ 603 and 801, including the requirement that the PSP pay the taxicab passenger surcharge in § 408.14; and

(b) A paper or electronic receipt is provided as required by § 803.

409 PROHIBITIONS

409.1 No PSP shall participate in a transaction involving taxicab service in the District where the fare, rates, charges, or payment does not comply with the applicable provisions of this title, including this chapter, and §§ 603 and 801.

409.2 No PSP shall allow its associated operators to limit service or refuse to provide service based on a person's choice of payment method.

409.3 No PSP shall allow its associated operators to access a passenger's payment card information after the payment has been processed.

409.4 No PSP shall allow its MTS to be used by an operator or vehicle not on its inventory at the time the trip is booked by dispatch or by street hail.

409.5 No PSP shall allow its MTS to be used by any person for a taxicab trip unless the PSP pays the taxicab passenger surcharge to the Office.

409.6 No person shall operate as a PSP, provide payment card processing services for taxicabs, or sell, lease, lend, or otherwise provide an MTS unit to any person in the District, unless such person is a PSP with current approval of its MTS under this chapter.

409.7 No PSP may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person that is contrary to public policy or that threatens passenger or operator safety, or consumer protection.

409.8 A PSP shall not associate with a taxicab operator who provides service using a vehicle associated with a taxicab company that:

(a) As of the effective date of this rulemaking, is providing credit card processing services to its associated operators;

(b) Has filed an application for approval as a PSP under this chapter; or

(c) Has been approved as a PSP under this chapter.

409.9 A PSP shall not associate with, or allow its associated taxicab companies, independent owners, or taxicab operators to associate with, a dispatch service that is not operating in compliance with the applicable provisions of this title and other applicable laws.

410 ENFORCEMENT

410.1 The enforcement of this chapter shall be governed by the procedures in Chapter 7 of this title. If, at the time of violation, the procedures in Chapter 7 do not extend in their terms to PSPs, such procedures shall be applied to a PSP as if such PSP were a taxicab owner or operator.

411 PENALTIES

411.1 A PSP that violates this chapter or an applicable provision of another chapter of this title is subject to:

(a) A civil fine of two hundred fifty dollars ($250) for the first violation of a provision, which shall double for the second violation of the same provision, and triple for each subsequent violation of the same provision thereafter;

(b) Confiscation of an MTS unit or unapproved equipment (including any fixed or mobile hardware component such as a smartphone, mobile data

terminal, tablet, or attached payment card reader) used in connection with the violation:

(c) Suspension, revocation, or non-renewal of the Office's approval of its MTS;

(d) Any combination of the sanctions listed in (a)-(c) of this subsection.

499 DEFINITIONS

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

"Approved MTS" means an MTS that has been approved for use by the Office under this chapter.

"Associated" connotes a voluntary relationship of employment, contract, ownership, or other legal affiliation. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

"Association" means a group of taxicab owners organized for the purpose of engaging in the business of taxicab transportation for common benefits regarding operation, color scheme, or insignia.

"Authorized MTS installation business" means a business authorized by the Office under this title to install one or more approved MTSs.

"Cashless payment" means a payment made with a passenger's payment card, or other means of non-cash payment that the PSP is approved to offer under Chapter 4, and processed by the PSP. A cashless payment is not a digital payment.

"Commission" or **"DCTC"** means the District of Columbia Taxicab Commission.

"Digital dispatch" means dispatch initiated by computer, mobile phone application, text, email, or Web-based reservation.

"Digital payment" means a payment made with a payment card or by a direct debit transaction, processed by a digital dispatch service in a manner that complies with § 801. A digital payment is not a cashless payment.

"Dispatch" means the booking of a public vehicle-for-hire through an advance reservation from the person seeking service.

"District" means the District of Columbia.

"District of Columbia Taxicab Commission (DCTC) License" means the taxicab vehicle license issued pursuant to D.C. Official Code § 47-2829(d).

"Face Card" or **"DCTC Identification Card"** or **"Identification Card"** means the taxicab or public vehicle-for-hire operator license issued pursuant to D.C. Official Code § 47-2829(e).

"Fleet" means a group of twenty (20) or more taxicabs having a uniform color scheme and having unified control by ownership or by association.

"Gratuity" is a voluntary payment by the passenger after service is rendered, which, if made, shall be included as an authorized additional charge under § 801.7(b)(7), in the amount determined only by the passenger.

"Group Riding" means a group of two (2) or more passengers composed prior to the booking by dispatch or street hail and whose trip has a common point of origin, and different or common destinations.

"Independent taxicab" means a taxicab operated by an individual owner.

"Independently operated taxicab" means a taxicab operated by an individual owner that is not part of a fleet, company, or association, and that does not operate under the uniform color scheme of any fleet, company, or association.

"Individual Riding" means the transportation of a single passenger for an entire trip.

"License" shall have the meaning ascribed to it in the D.C. Administrative Procedure Act, D.C. Official Code § 2-502.

"License Act" means D.C. Official Code § 47-2829.

"Limousine" shall have the meaning ascribed to it by § 1299.1.

"Loitering" means waiting around or in front of a hotel, theater, public building, or place of public gathering or in the vicinity of a taxicab or limousine stand that is occupied to full capacity; stopping in such locations, except to take on or discharge a passenger; or unnecessarily slow driving in front of a hotel, theater, public building, or place of public gathering or in the vicinity of a taxicab or limousine stand that is occupied to full capacity.

"Modern taximeter system" or **"MTS"** is a technology solution that combines taximeter equipment and PSP service and support in the manner required by this chapter and § 603.

"MTS unit" means the MTS equipment installed in a particular vehicle.

"Notice" means notice of transfer under § 507.

"Office" means Office of Taxicabs.

"Office order" shall have the meaning ascribed to it in Chapter 7 of this title.

"Operator" means a person who operates a public vehicle-for-hire.

"Owner" means a person, corporation, partnership, or association that holds the legal title to a public vehicle-for-hire, the registration of which is required in the District of Columbia. If the title of a public vehicle-for-hire is subject to a lien, a mortgagor may also be considered an owner.

"Payment card" means any major credit or debit card including Visa, MasterCard, American Express, and Discover.

"Payment service provider" or **"PSP"** is a business that offers an MTS, which, if approved by the Office, may operate such MTS pursuant to this chapter and § 603.

"Person" shall have the meaning ascribed to it in the D.C. Administrative Procedure Act, D.C. Official Code § 2-502.

"Personal service" means assistance or service requested by a passenger that requires the taxicab operator to leave the vicinity of the taxicab.

"Public vehicle-for-hire" means any private passenger motor vehicle operated in the District as a taxicab, limousine, or sedan, or any other private passenger motor vehicle that is used for the transportation of passengers for hire but is not operated on a schedule or between fixed termini and is operated exclusively in the District, or a vehicle licensed pursuant to D.C. Official Code § 47-2829, including taxicabs, limousines, and sedans.

"Public Vehicle-for-hire Identification Number" or **"PVIN"** is a unique number assigned by the Office of Taxicabs to each public vehicle-for-hire.

"Sedan" shall have the meaning ascribed to it in § 1299.1.

"Shared Riding" means a group of two (2) or more passengers, arranged by a starter at Union Station, Verizon Center, or Nationals Park, or other locations designated by an administrative order of the Office, that has common or different destinations.

"Street" means a roadway designated on the Permanent System of Highways of the District as a public thoroughfare.

"Surcharge Account" is an account established and maintained by the PSP with the Office for the purpose of processing the Passenger Surcharge.

"Taxicab" means a public vehicle-for-hire that operates pursuant to Chapter 6 and other applicable provisions of this title, having a seating capacity for eight (8) or fewer passengers, exclusive of the driver, and operated or offered as a vehicle for passenger transportation for hire.

"Taxicab Commission Information System" or **"TCIS"** means the information system operated by the Office.

"Taxicab company" means a taxicab company that operates pursuant Chapter 5 and other applicable provisions of this title.

"Taxicab passenger surcharge" means a passenger surcharge required to be collected from the passenger and paid by the PSP for each trip in a taxicab in an amount established in § 801.

"Taximeter fare" means the fare established by § 801.7 and not generated using information entered manually by any person into any device except for an authorized additional charge under § 801.7(b).

"Telephone dispatch" means dispatch initiated by a telephone call.

"Washington Metropolitan Area" means the area encompassed by the District; Montgomery County, Prince Georges County, and Frederick County in Maryland; Arlington County, Fairfax County, Loudon County, and Prince William County and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(b)(1) (C), (D), (E), (F), (G), (I), (J), 14, and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1) (C), (D), (E), (F), (G), (I), (J) and 50-319 (2009 Repl.), and D.C. Official Code § 50-313 (2009 Repl.; 2012 Supp.)); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Supp.); Section 12 of the 1919 District of Columbia Taxicab Act, approved July 11, 1919 (41 Stat. 104; D.C. Official Code § 50-371 (2009 Repl.)); and Section 6052 of the District of Columbia Taxicab Commission Fund Amendment Act of 2012 (Commission Fund Amendment Act), effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 50-320(a) (2012 Supp.)), hereby gives notice of its adoption of amendments to Chapter 6 (Taxicab Parts and Equipment) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules amending Chapter 6 (Taxicab Parts and Equipment) of DCMR Title 31 were originally approved for publication on January 31, 2013, and published in the *D.C. Register* on February 8, 2013, at 60 DCR 1566. The Office held a public hearing on the proposed rules on February 15, 2013, to receive oral comments on the proposed rules. The Office received valuable comments from the public at the hearing and throughout the comment period, which expired on March 9, 2013.

A second proposed rulemaking was drawn from the original proposed rulemaking for Chapter 6 and divided into proposed rulemakings amending Chapters 6 (Taxicab Parts and Equipment), 8 (Operation of Taxicabs), and creating a new Chapter 4 (Taxicab Payment Service Providers). The second proposed rulemakings, to include Chapters 4, 6 and 8, were approved for publication on March 20, 2013, and published in the *D.C. Register* on April 5, 2013 at 60 DCR 5173, 5187 and 5196, respectively. The Commission held another public hearing on the proposed rules on April 17, 2013, to receive oral comments. The Commission reviewed and considered the comments received at the April 17 hearing and throughout the comment period, which expired on May 4, 2013, but made no substantive changes.

The rulemaking for Chapter 6 includes adjustments in the parts and equipment for taxicab service consistent with the implementation of the Modern Taximeter System (MTS). This final rulemaking was adopted on May 8, 2013 and will take effect upon publication in the *D.C. Register*.

Chapter 6, TAXICAB PARTS AND EQUIPMENT, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 602, TAXIMETERS, is amended as follows:

The lead-in text of Subsection 602.1 is amended to read as follows:

602.1 All licensed taxicabs shall be equipped with a functioning taximeter that meets the following requirements and the requirements for a modern taximeter system (MTS) pursuant to § 603:

Section 603, SPECIALLY-EQUIPPED TAXICAB VEHICLES, is re-designated as Section 604.

A new Section 603, MODERN TAXIMETER SYSTEMS, is added to read as follows:

603 MODERN TAXIMETER SYSTEMS

603.1 A modern taximeter system (MTS) is a complete technology solution for taxicab metering and payment that pairs the equipment of § 603.8 with the service and support of § 603.9. Taxicab companies and independent owners shall obtain MTS units from the payment service providers (PSPs) whose MTSs have been approved by the Office under Chapter 4 of this title.

603.2 MTS implementation. Beginning on September 1, 2013 ("implementation date"):

(a) Each taxicab shall operate only with an MTS unit that allows a passenger to make a cash payment or cashless payment, which shall be the decision of the passenger;

(b) Each MTS unit shall be obtained from a PSP that has current approval for the MTS and is operating in compliance with this section and Chapter 4;

(c) Each MTS unit, including the passenger console and safety feature required by § 603.8 (n), shall be installed by an authorized MTS installation business which certifies that it meets the applicable provisions of this title;

(d) Each taxicab company, independent owner, or taxicab operator, may receive dispatches and provide digital payment to passengers as provided by § 603.4; and

(e) The taxicab passenger surcharge shall be collected from the passenger and paid by the PSP to the Office for each taxicab trip, regardless of how the fare is paid.

603.3 A list of approved MTSs and authorized MTS installation businesses shall be posted on the Commission's website by the effective date of this rulemaking.

603.4 Dispatch services. Each taxicab company, independent owner, or operator may associate with one or more dispatch services to receive telephone or digital dispatches, provided such dispatch service is in compliance with all applicable provisions of this title, and all other applicable laws, and such association is

consistent with any written agreement between the taxicab company, independent owner, or operator, and the PSP with which it associates. Each digital payment shall be processed as required by § 408.15.

603.5 Installation, certification, training, and inspection.

(a) Each taxicab company and individual owner shall have an approved MTS unit (and each component required by § 603.8 as of the installation date set forth therein) installed in each of its vehicles, and certified in a meter calibration report as meeting all the applicable requirements of this title including integrating with or replacing the vehicle's taximeter, by the implementation date.

(b) Each installation and certification required by § 603.5(a) shall be conducted by an authorized MTS installation business, including the installation and certification of the passenger console and safety feature required by § 603.8(n).

(c) Each taxicab company, individual owner, and operator shall obtain any necessary training on the use of the MTS unit by the implementation date.

(d) Each vehicle's MTS unit shall be tested as part of the periodic vehicle inspection required by this title.

603.6 All costs associated with obtaining an MTS unit, including installation and certification (including those associated with adding the passenger console and safety feature required by § 603.8(n)), operation, compliance with a provision of this title or other applicable law, compliance with an Office order , repair, lease, service and support, maintenance, and upgrade, shall be the responsibility of the taxicab company or independent owner, but may be allocated by written agreement among the taxicab company or independent owner and the PSP that provides it.

603.7 Nothing in this section shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

603.8 MTS equipment requirements.

Each MTS shall consist of a reasonable combination of fixed or mobile hardware components, such as a Bluetooth-enabled smartphone, mobile data terminal, or tablet, with an attached or integrated payment card reader, and printer, and shall:

(a) Operate only in a manner that allows the PSP to meet the service and support requirements of § 603.9 and the operating requirements of Chapter 4;

(b) Allow a passenger to select the payment method, including a cash payment or a cashless payment (among the forms of cashless payment the PSP is approved to provide under Chapter 4);

(c) Display text messages from the Office and permit selected responses when the vehicle is stationary;

(d) Not allow a person to be charged any amount through the MTS unit other than a taximeter fare;

(e) Use a wireless 3G or better cellular data connection;

(f) Use a high-sensitivity global positioning satellite receiver that provides failover geo-coding from mobile wireless networks;

(g) Record all trips made by the vehicle;

(h) Not store, or allow the operator to have access to, the passenger's payment card information after payment authorization has been issued;

(i) Have only one (1) physical access-point if wired to the taximeter, and allow no more than the number of Bluetooth connections necessary to meet MTS requirements, if connected wirelessly to the taximeter;

(j) Prevent the MTS unit from being used when any of its components are not operating as required by a provision of this title;

(k) Provide the passenger with a receipt that complies with § 803;

(l) Not use, incorporate, or connect to hardware available for personal use by the owner or operator of the vehicle unless the PSP demonstrates to the satisfaction of the Office that such use, incorporation, or connection does not pose a risk to passenger safety or privacy, or information security;

(m) Use, incorporate, or connect only to technology that meets Open Web Application Security Project ("OWASP") security guidelines, that complies with the current standards of the PCI Security Standards Council ("Council") for payment card data security, if such standards exist, and, if not, then with the current guidelines of the Council for payment card data security, and, that, for direct debit transactions, complies with the rules and guidelines of the National Automated Clearing House Association; and

(n) Not later than December 1, 2013, the MTS shall include a passenger console that shall:

(1) Have a display of not less than seven (7) inches and not more than twelve (12) inches in size, and is securely connected to the front seat or to a mount at shoulder height midway between the sides of

the vehicle, or in such similar location in the passenger area as may be required for passenger safety;

(2) Comply with Section 508, and with the electronic and information technology ("EIT") requirements of Section 504, of the Rehabilitation Act of 1973, and allows a visually impaired or mobility disabled passenger to independently complete the fare payment process without giving a payment card to the operator, through such mechanisms as braille print, audio prompting, input controls with tactile feedback for each function, numeric keys, and contrasting backgrounds;

(3) Not later than June 1, 2014, include a safety feature that shall:

(A) Be triggered by a physical button or prominent screen icon;

(B) Be available at all times when a passenger is inside the vehicle;

(C) Send a real-time notification to the Office of Unified Communications that a taxicab passenger is reporting a threat to his or her safety;

(C) Be operated discreetly and without interference by the operator; and

(D) Incorporate features to prevent accidental or intentional misuse.

(4) Display the following information in the following manner:

(A) When the MTS is engaged (at flag drop), the passenger console shall display for a period of not less than twenty (20) seconds or such other period as directed by the Office, a full-size image of the operator's DCTC identification card (Face ID), accompanied by a message as directed by the Office;

(B) After the period required by § 603.8 (n)(4)(A), the image of the identification card shall be minimized to an icon in the upper left-hand corner of the screen with the label "TOUCH HERE FOR DRIVER'S I.D.", which the passenger shall be able to maximize at any time prior to exiting the vehicle;

(C) After the period required by § 603.8(n)(4)(A), the following audio-visual content shall be displayed in such sequence as the PSP may determine, provided, however, that the passenger shall be able to turn off the sound at any time prior to exiting the vehicle:

(i) A public service announcement as provided and directed by the Office;

(ii) The navigational path of the vehicle;

(iii) Advertising, if agreed to by the vehicle owner and the PSP, from which not less than thirty (30) percent of the net revenue shall be paid to the vehicle owner; and

(D) At the conclusion of the trip, an itemization of the rates and charges under § 801.7 shall be displayed and the passenger may be asked for a gratuity, after which the fare shall be displayed, and the passenger shall be given an opportunity to choose a cash or cashless payment, and to process such payment as required by this subsection.

603.9 MTS service and support requirements.

Each MTS shall function with the service and support of the PSP, which shall at all times operate in compliance with Chapter 4, and shall maintain a data connection to each MTS unit that shall:

(a) Validate the status of the operator's DCTC license (Face Card) in real-time by connecting to the TCIS to ensure the license is not revoked or suspended, and that the operator is in compliance with the insurance requirements of Chapter 9;

(b) Validate the status of the taximeter component of the MTS unit (such as hired, vacant, or time-off) in real-time to ensure that it cannot be used until the prior trip and the payment process connected with it have ended;

(c) Transmit to the TCIS every twenty-four (24) hours via a single data feed consistent in structure across all PSPs, as established by the Office, the following data:

(1) The date;

(2) The operator identification (Face Card) number and PVIN, reported in a unique and anonymous manner allowing the PSP to maintain a retrievable record of the operator and vehicle;

(3) The name of the taxicab company, association, or fleet if applicable;

(4) The time at beginning of tour of duty;

(5) The time and mileage of each trip;

(6) The time of pickup and drop-off of each trip;

(7) The geospatially-recorded place of pickup, drop-off of each trip, and current location;

(8) The number of passengers;

(9) The unique trip number assigned by the PSP;

(10) The taximeter fare and an itemization of the rates and charges pursuant to § 801;

(11) The form of payment (cash payment, cashless payment, voucher, or digital payment);

(12) The time at the end of each tour of duty; and

(d) Provide the Office with the information necessary to insure that the PSP pays and the Office receives the taxicab passenger surcharge for each taxicab trip, regardless of how the fare is paid.

603.10 Prohibitions under this section.

(a) No operator shall provide taxicab service without an approved MTS unit installed and certified by an authorized MTS installation business.

(b) No operator shall operate a vehicle if the MTS unit is not functioning properly.

(c) No operator shall provide service unless both the operator and the vehicle are on the PSP's inventory when the trip is booked by dispatch or street hail.

(d) No operator shall limit service or refuse to provide service based on the passenger's choice of payment method.

(e) No operator shall access or attempt to access a passenger's payment card information after the payment has been processed.

(f) No operator shall participate in a transaction involving taxicab service in the District where the fare, rates, charges, or payment does not comply with the applicable provisions of this title, including this chapter, and §§ 603 and 801.

(g) No operator shall associate with a PSP if such operator is, at that time, associated with a taxicab company that provides payment card processing for its associated operators, and has applied for or received approval to act as a PSP under Chapter 4.

(h) No taxicab shall be equipped with more than one (1) MTS unit.

(i) No taxicab company or independent owner shall knowingly permit its vehicle to be operated in violation of this section or Chapter 4.

(j) No owner or operator shall alter or tamper with a component of an MTS unit or make any change in the vehicle that prevents the MTS unit from operating in compliance with this title.

(k) No operator shall operate a taxicab in which the MTS has been tampered with, broken, or altered. The operation of a taxicab with a tampered, broken, or altered MTS shall give rise to a rebuttable presumption that the operator knew of the tampering, breaking, or alteration.

A new Section 610, NOTICE OF PASSENGER RIGHTS, is added.

610 NOTICE OF PASSENGER RIGHTS

610.1 There shall be displayed in a suitable frame on the back of the front seat of each taxicab, in a position as to be clearly visible to passengers, notice of the procedure to be followed by persons wishing to file a complaint pursuant to Chapter 7 of this title.

610.2 Each taxicab operating in the District of Columbia shall prominently display the passenger rights form that shows the address and telephone number of the District of Columbia Taxicab Commission.

Section 612, PENALTY, is amended to read as follows.

612 PENALTIES

612.1 Each violation of this Chapter by a taxicab company, independent owner, or taxicab operator shall subject the violator to:

(a) The civil fines and penalties set forth in § 825 or in an applicable provision of this chapter, provided, however, that where a specific civil fine or penalty is not listed in § 825 or in this chapter, the fine shall be one hundred dollars ($100), that where a fare is charged to any person based on information entered by the operator into any device other than as required for an authorized additional charge under § 801.7 (b), the fine shall be two hundred fifty dollars ($250), and that, in all instances where a civil fine may be imposed, it shall double for the second violation of the same provision, and triple for each violation of the same provision thereafter;

(b) Impoundment of a vehicle operating in violation of this chapter;

(c) Confiscation of an MTS unit or unapproved equipment used for taxi metering in violation of this chapter;

(d) Suspension, revocation, or non-renewal of such person's license or operating authority; or

(e) Any combination of the sanctions listed in (a)-(d) of this subsection.

612.2 A PSP that violates a provision of this chapter shall be subject to the penalties in Chapter 4.

Section 699, DEFINITIONS, is amended to read as follows.

699.1 The words and phrases used in this Chapter shall have the meanings ascribed to them in § 499.1 of this title.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(b)(1) (C), (D), (E), (F), (G), (I), (J), 14, and 20 of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1) (C), (D), (E), (F), (G), (I), (J) and 50-319 (2009 Repl.), and D.C. Official Code § 50-313 (2009 Repl.; 2012 Supp.)); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Supp.); Section 12 of the 1919 District of Columbia Taxicab Act, approved July 11, 1919 (41 Stat. 104; D.C. Official Code § 50-371 (2009 Repl.)); and Section 6052 of the District of Columbia Taxicab Commission Fund Amendment Act of 2012 (Commission Fund Amendment Act), effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 50-320(a) (2012 Supp.)), hereby gives notice of its adoption of amendments to Chapter 8 (Operation of Taxicabs) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules amending Chapter 6 (Taxicab Parts and Equipment) of DCMR Title 31 were originally approved for publication on January 31, 2013, and published in the *D.C. Register* on February 8, 2013, at 60 DCR 1566. The Commission held a public hearing on the proposed rules on February 15, 2013, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the comment period, which expired on March 9, 2013.

A second proposed rulemaking was drawn from the original proposed rulemaking for Chapter 6 and divided into proposed rulemakings amending Chapters 6 (Taxicab Parts and Equipment), 8 (Operation of Taxicabs), and creating a new Chapter 4 (Taxicab Payment Service Providers). The second proposed rulemakings, to include Chapters 4, 6 and 8, were approved for publication on March 20, 2013, and published in the *D.C. Register* on April 5, 2013 at 60 DCR 5173, 5187 and 5196, respectively. The Commission held another public hearing on the proposed rules on April 17, 2013, to receive oral comments. The Commission reviewed and considered the comments received at the April 17 hearing and throughout the comment period, which expired on May 4, 2013, but made no substantive changes.

The rulemaking for Chapter 8 includes adjustments in the passenger rates and charges for taxicab service consistent with the implementation of the Modern Taximeter System (MTS). This final rulemaking was adopted on May 8, 2013 and will take effect upon publication in the *D.C. Register*.

Chapter 8, OPERATION OF TAXICABS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 800, APPLICATION AND SCOPE, is amended by adding a new subsection 800.4 to read as follows.

Section 801, PASSENGER RATES AND CHARGES, is amended to read as follows.

801 PASSENGER RATES AND CHARGES

801.1 No person shall charge another person a rate, charge, or fare for taxicab service in the District in excess of the amounts established by this section.

801.2 No person shall charge another person any amount for a taxicab trip before service is rendered.

801.3 Each taxicab company, independent owner, and taxicab operator shall charge the taximeter fare, except for hourly contracts pursuant to § 801.4, and shall accept only cash, cashless payments, and vouchers.

801.4 Hourly contract. A taxicab company, independent owner, or taxicab operator may provide taxicab service on a time-only basis pursuant to an hourly contract. The rate for an hourly contract shall be thirty-five dollars ($35) for the first one (1) hour or fraction thereof, and eight dollars and seventy-five cents ($8.75) for each additional fifteen (15) minutes or fraction thereof.

801.5 A dispatch fee charged by a telephone dispatch service operating in compliance with all applicable provisions of this title and other applicable laws and shall be included in the taximeter fare, pursuant to § 801.7 (b)(1).

801.6 A dispatch, booking, or similar, fee charged by a digital dispatch service operating in compliance with all applicable provisions of this title and other applicable laws shall not be included in the taximeter fare, and shall be paid only by digital payment that complies with § 408.15 and any other applicable provision of this title or applicable law.

801.7 Taximeter fare. Each taximeter fare shall consist only of the charges based on time and distance rates and the authorized additional charges, if any, established by this subsection, and shall not include any other amount.

(a) Time and distance rates. The time and distance rates that shall be automatically generated by each taximeter for each taxicab trip are established as follows:

(1) Three dollars and twenty-five cents ($3.25) upon entry (drop rate) and first one-eighth (1/8) of a mile;

(2) Twenty-seven cents ($0.27) for each one-eighth (1/8) of a mile after the first one-eighth (1/8) of a mile;

(3) The wait rate is twenty-five dollars ($25.00) per hour. Wait time begins five (5) minutes after time of arrival at the place the taxicab was dispatched. No wait time shall be charged for premature

response to a dispatch. Wait time shall be charged for time consumed while the taxicab is stopped or slowed to a speed of less than ten (10) miles per hour for longer than sixty (60) seconds and for time consumed for delays or stopovers en route at the direction of the passenger. Wait time shall be calculated in sixty (60) second increments. Wait time does not include time lost due to taxicab or operator inefficiency.

(b) Authorized additional charges. The only charges that may be included in the taximeter fare by manually adding an amount to the charges pursuant to § 801.7 (a) are as follows:

(1) A fee for telephone dispatch, if any, which shall be two dollars ($2.00);

(2) A taxicab passenger surcharge, which shall be twenty-five cents ($.25) (per trip, not per passenger);

(3) A charge for delivery service (messenger service and parcel pick-up and delivery), which shall be at the same rate as for a single passenger unless the vehicle is hired by the hour pursuant to § 801.4;

(4) An airport surcharge or toll paid by the taxicab operator, if any, which shall be charged for the same amount that was paid;

(5) An additional passenger fee, if there is more than one passenger, which shall be one dollar ($1.00) regardless of the number of additional passengers (the total fee shall not exceed one dollar ($1.00));

(6) A snow emergency fare when authorized under § 804; and

(7) A gratuity, if any.

801.8 Group or shared riding. In cases where more than one (1) passenger enters a taxicab at the same time on a pre-arranged basis (group riding or shared riding) bound for common or different destinations, in addition to any applicable charges set out in this section, the fare shall be charged as follows: As each passenger arrives to his or her destination, the fare then due shall be paid by the passenger(s) leaving the taxicab. There shall be a new flag drop and the passenger(s) remaining in the group shall pay in the same manner until the last passenger(s) arrives at his or her destination and the final taxicab fare is then paid. There shall be a new flag drop for each leg (or separate destination) of the trip.

801.9 Passengers accompanied by animals.

(a) Service animals.

A service animal (such as a guide dog, signal dog, or other animal trained to assist or perform tasks for an individual with a disability) accompanying a passenger shall be carried without charge.

(b) Animals other than service animals.

(1) When securely enclosed in a carrier designed for that purpose, small dogs or other small animals may accompany a passenger without charge. Other animals not so enclosed may be carried at the discretion of the operator.

(2) An operator may refuse to transport any passenger traveling with a small dog or other small animal if the operator presents to the passenger an exemption certificate from the Office that certifies that such operator suffers from a diagnosed medical condition, such as allergies, which prevents such operator from traveling with such small dogs or other animals;

(3) No operator shall have a personal pet or animal of any kind in a public vehicle-for-hire while holding the vehicle out for hire or transporting passengers; and

(4) An operator may request an exemption certificate from the Office that certifies that such operator suffers from a documented diagnosed medical condition, such as allergies, which prevents such operator him or her from traveling with such small dogs or other small animals securely enclosed in a carrier designed for that purpose. Without such exemption certificate, an operator may not refuse to transport any passenger traveling with a small dog or other small animal that is securely enclosed in such carrier. Each exemption certificate shall be on a form prescribed by the Office and notarized by an appropriately licensed medical professional (for example, a general practitioner or allergist). Each exemption certificate shall be renewed at each renewal of the DCTC operator's license.

801.10 A device for the aid of a disabled person, such as a folding wheelchair, when accompanying a passenger with a disability, shall be carried without charge. There shall be no additional charge for loading or unloading such device.

Section 803, CUSTOMER RECEIPTS FOR SERVICE, is amended to read as follows:

803 RECEIPTS FOR TAXICAB SERVICE

803.1 At the end of each taxicab ride, the taxicab operator shall provide the passenger with a receipt containing the following information:

(a) The date and time of the trip;

(b) The distance of the trip;

(c) The trip number assigned by the PSP;

(d) The vehicle's PVIN;

(e) The number of passengers;

(f) The taximeter fare established by § 801.7, itemized to show the time and distance charges and the authorized additional charges, if any;

(g) The name and customer service telephone number of the PSP that provides the service and support for vehicle's MTS;

(h) The form of payment, including whether the payment was made by cash payment, cashless payment, voucher, or digital payment;

(i) When the form of payment is digital payment and the digital payment includes the taximeter fare, the following statement: "Your digital payment to [name of digital dispatch service and customer service telephone number or email address] may include a fee in addition to the taximeter fare shown on this receipt";

(j) When the form of payment is digital payment and the digital payment does not include the taximeter fare, the following statement: "Your payment to the driver for the taximeter fare shown on this receipt does not include any additional fee that may be charged by [name of digital dispatch service and customer service telephone number or email address]"; and

(k) The following statement: "Taxicab service in Washington, DC is regulated by the DC Taxicab Commission, 2041 Martin Luther King Jr., Ave., SE, Suite 204, Washington, DC 20020, www.dctaxi.dc.gov, dctc3@dc.gov, 1-855-484-4966, TTY 711."

803.2 When payment is made by a cash or cashless payment, a printed receipt shall be provided using the vehicle's MTS printer component. If the printer component malfunctions while printing a receipt, the operator shall provide the passenger with a handwritten receipt and the vehicle shall then be out of service until the printer component is operational.

803.3 When payment is made by digital payment, the operator shall provide the passenger with the passenger's choice of a printed receipt or an electronic receipt sent to the passenger via email address or SMS text message not later than when the passenger exits the vehicle.

803.4 In the case of messenger or parcel delivery service, the operator shall provide the customer with a written invoice describing the article(s) transported.

Section 808, GROUP RIDING AND SHARED RIDING, is amended as follows.

808.1 Group riding for pre-formed groups, as defined in § 899, is permitted at all times. No driver shall refuse to transport a pre-formed group at any time. Fares for group riding shall be calculated in accordance with § 801.8.

Section 899, DEFINITIONS, is amended to read as follows:

899.1 The words and phrases used in this chapter shall have the meanings ascribed to them in § 499.1 of this title.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2007 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to adopt the following amendments to Chapter 75 (Massage Therapy) of Title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

This rulemaking will repeal the tuberculin testing requirement for massage therapy licensure in the District of Columbia.

CHAPTER 75, MASSAGE THERAPY, of TITLE 17, BUSINESS, OCCUPATIONS, AND PROFESSIONS, OF THE DCMR is amended as follows:

Section 7516, TUBERCULIN TEST REQUIRED, is amended to read as follows:

Section 7516 REPEALED.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Kenneth Campbell, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays, at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights ("Director"), pursuant to the authority set forth in Section 6(b)(6) (D.C. Official Code § 2-2-1935(b)(6)) (2007 Repl.) of the Language Access Act, effective June 19, 2004 (D.C. Law 15-167, D.C. Official Code §2-1931 *et seq.* (2007 Repl.)) ("Language Access Act" or "Act"), and Mayor's Order 2007-127, dated May 31, 2007, hereby gives notice of an amendment to Title 4 (Human Rights and Relations) of the District of Columbia Municipal Regulations. A new Chapter 12 (Language Access Act) has been added to Title 4 to provide guidance and assistance to District agencies with the implementation of the Language Access Act for individuals with Limited English Proficiency/No English Proficiency ("LEP/NEP") being served by the District of Columbia Government.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new Chapter 12 is added to read as follows:

CHAPTER 12 LANGUAGE ACCESS ACT

1200 SCOPE

The provisions of this chapter shall apply to all District government agencies that constitute "covered entities" and "covered entities with major public contact" as defined in Sections 2(2) and 2(3) of the Act. (D.C. Official Code § 2-1931(2) and § 2-1931(3)).

1201 PURPOSE

1201.1 In order for covered entities to meet their obligations under the Act and to provide enforcement thereof, the Office of Human Rights ("OHR") adopts this chapter:

(a) To define the roles and responsibilities of parties assigned to oversee and implement the Act;

(b) To provide assistance with data collection on the languages spoken by a limited or non-English proficient ("LEP/NEP") population as required under the Act;

(c) To provide assistance and guidance to covered entities with major public contact in implementing a biennial language access plan ("BLAP") and on reporting requirements for all covered entities; and

(d) To set forth guidelines for the investigation of complaints filed under the Act and for enforcement of the Act.

1202 ROLE OF THE OFFICE OF HUMAN RIGHTS (OHR)

1202.1 The Office of Human Rights ("OHR") shall provide covered entities with oversight, central coordination, and technical assistance in their implementation of the provisions of the Act.

1202.2 OHR shall ensure that the delivery of services by covered entities meets acceptable standards of translation and interpretation by providing information to the Office of Contracts and Procurement (OCP) to assist in the development of a quality procurement process.

1202.3 OHR shall collect and publish statistical information regarding Language Access public complaints received by OHR over which OHR has jurisdiction, including those not assigned to an investigator, on an annual basis.

1203 ROLE OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS

1203.1 The Director of the Office of Human Rights ("OHR Director") shall designate a Language Access Director to coordinate activities under the Act. The Language Access Director shall carry out all job functions under the direction and supervision of the OHR Director. The OHR Director may also designate additional staff to assist the Language Access Director with the implementation of the Act.

1203.2 OHR shall ensure that staff members of covered entities in public contact positions are trained regarding their legal obligations for serving LEP/NEP customers under the Act. These trainings shall also include resources to improve accessibility for LEP/NEP customers, including, but not limited to, the use of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services.

1203.3 The OHR Director shall prepare an annual Language Access Report and deliver it to the Mayor, and the Office of the City Administrator ("OCA") on the deficiencies found, progress made, and overall compliance with the Act for each covered entity. OHR shall include a summary of the results of the annual surveys of covered entities designated as non-major public contact in the Annual Language Access Report.

1204 ROLE OF THE LANGUAGE ACCESS DIRECTOR

1204.1 The Language Access (LA) Director shall oversee the Language Access complaint procedures for the OHR.

1204.2 The LA Director shall conduct education and outreach to covered entities and community providers on their legal obligations under the Act.

1204.3 The LA Director shall provide training resources to personnel in public contact positions for covered entities regarding compliance with the Act. The Director will deliver this training and/or ensure that Language Access Coordinators deliver this training to personnel either in person or via web-based resources. In addition, all District personnel shall have access to in-person or web-based training regarding compliance with the Act.

1204.4 The LA Director shall provide all covered entities with a policy manual that contains baseline policies and procedures that ensure agency-wide compliance with the Act.

1204.5 The LA Director shall issue an annual survey to all covered entities that are designated a non-major public contact. The survey shall request information regarding agency encounters with LEP/NEP constituents consistent with Section 1205.7.

1204.6 The LA Director shall review and monitor each Biennial Language Access Plan (BLAP) for compliance with the Act.

1204.7 If a BLAP should fail to comply with the Act, the LA Director shall assist the agency in revising the BLAP and shall set a deadline for resubmission of the revised BLAP.

1204.8 The LA Director's responsibilities include reviewing covered entities' implementation reports and providing an annual synopsis to the OHR Director on the deficiencies found and progress made in implementing the Act.

1204.9 The LA Director") shall monitor the performance and responsibilities of the Language Access Coordinators (LACs) as described in §1207and the Language Access Points of Contact, as described in § 1205.19.

1204.10 The LA Director shall produce a final Annual Compliance Report at the end of each fiscal year and provide copies to the Executive Office of the Mayor, the Office of the City Administrator, the Office on African Affairs (OAA), the Office on Asian and Pacific Islander Affairs (OAPIA), the Office on Latino Affairs (OLA), and the D.C. Language Access Coalition. Annual reports shall also be made available to the public within thirty (30) days of a request.

1204.11 The LA Director shall consult with the D.C**.** Language Access Coalition, the Mayor's Office on OAA, OAPIA, and OLA regarding the implementation of the Language Access Act.

1204.12 The LA Director shall advise the District's Department of Human Resources (DCHR) and the personnel authorities of covered entities who have independent hiring authority on issues related to the recruitment and hiring of bilingual public contact personnel.

1204.13 The LA Director shall serve as the Language Access Coordinator for OHR and shall fulfill the responsibilities listed in §1207 for that agency.

1205 ROLES OF COVERED ENTITIES

1205.1 Pursuant to Section 2(2) of the Act, all District government agencies, departments, or programs that furnish information or render services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services or activities to the public are covered entities.

1205.2 The covered entity shall ensure that contractors hired to carry out services, programs or activities directly to the public are required to comply with the same requirements of covered entities.

1205.3 The covered entity shall ensure that any grantee that provides services under a covered entity's mandate complies with the requirements of the Act.

1205.4 The covered entity shall require that contractors and grantees, as described in §§ 1205.2 and 1205.3, certify in writing that the same compliance requirements will be satisfied by their subcontractors and sub-grantees.

1205.5 The covered entity shall update databases, applications, and tracking systems to contain fields that will capture and/or produce data about the specific languages spoken and the number of LEP/NEP customers speaking a given language in the population(s) served.

1205.6 Annual reporting requirements for covered entities:

(a) Each covered entity shall make a determination of each non-English language spoken by a population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity. This determination shall be provided to the Language Access Director.

(b) Each covered entity shall also submit the data it relied on to make the determination of each non-English language spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, or likely to be served or encountered, by the covered entity. This data shall include, but not be limited to, resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1931 (c) (1)).

(c) The Language Access Director shall evaluate whether the data submitted by the covered entity supports the entity's determination, and whether the data relied upon by the entity is sufficient and appropriate. If the Language Access Director concludes that an entity's determination is not supported by sufficient and appropriate data, the Language Access Director may make a revised determination of any non-English language spoken by a population that constitutes 3% or 500 individuals, whichever is less, or likely to be served or encountered, by the covered entity. In making this determination the Language Access Director shall rely upon resources cited in Section 3(c)(1) of the Act (D.C. Official Code § 2-1932(c)(1)). The covered entity may appeal a determination of the Language Access Director to the Director of the Office of Human Rights.

1205.7 The covered entity shall determine the type of oral language services it must provide in order for the LEP/NEP customers it serves to access or participate in the services, programs, or activities offered by the entity, based on the following factors and as determined by § 1205.6 and Section 3(c)(1) of the Act:

(a) The number or proportion of LEP/NEP persons of the population served or encountered, or likely to be serve or encountered, by the covered entity;

(b) The frequency with which LEP/NEP individuals come into contact with the covered entity;

(c) The importance of the service provided by the covered entity; and

(d) The resources available to the covered entity.

1205.8 To the extent that a covered entity requires additional personnel to provide the type of oral language services needed, it shall, in consultation with its personnel authority, give preference to hiring qualified bilingual personnel into existing budgeted vacant public contact positions.

1205.9 The covered entity shall maintain a current account (either directly or through a District-wide or multi-agency contract) with a professional and qualified multilingual telephonic interpretation service that provides immediate oral language services to LEP/NEP customers and District staff in a variety of languages.

1205.10 When the services described in § 1205.9 are not reasonably sufficient to ensure access to the services provided by the covered entity, the entity shall provide qualified and experienced in-person interpretation services to LEP/NEP customers

1205.11 The covered entity shall ensure that the telephone interpretation service assists in providing access to customers who are both within and outside of LEP/NEP target languages as determined under § 1205.7.

1205.12 The covered entity will work closely with OHR and the Language Access Director to ensure that all staff members of covered entities in public contact positions are trained regarding their legal obligations for serving LEP/NEP customers under the Act.

1205.13 The covered entity shall place appropriate signs/posters communicating the availability of language accessible services at all conspicuous points of entry and other public locations at the covered entity. The signs or posters shall be in the language(s) identified as those spoken by 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the covered entity.

1205.14 The covered entity shall provide oral language services to LEP/NEP customers who seek to access or participate in public meetings and administrative hearings conducted by the covered entity. The covered entity shall provide oral language services to LEP/NEP customers who seek to access or participate in public meetings conducted by the covered entity, if the request is made at least five (5) business days in advance of the public meeting.

1205.15 Requests for oral language services in advance of public meetings shall be made directly to the entity's Language Access Coordinator or other designated point of contact, as described in § 1207, in person, via phone, or by electronic mail.

1205.16 The covered entity shall provide written translation of vital documents into any non-English language spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be encountered, by the covered entity.

1205.17 The covered entity shall ensure that all vital documents that are translated into any non-English language spoken by a LEP/NEP population are widely distributed within the agency, accessible at points of entry, and available online.

1205.18 The covered entity must also obtain written acknowledgment from each LEP/NEP customer who waives his/her rights to interpretation or translation services prior to the individual accessing the entity's services.

1205.19 Each covered entity that is not designated as an agency with major public contact shall designate a Language Access Point of Contact (LAPOC). The LAPOC shall serve as an information coordinator and assist in implementing all of the requirements for non-major public contact covered entities under the Act and these regulations. The LAPOC person shall also:

(a) Receive, maintain, update and disseminate information regarding language access resources for the covered entity, including, but not limited to, annual distribution of the covered entity's language access policy;

(b) Complete the annual survey or report for the covered entity consistent with the requirements in Section 1205.6; and

(c) Attend an annual training on Language Access Act obligations and resources made available by OHR.

1205.20 Each covered entity shall respond to an annual survey issued by the Language Access Director regarding compliance with the Act.

1205.21 Covered entities are distinguished from covered entities with major public contact, as described in § 1206. Covered entities with major public contact have additional obligations under the Act as described in § 1206.

1206 ROLES OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT

1206.1 Covered entities with major public contact are covered entities whose primary responsibility consists of meeting, contracting, and dealing with the public. "Dealing" with the public refers to providing direct services to and interacting with the public.

1206.2 Covered entities with major public contact are:

(a) Agencies listed in Section (2)(3)(B) of the Act, which are as follows:

Alcoholic Beverage Regulation Administration;
Department of Health;
Department of Mental Health;
Department of Human Services;
Department of Employment Services;
Fire and Emergency Medical Services;
District of Columbia Housing Authority;
District of Columbia general ambulatory and emergency care centers;
Homeland Security and Emergency Management Agency;
Metropolitan Police Department;
District of Columbia Public Schools;
Department of Motor Vehicles;
Department of Housing and Community Development;
Department of Public Works;
Department of Corrections;
Office on Aging;
District of Columbia Public Library;
Department of Parks and Recreation;
Department of Consumer and Regulatory Affairs;
Child and Family Services Agency;

Office of Human Rights;
Department of Human Resources;
Office of Planning;
Office of Contracting and Procurement;
Office of Tax and Revenue; and
Office of the People's Counsel.

(b) Agencies designated by the LA Director under the direction of the OHR Director, which are as follows:

Department of Disability Services;
Department of Transportation;
Office of Unified Communications;
Department of the Environment;
Office of the State Superintendent of Education;
Department of Small and Local Business Development;
Office of Zoning;
Office of Tenant Advocacy
District of Columbia Lottery and Charitable Games Control Board;
Office of Administrative Hearings;
Office of the Attorney General-Child Support Services Division;
Department of Health Care Finance;
Department of General Services and
The District of Columbia Public Charter Schools.

1206.3 Each covered entity with major public contact must meet all of the responsibilities for covered entities under the Act and these regulations, and in addition shall:

(a) Establish and implement a complete BLAP that is approved by the LA Director and published in the *D.C. Register* every two (2) years;

(b) Designate a Language Access Coordinator;

(c) In accordance with goals set forth in the BLAP, have all staff members in public contact positions attend trainings, either web-based training or in-person, provided by OHR, on the requirements for serving LEP/NEP customers under the Act and on the usage of professional and qualified multilingual telephonic interpretation services and how to appropriately direct LEP/NEP customers to such services; and

(d) Develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the benefits and services offered by the entity as well as LEP/NEP goals stated in the entity's BLAP.

1206.4 Each covered entity with major public contact shall develop a plan to conduct outreach to LEP/NEP communities to disseminate information about the benefits and services offered by the entity as well as LEP/NEP goals stated in the entity's BLAP. Outreach activities may include, but are not limited to, the following:

(a) Conducting annual public meetings, at least one of which shall be a public meeting as defined in Section 1228 that shall be held in consultation with the LA Director, with reasonable advance notice to the public in a location where LEP/NEP populations are known to congregate such as a school, community center or place of worship;

(b) Organizing events in LEP/NEP communities (including fairs, community meetings, forums, educational workshops);

(c) Deploying entities' mobile unit/truck/van to visit specific community centers, community based organizations or schools;

(d) Disseminating information through LEP media outlets (including local TV, newspapers, and radio);

(e) Deploying outreach personnel to visit and/or perform regular "walk throughs" within the various LEP/NEP communities;

(f) Partnering with community based organizations for the implementation of projects and/or delivery of services;

(g) Distributing flyers, brochures, and other printed material in diverse languages and at diverse locations;

(h) Disseminating information through entities' websites;

(i) Issuing press releases in diverse languages and directing those press releases to media outlets serving the LEP/NEP community;

(j) Implementing a topic-specific campaign to raise awareness of a particular service or project in an LEP/NEP community;

(k) Sponsoring educational, informational, cultural and/or social events in LEP/NEP communities;

(l) Participating in LEP/NEP community events and/or meetings;

(m) Inviting LEP/NEP community members to visit agency service site(s) and government facilities;

(n) Cosponsoring community events with LEP/NEP community based organizations;

(o) Participating in and/or cosponsoring events that target the District's LEP/NEP communities with other District government agencies; and

(p) Organizing regular needs assessment meetings with LEP/NEP community based organizations.

1207 ROLE OF THE LANGUAGE ACCESS COORDINATORS (LACs)

1207.1 LACs shall report directly to their agency director, and consult with the agency director on budgeting issues for the delivery of language access services as required by the Act.

1207.2 The LAC must also establish and implement the agency's BLAP pursuant to § 1213.

1207.3 The LAC shall coordinate and assist in implementing all of the requirements for covered entities with major public contact under the Act and these regulations.

1207.4 On a quarterly basis, the LAC shall submit a report to the LA Director regarding the agency's implementation of its BLAP.

1207.5 The LACs shall receive reports of alleged violations of the Language Access Act from individuals, consultative agencies or other organizations, and shall report them to the Language Access Director as they are received.

1208 ROLE OF AGENCY DIRECTORS

1208.1 The Directors shall ascertain that all applicable agency contracts and grants fully comply with all provisions of the Act.

1208.2 For each covered entity, the Directors shall designate a LAPOC. In the case of covered entities with major public contact, the Directors shall designate a LAC.

1209 ROLE OF LANGUAGE ACCESS COALITION

1209.1 The D.C. Language Access Coalition ("LA Coalition") shall serve in an external non-governmental role consulting on the implementation of the Act. The LA Coalition shall have no authority to make final decisions.

1209.2 The LA Director shall consult with the LA Coalition on the following:

(a) Data Collection;

(b) Development and modification of BLAPs;

(c) Identification of additional covered entities to be named under the Act as "covered entities with major public contact;" and

(d) Overall implementation of the Language Access Act.

1209.3 Consultation pursuant to § 1209.2 requires that the LA Director notify the LA Coalition of activities that would significantly impact the

implementation of the Act with sufficient notice so as to allow the LA Coalition to provide meaningful input, and give reasonable consideration to the LA Coalition's input, which may, where appropriate, lead to changes or modifications in decisions.

1210 ROLES OF MAYOR'S OFFICE ON AFRICAN AFFAIRS, THE MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS, AND THE MAYOR'S OFFICE ON LATINO AFFAIRS (CONSULTATIVE AGENCIES)

1210.1 OAA, OAPIA, and OLA (collectively referred to as "consultative agencies") shall serve as consultative bodies to the LA Director and the OHR Director to develop and update covered entities' BLAPs, and assist in the implementation of the Act.

1210.2 The consultative agencies shall furnish demographic data on their respective communities to covered entities.

1210.3 The consultative agencies shall also provide outreach to LEP/NEP communities in the District on the Act and assist the LACs to develop and implement outreach efforts.

1210.4 The consultative agencies shall assist OHR in the development of quality control instruments in their respective languages.

1210.5 The consultative agencies shall provide technical assistance to the DCHR and the personnel authorities of covered entities who have independent hiring authority (collectively "personnel authority") regarding issues related to the recruitment and hiring of bilingual public contact personnel.

1210.6 The consultative agencies shall assist their constituents with language access concerns by first referring the concern to the LAC of the entity in question. If the concern is not addressed by the entity, the consultative agency shall refer the allegation to the attention of the LA Director.

1211 ROLE OF PERSONNEL AUTHORITIES FOR COVERED ENTITIES

1211 .1 The personnel authority for each covered entity shall provide central coordination and technical assistance to the entity in its implementation of the provisions of the Act and shall report accordingly to the LA Director, OHR and OCA.

1211.2 The personnel authority shall develop strategies for recruiting and maintaining bilingual personnel, including assessing the non-English language abilities of all future and current District personnel who self-identify as bilingual, and who apply for or currently fill a "bilingual" or "bilingual preferred" position.

1211.3 Pursuant to § 1205.8, the personnel authority shall assess the covered entity's budgeted vacant public contact positions and classify identified positions as "bilingual" or "bilingual preferred" to satisfy the requirement.

1211.5 In consultation with the LA Director and consultative agencies, the personnel authority shall create a linguistic and cultural competency training curriculum that will be made available through DCHR.

1212 BASELINE ASSESSMENTS

1212.1 Each covered entity with major public contact shall complete baseline assessments at the beginning of their implementation phase to provide data for comparison or as a control prior to creating and implementing its first BLAP.

1212.2 Upon the completion of the two-year plan cycle, each covered entity with major public contact shall update the information in the assessments with current information, which shall be included in the entity's BLAP.

1212.3 The LAC for each covered entity with major public contact shall facilitate the work required for completing the baseline assessments within the agency, as well as complete and submit the assessments to the LA Director as required in § 1212.1.

1212.4 The LA Director shall meet with each LAC and respective agency director to review agency responses to the baseline assessments.

1213 BIENNIAL LANGUAGE ACCESS PLAN

1213.1 A covered entity with major public contact shall establish a biennial language access plan ("BLAP") by regulation. Each BLAP shall be established in consultation with:

(a) The Language Access Director;

(b) The D.C. Language Access Coalition;

(c) The entity's Language Access Coordinator;

(d) The entity's Director; and

(e) Consultative agencies.

1213.2 Each BLAP shall be updated every two (2) fiscal years and shall set forth, at a minimum, the following:

(a) The types of oral language services that the entity will provide and how the determination was reached;

(b) Which languages are spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the entity; and how the entity made this determination;

(c) The titles and types of each translated document that the entity will provide and how the determination was reached;

(d) The total number of public contact positions in the entity and the number of bilingual employees in public contact positions, including languages spoken;

(e) The number, position, and location of bilingual employees the entity plans to hire in public contact positions;

(f) An evaluation of the language access services provided, of the language access data collection systems in place, and of whether the goals stated in the previous BLAP were met; a description of the budgetary sources specifying the various resources and expenditures upon which the covered entity intends to implement its BLAP;

(g) A plan to conduct outreach to the District's LEP/NEP communities served or likely to be served by the covered entity; and

(h) A plan to conduct training on the entity's legal obligations under the Act, resources for ensuring access to services for LEP/NEP customers, and cultural competency training within the designated BLAP period for the entity's staff who fill public contact positions. New hires who do not attend agency-wide training will be required to attend an alternative training made available by OHR.

1213.3 The LA Director shall meet with each LAC and respective agency director to review agency plans prior to approval of the BLAP. The LA Director shall consult resources including, but not limited to, those listed in Section 3(c)(1) of the Act to verify the identification of the languages which are spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered, or likely to be served or encountered by the entity.

1213.4 BLAPs shall be completed by the covered entity with major public contact and approved by the LA Director upon completion of the baseline assessments.

1213.5 BLAPs shall be completed by the covered entity with major public contact, within a reasonable deadline established and approved by the LA Director. Failure to submit BLAPs in a timely manner shall be reported to the Director of OHR and shall be included in the Director's annual report to the OCA. Failure to fulfill the criteria set forth by 1213.2 may also be reported to the Director OHR.

1214 QUARTERLY REPORTS

1214.1 Each covered entity with major public contact shall submit to the LA Director a quarterly report on the entity's BLAP at the end of each official quarter of the fiscal year or as otherwise required by the LA Director.

1214.2 Quarterly reports shall provide the status of all tasks required of the entity in accordance with the entity's BLAP and requirements of the Act. In addition, each quarterly report shall report the number of complaints received during the quarter in question and the steps taken to resolve such complaints.

1214.3 Quarterly reports submitted in the last quarter of a fiscal year shall contain:

(a) Information on progress made during the quarter; and

(b) A summation of all activity performed within the fiscal year; including a self-assessment of what objectives were unmet with explanation.

1214.4 Failure to submit quarterly reports in a timely manner shall be reported to the Director of OHR, and such failure shall be included in the Director's annual compliance report to the OCA.

1215 ANNUAL REPORT

1215.1 Each covered entity with major public contact shall furnish a narrative report on progress made in the implementation of the Act at the end of each fiscal year to the LA Director. The report shall be included on a form designated by the LA Director and shall contain summary data on the following:

(a) Total number of LEP/NEP individuals served or encountered from the total population served by the entity within the fiscal year (delineated by language);

(b) A list of translated vital documents;

(c) Oral language services offered through the entity's services and programs;

(d) The names of all organizations to which the entity provides grants or contracts to provide services to its LEP/NEP customers.

(e) An itemized budget allocated for Language Access purposes;

(f) A comprehensive list of the entity's bilingual staff employed in public contact positions;

(g) The list of contractors and grantees, as described in §§ 1205.3 and 1205.4, and the status of their compliance with the Act; and

(h) The number of language access complaints received during the course of the fiscal year, and the steps taken to resolve those complaints.

1215.2 Annual reports shall be submitted to the LA Director by a deadline designated by the LA Director. Failure to fulfill the criteria set in Section 1214.1 may also be reported to the OHR Director.

1215.3 The LA Director shall provide copies of the annual report to the OCA, the LA Coalition, OAA, OAPIA, and OLA.

1215.4 Annual reports shall be made available to the public within thirty (30) days of a request.

1216 LANGUAGE ACCESS INQUIRIES AND PUBLIC COMPLAINTS OF NONCOMPLIANCE WITH THE LANGUAGE ACCESS ACT

1216.1 OHR shall receive and track all inquiries and requests for assistance or information concerning language access. These may be submitted in writing or verbally by a LEP/NEP customer or an individual acting on their behalf. These inquiries will be addressed and resolved by the Language Access Director and documented in accordance with the protocols and procedures of the OHR Standard Operations Manual.

1216.2 OHR shall accept information concerning alleged violations of the Act through the filing of a public complaint.

1216.3 If any covered entity receives a public complaint regarding an alleged violation of the Act, the entity shall report it to the LA Director.

1216.4 By filing a public complaint, any person or organization may request an investigation into individual or systemic noncompliance with the Act.

1216.5 The LA Director, under the direction and supervision of the OHR Director, shall coordinate the investigation and resolution of public complaints filed under this section, and adhere to the investigatory protocols and procedures of the OHR Standard Operations Manual.

1216.6 The filing of a public complaint does not supersede or preclude the filing of a complaint by any person or organization alleging intentional illegal discrimination under the D.C. Human Rights Act of 1977, as amended, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code § 2-1401.01 *et seq.*). Discrimination complaints shall be filed in accordance with the procedures in Chapter 7 and Chapter 1 of Title 4 of the District of Columbia Municipal Regulations.

1217 FILING OF PUBLIC COMPLAINTS

1217.1 The procedures in this section apply to the filing of a public complaint as described in § 1216.

1217.2 Any person or organization may file with OHR a public complaint of violation of the provisions of the Language Access Act. If a complainant lacks capacity, the public complaint may be filed on his/her behalf by a person or organization with an interest in the welfare of the complainant.

1217.3 The public complaint may be submitted in writing on a pre-complaint questionnaire obtained from the OHR or online via the OHR's website, relayed verbally to an OHR staff member by telephone or in-person, or communicated through a covered entity. The public complaint must be recorded in writing.

1217.4 The LA Director may initiate an investigation whenever he or she has reason to believe that any agency covered under the Act or its employee has committed an act of noncompliance with the Act.

1217.5 A public complaint shall be deemed filed when OHR receives from the complainant a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.

1217.6 A public complaint shall be processed by OHR in accordance with intake procedures set forth in OHR's Standard Operating Procedures ("SOP") Manual.

1217.7 The LA Director shall attempt to resolve the alleged violation with the covered entity in question prior to assigning the complaint for investigation.

1217.8 If a proposed resolution is reached, the LA Director must notify both the complainant and the covered entity of the proposed resolution and ensure that both are satisfied with the outcome before determining that the complaint has been successfully resolved prior to a formal investigation.

1217.9 If the LA Director has jurisdiction to investigate the complaint and if the complaint has not successfully been resolved as described in § 1221, or otherwise withdrawn from the investigation procedure by OHR or the complainant, it shall be assigned to an OHR investigator.

1218 DISMISSAL FOR LACK OF JURISDICTION

1218.1 Under the Supervision of the OHR Director, the LA Director has the statutory authority to receive, investigate, and seek an appropriate remedy for allegations of noncompliance with the Act's provisions, provided that the following requirements are met:

(a) The public complaint is filed with the OHR within one year of the occurrence of the alleged act of noncompliance, or the discovery thereof; whichever occurs later;

(b) The alleged act of noncompliance occurred within the District of Columbia; and

(c) The respondent is identified as a covered entity, a covered entity with major public contact or a grantee or contractor.

1218.2 If the LA Director determines, on the face of the public complaint, that the complaint lacks jurisdiction, pursuant to Section 6(b)(2) of the Act or fails to state a noncompliance claim under the Act, an order dismissing the complaint shall be issued without an investigation two business days from the time of intake. No cases shall be assigned to an investigator until this process is completed.

1219 ADMINISTRATIVE DISMISSALS

1219.1 The LA Director shall dismiss a public complaint without prejudice if the complainant submits a written request to withdraw the complaint, or for the following administrative reasons:

(a) The complainant is absent and has failed to contact or cannot be contacted by the Office;

(b) The complainant fails to state a claim of noncompliance; or

(c) After preliminary investigation, the LA Director determines that he or she lacks jurisdiction over the matter pursuant to the Act.

1219.2 An Order dismissing a complaint for administrative reasons shall be in writing and served on the parties stating the reasons for dismissal.

1219.3 A complainant may request that a complaint previously dismissed for administrative reasons or voluntarily withdrawn be reopened, provided that the complainant submits a written request within thirty (30) days of receipt of the order dismissing the complaint and stating specifically the reasons why the complaint should be reopened.

1219.4 The LA Director, upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reasons or in the interest of justice.

1219.5 The decision of the LA Director to reopen a complaint shall be served on all parties to the complaint.

1220 WITHDRAWAL OF COMPLAINTS

1220.1 Complaints filed with the OHR under the provisions of the Act may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the LA Director's investigation and findings, except that the circumstances accompanying a withdrawal may be fully investigated by the LA Director.

1221 INVESTIGATION

1221.1 When a public complaint is filed, the LA Director shall:

(a) Facilitate access to required services. The cited covered entity shall evaluate the complaint and either resolve to provide immediate access to the required services. If resolution is not possible, the covered entity will propose a solution that is acceptable to the complainant, the covered entity, and the LA Director within a reasonable period of time. If the covered entity does not meet these requirements the LA Director shall assign the complaint to an investigator within thirty days of the filing of the complaint;

(b) Allow the Respondent to acknowledge its non-compliance with the Act rather than be subject to an investigation. In such cases, the LA Director shall find the entity in noncompliance, and shall use the information acquired during the Office's intake procedure to fashion and issue an Order as described in Section 1223; and

(c) Supervise and monitor the investigation of the public complaint according to the protocols and procedures of the OHR SOP Manual; and

1221.2 If the alleged act(s) of noncompliance was committed by OHR, the complaint shall be brought before the OCA for investigation.

1221.3 Upon assignment of the case to an investigator, the investigator shall serve via electronic mail on the Respondent a copy of the public complaint.

1221.4 Under the direction of the LA Director, the investigation shall include, but not be limited to, site visits, interviews of witnesses, and inspection of Respondent's records.

1221.5 After the receipt of all requested documents from the Respondent, the investigator shall provide the complainant with an opportunity to rebut relevant information submitted by the Respondent.

1221.6 After the completion of the investigation, the LA Director will review and analyze the case and then submit initial findings to the General Counsel and OHR Director for review.

1222 DETERMINATION

1222.1 Upon receipt of a report and recommendation from the investigator, and OHR's Legal Unit, the LA Director, in consultation with the OHR Director shall determine whether respondent is in compliance with the Act.

1222.2 The LA Director shall mail the written findings to both parties. All reports and findings shall be forwarded to the OCA.

1223 FINDINGS

1223.1 If there is a finding of noncompliance with the Act, the OHR Director, through the LA Director, shall issue an Order containing terms and conditions to the Respondent to provide the services in question within a reasonable timeframe to the complainant and other LEP/NEP individuals. This Order of noncompliance shall be issued within no more than six months of the filing of the complaint. If Respondent does not provide the services required by the Order within the designated timeframe, respondent's actions will be reported to the OCA for further action.

1223.2 If the OHR Director determines that no violation against the Act has taken place, a letter shall be issued to the parties stating the Respondent was found in compliance with the Act.

1224 RIGHTS AND RESPONSIBILITIES OF PARTIES

1224.1 All parties are entitled to, and shall receive, a fair and impartial investigation by the LA Director.

1224.2 All parties have a duty to cooperate with and furnish OHR with the following:

(a) All documents, records, names of witnesses and any other necessary information needed to investigate the complaint; and

(b) Current contact information.

1224.3 Failure by both parties to perform any of the duties described in § 1224 may adversely affect the outcome of the case, up to and including dismissal.

1224.5 Respondent and the complainant shall comply with all requests from the LA Director or OHR during the investigation of the complaint. Noncompliance by the parties shall be reported to the OCA for further action.

1225 AUDITS

1225.1 The OHR shall conduct audits on covered entities, as deemed necessary, to ascertain the level of compliance with the Act.

1225.2 Upon the completion of an audit, results will be issued to the entity being audited, the LA Director and the OCA. Failure to meet audit standards may result in being reported in the OHR's annual compliance report.

1225.3 The LA Director shall investigate and make a determination in accordance with §§ 1221 though 1223 on any instance of noncompliance cited in the audit.

1226 RECONSIDERATION

1226.1 A complainant seeking reconsideration of a finding of compliance, or a respondent seeking reconsideration of a non-compliance determination shall submit an application for reconsideration to the OHR Director in writing, stating specifically the grounds upon which the request for reconsideration is based.

1226.2 A request for reconsideration shall be filed with the LA Director's office, in writing, within fifteen (15) calendar days from the receipt of the OHR Director's Determination of Compliance.

1226.3 Upon receipt of an application for reconsideration, the LA Director shall send letters acknowledging receipt of the application to both the complainant and the respondent. The non-moving party shall also receive a copy of the grounds upon which the moving party bases the request for reconsideration, and shall be given ten (10) calendar days from receipt of the information to file a response.

1226.4 If, after review of a timely-filed application for reconsideration by a complainant and the response thereto, the OHR Director concludes that the complainant has not presented evidence that would warrant change, modification, or reversal of the prior

finding of compliance, the OHR Director shall affirm the original compliance finding.

1226.5 If the OHR Director concludes that the complainant's application for reconsideration has provided sufficient evidence to raise a genuine issue of law or fact, the complaint shall be reopened for further investigation or a finding of non-compliance shall be issued.

1226.6 If the respondent adequately presents evidence in its application for reconsideration to show compliance, and complainant fails to adequately rebut respondent's application for reconsideration, the OHR Director will reverse the finding of non-compliance and find the agency in compliance with the Act.

1226.7 The OHR Director, through the LA Director, can reopen the complaint for further investigation.

1226.8 If, at the end of further investigation and after considering the record as a whole, the OHR Director concludes that the complainant has not presented sufficient evidence to warrant a change of the finding of compliance, the prior determination of compliance shall be affirmed, and the parties shall be notified in writing.

1226.9 If the OHR Director determines, after further investigation, that a prior finding of compliance should be reversed, the Director shall find non-compliance, and the parties shall be served with a detailed written basis for the reversal and the respondent shall be notified of the corrective actions required to become in compliance with the Act.

1227 APPEALS

1227.1 An appeal from the final determination of compliance or non-compliance under this chapter may be filed with the District of Columbia Office of Administrative Hearings (OAH).

1227.2 The moving party must file an appeal with the OAH within thirty (30) calendar days after the date of the OHR's Letter of Determination is issued.

1227.3 OAH may adjudicate the appeal consistent with its own policies, procedures and the standard of review established for this process.

1228 DEFINITIONS

1228.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act – The Language Access Act of 2004

Administrative Hearing - a hearing before any governmental or administrative agency, or before an administrative law judge.

Agency -a designated District of Columbia entity which has specified functions and/or provides particular services to the public.

Baseline Assessment - a collection of data regarding specific characteristics of a covered entity as of the date the Language Access Act becomes effective for that entity.

Biennial Language Access Plan (BLAP) - a two-year mandatory compliance plan for each covered entity with major public contact that is to be revised and published in the D.C. Register biennially by the entity.

Bilingual Employee- an employee who is assessed and certified as "proficient" in both the English language and a language other than English by the DC Department of Human Resources (DCHR) or the personnel authority of the entity in which he/she is employed should the entity not fall under DCHR's purview.

Complainant –an individual, group of individuals, or organization(s) who brings or files a public complaint alleging violations of the Language Access Act against an agency, generally titled the respondent.

Consultative Agencies-is a collective term used to refer to the Mayor's Offices on African Affairs, Asian Pacific Islander Affairs, and Latino Affairs. These agencies are referred to in the Act as government offices that conduct outreach to communities with LEP/NEP populations.

Covered Entity – all District government agencies, departments, or programs that furnish information or render services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services or activities to the public.

D.C. Language Access Coalition- the established alliance of diverse community-based organizations in the District that work with the District government to foster and promote the civil rights of immigrant and LEP/NEP communities by advocating for meaningful language access within the District.

Interpretation- oral/verbal conversion of the meaning of a dialogue from one language to another language and vice versa. There are three (3) types of interpretation:

(a) Sight translation: an interpreter reads a document written in one language and translates it orally into another language.

(b) Consecutive interpretation: an interpreter translates a speaker's words orally after the foreign language speaker has stopped speaking.

(c) Simultaneous interpretation: an interpreter speaks simultaneously with the source language speaker.

Limited English Proficient (LEP) - means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Linguistic and Cultural Competency Training- training that educates, informs, instructs or guides agency staff on how to provide readily available, culturally appropriate oral and written language services to LEP/NEP individuals through such means as bilingual/bicultural staff, trained interpreters, and qualified translators.

Non-English Proficient (NEP) - persons who cannot speak or understand the English language at any level.

Oral Language Services- the provision of oral information necessary to enable LEP/NEP individuals to access or participate in programs or services offered by a covered entity. The types of oral language services include:

(a) Commercial Interpretation Services: Professional businesses that offer oral interpretation as part of their array of services.

(b) Community Interpretation Services: Community interpreters are members of a given language community who serve as liaisons between monolingual speakers of their native language and English.

(c) Multilingual Telephonic Interpretation Services: An over-the-phone interpretation service that provides professionally trained and qualified interpreters in various languages.

(d) Staff Interpreter: An employee who has been trained and proven competence in interpretation. Certification, training, or assessments indicate the employee's proficiency as an interpreter.

(e) Bilingual employee.

Party- the individual, group of individuals, or organization(s) named in a public complaint charging noncompliance with the Language Access Act, and is generally the complainant or the respondent.

Personnel Authority -The District of Columbia's Department of Human Resources or individual departments within covered entities with independent hiring authority responsible for human resource matters, including, but not limited to hiring, compensation and promotion.

Public Complaint -an administrative complaint filed under the rules of procedure established by Section 6(b)(2) of the Act, the LA Director or OHR, and § 1217 of the Language Access Act municipal regulations, which is filed by a person or organization claiming lack of access to a covered entity(ies) services due to significant language barriers posed by the entity(ies) in violation of the Language Access Act.

Public Contact Position - position in a covered entity for which the primary responsibilities include greeting, meeting, serving or providing information or services to the public. These are positions that require personal contacts with the public, community and civic organizations, or any combination of these groups.

Public Meeting- a meeting scheduled by a covered entity and a LEP/NEP community to allow for input or feedback from community members on issues of interest relating to the Language Access Act and service(s) provided by the entity. Such meetings shall take place at locations where LEP/NEP communities are known to congregate, including but not limited to, community centers, places of worship, etc.

Respondent-The respondent agency against whom the complainant files a public complaint charging noncompliance with the Language Access Act.

Translation- the written conversion of texts in the source language into texts written in the LEP/NEP customer's language, retaining the meaning and intent of the original source text and producing a culturally competent product. All translators providing translation services to the District must be certified and/or otherwise qualified.

Vital documents – applications and their instructions, notices, complaint forms, legal contracts, correspondence, and outreach materials published by a covered entity in a tangible format, including but not limited to those which inform individuals about their rights and responsibilities or eligibility requirements for benefits and participation, as well as documents that pertain to the health and safety of the public. The term "vital documents" shall include tax-related educational and outreach materials produced by the Office of Tax and Revenue, but shall not include tax forms and instructions.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Language Access Director, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

SECOND NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(b)(1) (C), (D), (E), (F), (G), (I), (J), 14, 20, and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(b)(1) (C), (D), (E), (F), (G), (I), (J) (2009 Repl.), 50-313 (2012 Supp.), 50-319 (2009 Repl.), and 50-320 (2012 Supp.)); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Supp.); and Section 12 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1920, and for other purposes, approved July 11, 1919 (41 Stat. 104; D.C. Official Code § 50-371 (2009 Repl.)); hereby gives notice of its intent to adopt amendments to Chapters 4, 5, 6, 7, 8 and 10 of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules amending Chapters 4, 5, 6, 7, 8 and 10 of DCMR Title 31 were originally approved by the Commission for publication on February 13, 2013, and published in the *D.C. Register* on March 15, 2013, at 60 DCR 3783. The Commission held a public hearing on the proposed rules on April 12, 2013, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the comment period, which expired on April 13, 2013. The proposed rules clarify jurisdiction, procedures, and penalties to assist the Office of Taxicabs in its enforcement of Title 31, and clarify that all enforcement actions shall be governed by this Chapter.

Directions for submitting comments may be found at the end of this notice. The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of second proposed rulemaking in the *D.C. Register*.

Chapter 7, COMPLAINTS AGAINST TAXICAB OWNERS OR OPERATORS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is deleted.

A new Chapter 7, ENFORCEMENT, is added as follows.

CHAPTER 7 ENFORCEMENT

700 APPLICATION AND SCOPE

700.1 This chapter establishes procedural rules for the enforcement of and compliance with the provisions of this title.

700.2 This chapter applies to all persons (including all owners, operators, and businesses) regulated by a provision of this title.

700.3 The provisions of this chapter shall be interpreted to comply with the language and intent of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-301 *et. seq.*) ("Act").

700.4 Nothing in this chapter shall be construed to limit the authority of the Office or the Commission under any applicable law.

700.5 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, including a penalty provision, the provision of this chapter shall control.

701 ADMINISTRATIVE ACTIONS

701.1 The Office may, in its discretion, take an administrative action, including issuing an Office order or Office directive, as it deems necessary to aid in administration, enforcement, or compliance under this title.

701.2 Except where otherwise expressly stated in a provision of this title, the Office's exercise of its discretion to refrain from taking an administrative action shall not excuse or justify failure to comply with an applicable provision of this title or other applicable law.

701.3 Each Office order shall be posted on the Commission's website and shall become effective twenty-four (24) hours after it is posted or at such later time as stated in the Office order, provided, however, that an Office order shall become effective upon posting if the Office states that it is effective at such time based on a determination that such action is required to protect passenger, operator, or public safety, for consumer protection, or where otherwise permitted by applicable law.

701.4 Each written Office directive shall be served in person upon the individual who must comply with it, or upon the owner, agent, partner, employee, or other designated representative of the person that must comply with it, or by U.S. Mail with delivery confirmation or return receipt requested to the address on file at the Office. Service of a written Office directive shall be complete at the time the Office directive is served in person or at the time it is deposited into the U.S. Mail, whichever occurs first.

701.5 Each oral Office directive shall be given to the individual who must comply with it, or to the owner, agent, partner, employee, or other designated representative of the person that must comply with it.

701.6 Each person shall timely and fully comply with each Office order that applies or relates to its obligations under any provision of this title or other applicable law and with each Office directive issued to it.

701.7 An Office order or Office directive may be modified or rescinded at any time with reasonable notice.

701.8 The civil penalties for failure to comply an Office order or Office directive are established as follows:

(a) Each individual that fails to timely and fully comply with an Office order or Office directive:

(1) Shall be subject to any civil fine that may be imposed under a chapter of this title that provides authority for the Office order or Office directive, or, if no fine is established, five hundred dollars ($500), which shall be doubled for the second violation, and tripled for the third and subsequent violations occurring within any twelve (12) month period; and

(2) If the individual's failure to comply causes the Office to lose jurisdiction to initiate a contested case against any person, then, in addition to the civil fine imposed under Subparagraph (a)(1) of this subsection, such individual shall pay a civil fine of one thousand dollars ($1,000).

(b) Each person other than an individual that fails to timely and fully comply with an Office order or Office directive:

(1) Shall be subject to any civil fine that may be imposed under a chapter of this title that provides authority for the Office order or Office directive, or, if no fine is established, seven hundred fifty dollars ($750), which shall be doubled for the second violation, and tripled for the third and subsequent violations occurring within any twelve (12) month period;

(2) If the person's failure to comply causes the Office to lose jurisdiction to initiate a contested case against any person, then, in addition to a civil fine that may be imposed under Subparagraph (b)(1) of this subsection, such person shall pay a civil fine of two thousand five hundred dollars ($2,500).

702 LICENSING DOCUMENTS

702.1 Where a licensing document is issued by the Office:

(a) The terms stated or incorporated by reference in such document shall constitute an Office directive; and

(b) If the document states that it is a temporary (such as in the case of a temporary DCTC identification card (Face Card), it shall be valid and effective for all purposes under this title for the period stated therein.

702.2 No person, other than a District enforcement official or other person authorized by law, shall duplicate or cause to be duplicated any licensing document except with written permission from the Office or for personal use pursuant to §§ 814.8 and 822.2.

703 PUBLIC COMPLAINTS

703.1 The Office shall receive oral and written complaints by members of the public through all common means of transmission, including through the Commission's telephone hotline and website, by email, in person, by U.S. Mail, and by private delivery service.

703.2 An oral complaint shall not be the basis of further action unless it has been reduced to writing.

703.3 The Office shall provide written notice to each complainant that his or her complaint has been received, within seventy-two (72) hours of receiving a complaint submitted in writing or within seventy-two (72) hours after a complaint originally submitted orally is reduced to writing. The notice required by this subsection may be served by email, if provided by the complainant.

703.4 If the Office determines that a complaint has merit, it shall issue an invitation to mediate to the respondent pursuant to § 704.2. The invitation shall include a detailed description of the complaint, including the time, place, and location of any incident referenced in the complaint, and the potential penalties if a contested case is initiated based on the complaint.

703.5 A complaint shall be pursued by the Office only if the complaint is made within thirty (30) days after the alleged incident giving rise to the complaint, provided, however, that a complaint alleging that any person suffered personal injury or engaged in criminal misconduct in connection with the provision of a public vehicle-for-hire service may be pursued by the Office if made within twelve (12) months after the alleged incident.

703.6 The Office shall initiate a contested case based on a complaint not later than ninety (90) days after the deadline by which it must pursue such complaint under this subsection, provided, however, that such period shall be subject to tolling as provided by District case law applicable to limitations periods.

704 MEDIATION

704.1 Mediation shall consist of an informal meeting between the Office and the respondent at a time and place designated by the Office for the purpose of addressing a public complaint or any other matter over which the Office has jurisdiction under a provision of this title.

704.2 The Office, in its discretion, may extend to a respondent an invitation to mediate, provided, however, that the Office shall extend to a respondent an invitation to mediate where required by § 703.4.

704.3 Each invitation to mediate:

(a) Shall state the designated time and location for the mediation session;

(b) Shall include any information required by § 703.4;

(c) May include a request or directive that the respondent bring with it or submit in advance documents or information;

(d) Shall be served in the manner required for an Office directive under § 701.4; and

(e) Shall state that the invitation is valid for ten (10) calendar days if the mediation follows a public complaint, or else for such period as the Office may determine in its discretion.

704.4 A respondent shall not be required to accept an invitation to mediate. If the Office receives a timely acceptance from the respondent and the respondent appears on time for mediation, the Office shall mediate the matter as stated in the invitation. If the Office does not receive a timely acceptance from the respondent or the respondent does not appear for mediation, the Office may initiate a contested case pursuant to § 704.

704.5 The Office shall reschedule a mediation once for good cause shown if a request to reschedule is received by the Office not later than three (3) business days before the mediation date or on shorter notice if due to on exigent circumstances (such as hospitalization), supported by appropriate documentation.

704.6 At mediation, the parties may negotiate and agree concerning any penalty that would be available if a contested case were filed (including a full or partial payment of a civil fine), admission of liability, execution of a compliance agreement or consent decree, suspension or revocation of a license, or any other relief authorized by law.

704.7 No fact related to or concerning mediation, including whether a mediation session occurred or did not occur, whether a mediation session was rescheduled or not, and a party's offer to compromise made orally or in writing, shall be admissible in a contested case, provided, however, that a document that is not created in anticipation of mediation shall be admissible in a contested case regardless of whether it was obtained in connection with mediation.

705 CONTESTED CASES

705.1 The Office may initiate a contested case alleging the violation of one (1) or more provisions of this title or other applicable law by serving:

(a) A notice of infraction (NOI) seeking a penalty authorized by law;

(b) A notice of summary denial, revocation, suspension, or modification, of a license issued by the Office;

(c) A notice of proposed denial, revocation, suspension, or modification, of a license issued by the Office; or

(d) A notice requiring the respondent to cease and desist conduct that violates a provision of this title or other applicable law, or to take action necessary to achieve compliance with a provision of this title or other applicable law.

705.2 A contested case shall be adjudicated by OAH or by such other authorized official as designated in the notice.

705.3 In addition to any other penalty authorized by a provision of this title, the Office may recommend to another government agency the denial, revocation, or suspension of any license that may be issued by such other agency.

705.4 When a notice of proposed denial, revocation, suspension, or modification of a license issued by the Office ("notice of proposed action") is served pursuant to § 705.1(c), the respondent may request reconsideration of the proposed action by the Chairman of the Commission under the following procedures:

(a) The notice of proposed action shall state the availability of the process established by this subsection;

(b) The respondent shall notify the Office in writing of its intention to seek reconsideration within five (5) business days of service of the notice of proposed action ("service");

(c) If the Office receives a statement indicating the respondent intends to seek reconsideration within the time required by § 704.5(b), the Office shall

notify the respondent of such receipt within two (2) business days and shall then begin the reconsideration process described herein.

(d) Within ten (10) business days of service of the notification required by § 705.4(c), the respondent shall file with the Office a detailed written statement in support of its request for reconsideration stating the grounds upon which reconsideration is sought, which shall include citation to any provision of this title or other applicable law, or other point or authority, and which shall be executed under oath and attach all supporting documentation, including any witness statements, which shall also be executed under oath;

(e) If the Office receives the written statement in support of reconsideration within the time required by § 705.4(d), the Office shall notify the respondent of such receipt within two (2) business days and shall then continue with the reconsideration process

(f) The Chairman shall consider the written statement and all documentation provided by the respondent, and may also consider any relevant information or document from the Office, another District agency, or another person, or any point or authority, that appears reasonably reliable and bears on the issues presented;

(g) The Chairman shall issue a written decision to let stand, modify or withdraw, in full or in part, the proposed action, , together with a supporting narrative, within ten (10) business days of the receipt of the written statement, unless the Chairman extends this deadline at his or her sole discretion for no more than five (5) business days;

(h) The Office shall serve the Chairman's decision and supporting narrative on the day it is issued, and shall comply with such order by withdrawing, modifying, or letting stand the proposed order; and

(i) The Chairman's decision on reconsideration shall not be subject to review, and no fact related to or concerning reconsideration, including, without limitation, any action or failure to take action by the Office or by the Chairman, and the Chairman's decision and supporting narrative, shall be admissible in an adjudication of the proposed action or in any other contested case, provided, however, that a document created prior to the reconsideration process or not in connection with the reconsideration process, or that would be admissible if the respondent had not requested reconsideration, shall be admissible.

706 ADDITIONAL CIVIL PENALTIES FOR FAILURE TO RESPOND TO A CONTESTED CASE NOTICE

706.1 Each respondent that fails to timely answer or otherwise respond within thirty (30) days to any contested case notice issued under § 705.1(a):

(1) Shall pay a civil penalty equal to twice the amount of the civil fine applicable to the violation pursuant to a penalty provision of any chapter of this title, in addition to the applicable civil fine itself; and

(2) Shall be subject to the entry of a default order without additional notice.

706.2 An additional civil fine imposed under § 705.1 shall not relate to and shall not preclude or affect the multiplication of a civil fine under a penalty provision of any chapter of this title, as the result of a prior violation by the respondent.

706.3 Each respondent shall respond to any contested case notice issued under § 705.1 (b) or (d) as directed within such notice and be subject to civil penalties and fines as stated in such notice.

707 DECLARATORY ORDERS

707.1 Upon the petition of any interested person, the Commission may issue a declaratory order concerning the applicability of any rule, regulation, Council act or resolution, or statute administered by the Commission, for the purpose of terminating a controversy (other than a contested case) or removing an uncertainty.

707.2 A petition for a declaratory order shall be filed in writing, clearly marked to indicate that it is being filed pursuant to this section and shall:

(a) Contain a detailed statement of the facts on which the petition is based;

(b) Set forth fully the laws and decisions relevant to the issue;

(c) Pose the question of whether, and in what manner, the law and decisions apply to the petitioner under the facts outlined in the petition;

(d) Contain a statement describing the interest of the petitioner in making the request for the declaratory order; and

(e) Provide a description and any supporting documentation of any action or inaction of the Commission that gives rise to the petition.

707.3 The Commission shall consider the petition and, at the Commission's discretion, may issue or not issue the declaratory order requested. The determination to issue

or not issue a declaratory order shall be promptly communicated to the petitioner. The Commission may require argument on the petition.

707.4 A declaratory order issued by the Commission shall be in writing and plainly state that it is a declaratory order issued pursuant to this section.

707.5 A written answer from the Commission to an inquiry shall not be construed as a declaratory order unless it is made in compliance with the requirements of this section.

707.6 The Office shall publish each declaratory order of general interest on the Commission's website, subject to the redaction of any information that should be withheld under the Freedom of Information Act, effective Mar. 25, 1977 (D.C. Law 1-96, D.C. Official Code §§ 2-531, *et seq.*), and its implementing regulations.

707.7 A declaratory order shall bind the petitioner on the stated facts, unless such order is altered or set aside by a court of competent jurisdiction. A declaratory order may be revoked, altered, or amended by the Commission at any time by written notice to the petitioner, which shall have prospective effect only, and if the revocation, alteration, or amendment concerns a declaratory order that has been published, such revocation, alteration, or amendment shall also be published promptly.

708 REPRESENTATION

708.1 Each person may designate a representative to act on its behalf before the Office or the Commission in connection with any matter arising under this title.

708.2 No person other than a representative designated pursuant to § 706.1 shall act on behalf of another person before the Office or the Commission.

Subsection 799.1 is amended to read as follows:

799.1 The terms "adjudication," "contested case," "declaratory order", "party," and "license" shall have the meanings ascribed to them in the District of Columbia Administrative Procedure Act, effective Oct. 8, 1975, (D.C. Law 1-19, D.C. Official Code § 2-502 *et seq*.).

A new Subsection 799.2 is added to read as follows:

799.2 The following words and phrases shall have the meanings ascribed:

Administrative action – an Office order or Office directive.

APA – the District of Columbia Administrative Procedure Act, effective Oct. 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-501 *et seq.*).

Complainant– a member of the public who submits a complaint.

District enforcement official –a public vehicle enforcement inspector (hack inspector) or other authorized official, employee, or general counsel of the Office, or any law enforcement official authorized to enforce a provision of this title.

Licensing document –a physical or electronic document issued to a person as evidence that such person has been issued a license under this title (such as a DCTC identification card (Face card)).

Office directive – a written or oral administrative instruction by the Office, including a District enforcement official, to a person regulated by this title or other applicable law, requiring such person to: appear at the Office; produce a document, information, or thing for inspection or copying; submit a vehicle for testing or inspection; surrender a physical document evidencing that a person has been licensed by the Office (such as a DCTC identification card (Face Card)); comply with any provision of this title or other applicable law, including an order pursuant to the Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, effective March 16, 1993 (D.C. Law 9-199, D.C. Official Code §§ 50-331 *et. seq*).; or take or refrain from any action as the Office or such District enforcement official may deem necessary for purposes of administration, enforcement, or compliance.

Office order – an administrative issuance by the Office to a class of persons or vehicles regulated by a provision of this title or other applicable law that: adopts a form; establishes an administrative fee; issues a guideline or protocol applicable to persons other than employees of the Office; provides guidance concerning a provision of this title; or takes any action that the Office deems necessary for purposes of administration, enforcement, or compliance.

Notice of infraction or NOI –a civil charging document in which the respondent is charged with violating one (1) or more provisions of this title or other applicable law.

Person – has the meaning ascribed to it in the APA, and is further defined as including any individual or entity regulated by this title or any individual or entity that engages in an activity regulated by this title which requires DCTC licensure or authorization to operate but has not obtained such appropriate license or authorization or the license or authorization has lapsed, been suspended, or been revoked.

Representative – an individual or a law firm designated and accepted by a person to advocate on its behalf or to provide advice and counsel to it, at its sole cost and expense, to the extent authorized by law.

Respondent – a person that is the subject of a public complaint, that is invited to participate in mediation, or against which a public complaint is initiated.

Chapter 4, HEARING PROCEDURES APPLICABLE TO NOTICES OF INFRACTIONS, is DELETED and RESERVED.

Chapter 5, TAXICABS COMPANIES, ASSOCIATIONS, AND FLEETS AND INDEPENDENT TAXICABS, is amended as follows:

Subsection 500, APPLICATION AND SCOPE, is amended to read:

500.3 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Subsection 510.3 is DELETED.

Subsections 518.2 and 518.3 are DELETED.

Chapter 6, TAXICABS PARTS AND EQUIPMENT, is amended as follows:

Section 600, APPLICATION AND SCOPE, is amended to read:

600.5 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

The title of Section 826 is amended to read:

ENFORCEMENT OF THIS CHAPTER

Section 826, ENFORCEMENT OF THIS CHAPTER, is amended as follows:

826.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 10, PUBLIC VEHICLES FOR HIRE, is amended as follows:

Subsection 1002, APPLICATION FOR A HACKER'S LICENSE; FEES, is amended to read:

1002.10 The denial of a hacker's license for failure to successfully take and pass the written examination is not reviewable on appeal.

Section 1013 is DELETED.

A new Section 1013, ENFORCEMENT, is added.

1013.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-088
May 10, 2013

SUBJECT: Reappointment – Washington Convention and Sports Authority Board of Directors

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) (2012 Supp.), and in accordance with section 205 of the Washington Convention and Sports Authority Act of 1994, effective September 28, 1994, D.C. Law 10-188, D.C. Official Code § 10-1202.05 (2012 Supp.), it is hereby **ORDERED** that:

1. **JOHN BOARDMAN,** who was nominated by the Mayor on March 13, 2013 and approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0130 on May 7, 2013, is reappointed as an organized labor representative member of the Washington Convention and Sports Authority Board of Directors, for a four-year term to begin May 17, 2013 and to end May 16, 2017.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-089
May 10, 2013

SUBJECT: Appointment – Director, District Department of the Environment

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code §§ 1-204.22(2) and (11) (2012 Supp.), and by section 104 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006, D.C. Law 16-51, D.C. Official Code § 8-151.04(a) (2008 Repl.), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2012 Supp.), it is hereby **ORDERED** that:

1. **KEITH A. ANDERSON**, who was nominated by the Mayor on January 22, 2013, and approved by the Council of the District of Columbia pursuant to Resolution 20-0118 on May 7, 2013, is appointed as the Director of the District Department of the Environment, and shall serve at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2013-020, dated January 24, 2013.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to May 7, 2013.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-090
May 14, 2013

SUBJECT: Appointment – District of Columbia Taxicab Commission

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(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) (2012 Supp.), and in accordance with section 5 of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986, D.C. Law 6-97, D.C. Official Code § 50-304 (2009 Repl.), which established the District of Columbia Taxicab Commission ("Commission"), it is hereby **ORDERED** that:

1. **GLADYS MACK**, who was nominated by the Mayor on February 7, 2013, and was approved by the Council of the District of Columbia, pursuant to Resolution 20-119, on May 7, 2013, is appointed as a public member of the Commission for a term to end May 4, 2018.

2. **EFFECTIVE DATE**: This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-091
May 15, 2013

SUBJECT: Appointment – District of Columbia Child Fatality Review Committee

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) (2012 Supp.), and in accordance with section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 4-1371.04 (2008 Repl.), it is hereby **ORDERED** that:

1. **KAREN P. WATTS** is appointed to the District of Columbia Child Fatality Review Committee as the designee representative of the Department of Health, replacing Samia Altaf, and shall serve in that capacity at the pleasure of the Mayor, so long as she continues in her official capacity with the District.

2. **EFFECTIVE DATE:** This Order shall be effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-092
May 15, 2013

SUBJECT: Appointment – District of Columbia Child Fatality Review Committee

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) (2012 Supp.), and in accordance with section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 4-1371.04 (2008 Repl.), it is hereby **ORDERED** that:

1. **JOHN VYMETAL-TAYLOR** is appointed to the District of Columbia Child Fatality Review Committee as a designee representative of the Child and Family Services Agency, replacing Dr. Cheryl R. Williams, and shall serve in that capacity at the pleasure of the Mayor, so long as he continues in his official capacity with the District.

2. **EFFECTIVE DATE:** This Order shall be effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

ADVISORY COMMITTEE TO THE OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF PUBLIC MEETING

The Advisory Committee to the Office of Administrative Hearings hereby gives notice that the Committee will meet on Thursday, May 23, 2013 at 9:30 a.m. The meeting is open to the public and will be held at the location below:

Office of Administrative Hearings
441-4th Street, N.W., Suite 450 North
Washington, DC 20001.

The agenda for the meeting is below. For further information, please contact Ms. LaVita Anthony, on (202) 724-7681 or lavita.anthony@dc.gov

AGENDA

I. Call to Order

II. Approval of Minutes from April 10, 2013 Meeting

III. Briefing on Investigative Report

IV. Proposed Transfer of Hearing Functions from DOH and DCRA

V. Proposed use of Hearing Examiners for Taxicab Commission Cases

VI. New Business

VII. Adjournment

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CHANGE OF HOURS AGENDA

WEDNESDAY, MAY 22, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Thursday 9:00 am – 10:00 pm; Friday and Saturday 9:00 am – 11:00 pm. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday 9:00 am – 11:00 pm; Monday through Thursday 9:00 am – 10:00 pm; Friday and Saturday 9:00 am – 12:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 1B. SMD 1B09. ***Harvard Liquors, LLC T/A Harvard Liquors***, 2901 Sherman Ave., NW. Retailer's Class A. License No. 077747.

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2. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales (Sunday Only). Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Saturday 9:00 am - 12:00 am. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday through Saturday 9:00 am - 12:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 7E. SMD 7E06. ***JCP Liquors, Inc. T/A Seymours Liquors***, 5581 Central Avenue, SE. Retailer's Class A, License No. 070948.

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3. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales (Sunday Only). Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Saturday 8:00 am – 12:00 am. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday through Saturday 8:00 am - 12:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 4D. SMD 4D04. ***Rion, Inc T/A Colony Liquors***, 4901 Georgia Avenue, NW. Retailer's Class A, License No. 091371.

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4. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Thursday 9:00 am – 10:00 pm; Friday and Saturday 9:00 am – 11:00 pm. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday 9:00 am – 11:00 pm; Monday through Thursday 9:00 am – 10:00 pm; Friday and Saturday 9:00 am – 12:00 am. . No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 5B. SMD 5B04. ***Rhode Island Liquors, LLC T/A Rhode Island Liquors***, 914 Rhode Island Avenue, NE. Retailer's Class A, License No. 078927.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, MAY 22, 2013
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 22, 2013 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#13-CC-00022 Mac's Wine & Liquors, 401 RHODE ISLAND AVE NE Retailer A Retail - Liquor Store, License#: ABRA-060758

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2. Case#13-CMP-00145 TruOrleans, 400 H ST NE Retailer C Restaurant, License#: ABRA-086210

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3. Case#13-CC-00023 Edgewood Liquors, 2303 4TH ST NE Retailer A Retail - Liquor Store, License#: ABRA-089688

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, MAY 22, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Requests dated May 8 and 10, 2013 from E& J Gallo Winery for approval to provide retailers with products valued at more than $50 and less than $500.

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2. Review of Application for License Class Change: CR to CT. ***Approved Hours of Operation*** Sunday 11:00 am – 12:00 am; Monday through Thursday 8:00 am – 2:00 am; Friday 8:00 am – 3:00 am; Saturday 11:00 am – 3:00 am. ***Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday 11:00 am – 12:00 am; Monday through Thursday 11:00 am – 2:00 am; Friday and Saturday 11:00 am – 3:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 6A. SMD 6A07. ***Langston Bar & Grille,*** 1831 Benning Road NE Retailer CR01, Lic.#: 76260.

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3. Manager's Application: Derrick Hampton. **

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4. Review of Request dated May 8, 2013 from Long Trail Brewing Company for approval to provide a retailer with a product valued at more than $50 and less than $500.

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5. Review of letters, dated April 23, 2013, from ANC 1B and the Ledroit Park Civic Association protesting any future liquor license applications submitted to the Board for House of Secrets, located at 507 T Street, NW.

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6. Review of Petition to Terminate Settlement Agreement, dated May 2, 2013, from Red Lounge. ***Red Lounge,*** 2013 14th Street NW Retailer CR02, Lic.#: 76011.*

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7. Review of Petition to Terminate or Amend Settlement Agreement, dated March 29, 2013, for Bistro 18. ***Bistro 18,*** 2420 18th Street NW Retailer CR01, Lic.#: 86876. *

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8. Review of Petition to Terminate or Amend Settlement Agreement, dated March 29, 2013, for Jo Jo Restaurant & Bar. ***Jo Jo Restaurant & Bar,*** 1518 U Street NW Retailer CR01, Lic.#: 60737. *

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9. Review of Settlement Agreement Amendment, dated April 26, 2013, between Maketto and ANC 6A. ***Maketto,*** 1351 H Street NE Retailer CR02, Lic.#: 90445. *

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10. Review of Settlement Agreement Amendment, dated April 10, 2013, between Mad Momos and ANC 1A. ***Mad Momos,*** 3605 14th Street NW Retailer CR01, Lic.#: 88409. *

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11. Review of Settlement Agreement, dated May 6, 2013, between Meskerem Ethiopian Restaurant and the Kalorama Citizens Association. ***Meskerem Ethiopian Restaurant,*** 2434 18th Street NW Retailer CR02, Lic.#: 7916. *

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12. Review of Settlement Agreement, dated April 24, 2013, between Thaitanic II and ANC 1A. ***Thaitanic II,*** 3460 14th Street NW Retailer CR*, Lic.#: 82445. *

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13. Review of Settlement Agreement, dated May 1, 2013, between Young Chow Asian Restaurant and ANC 6B. ***Young Chow Asian Restaurant,*** 312 Pennsylvania Avenue SE Retailer CR01, Lic.#: 88497. *

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14. Review of Settlement Agreement, dated April 12, 2013, between Trattoria Alberto and ANC 6B. ***Trattoria Alberto,*** 504 8th Street SE Retailer CR01, Lic.#: 8946. *

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15. Review of Settlement Agreement, dated October 12, 2010, between Montmarte/7th Hill and ANC 6B. ***Montmarte/7th Hill,*** 327 7th Street SE Retailer CR01, Lic.#: 60422. *

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16. Review of Settlement Agreement, dated April 10, 2013, between Hunan Dynasty and ANC 6B. ***Hunan Dynasty,*** 215 Pennsylvania Avenue SE Retailer CR02, Lic.#: 60390. *

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17. Review of Settlement Agreement, dated October 12, 2010, between The Silver Spork and ANC 6B. ***The Silver Spork,*** 301 7th Street SE Retailer DR01, Lic.#: 88503. *

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18. Review of Settlement Agreement, dated April 4, 2013, between Café 8 and ANC 6B. ***Café 8,*** 424 8th Street SE Retailer CR01, Lic.#: 77797. *

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19. Review of Settlement Agreement, dated April 9, 2013, between Belga Café and ANC 6B. ***Belga Café,*** 514 8th Street SE Retailer CR01, Lic.#: 60779. *

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20. Review of Settlement Agreement, dated October 12, 2010, between Sanphan Thai Cuisine and ANC 6B. ***Sanphan Thai Cuisine,*** 653 Pennsylvania Avenue SE Retailer CR01, Lic.#: 80550. *

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21. Review of Settlement Agreement, dated April 24, 2013, between Lavagna and ANC 6B. ***Lavagna,*** 529 8th Street SE Retailer CR02, Lic.#: 86529. *

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22. Review of Settlement Agreement, dated April 12, 2013, between Szechuan House Restaurant Fusion Grill and ANC 6B. ***Szechuan House Restaurant Fusion Grill,*** 515 8th Street SE Retailer CR01, Lic.#: 76814. *

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23. Review of Settlement Agreement, dated April 23, 2013, between Kenneth H Nash Post 8 American Legion and ANC 6B. ***Kenneth H Nash Post 8 American Legion,*** 224 D Street SE Retailer CX, Lic.#: 643. *

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24. Review of Settlement Agreement, dated May 9, 2013, between Case Fiesta II and ANC 3E. ***Casa Fiesta II,*** 4910 Wisconsin Avenue NW Retailer CR01, Lic.#: 24766. *

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

** **In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations. The Board's vote will be held in an open session, and the public is permitted to attend.**

CAPITAL CITY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Bond Counsel

Capital City Public Charter School invites all interested and qualified vendors to submit proposals for Bond Counsel. Proposals are due no later than 5 P.M. May 24, 2013. The RFP with bidding requirements and supporting documentation can be obtained by contacting Arogya Singh at asingh@ccpcs.org or Capital City PCS, 100 Peabody St, NW, Washington, DC 20011

Thin Client System

Capital City Public Charter School invites all interested and qualified vendors to submit proposals for Thin Client System. Capital City PCS is deploying a school-wide thin client classroom setup and is seeking a vendor that would provide a full service integration, from design through implementation and review. This project will deploy 2 thin client workstations to each classroom for grades 2-12 and 4 thin client laptops to each High School Science Lab, allowing students to work independently and in small groups in a classroom environment. Proposals are due no later than May 24, 2013. The RFP with binding requirements and supporting documentation can be obtained by contacting Jaime Chao at jchao@ccpcs.org or Capital City PCS, 100 Peabody St, NW, Washington, DC 20011.

Speaker Installation for Classrooms

Capital City Public Charter School invites all interested and qualified vendors to submit proposals for classroom speaker installations. Proposals are due no later than 5 P.M. May 24, 2013. The RFP with bidding requirements and supporting documentation can be obtained by contacting Jaime Chao at jchao@ccpcs.org or Capital City PCS, 100 Peabody St, NW, Washington, DC 20011.

D.C. CORRECTIONS INFORMATION COUNCIL

NOTICE OF PUBLIC MEETING

The DC Corrections Information Council (CIC), held a meeting open to the public on May 14, 2013. For additional information about the meeting, please contact Cara Compani, CIC Program Analyst, at (202)445-7623 or DC.CIC@dc.gov.

The CIC is an independent monitoring body mandated to inspect and monitor conditions of confinement at facilities operated by the Federal Bureau of Prisons (BOP), D.C. Department of Corrections (DOC) and their contract facilities where D.C. residents are incarcerated. Through its mandate the CIC will collect information from many different sources, including site visits, and report its observations and recommendations.

Below is the meeting agenda. More information is available on our website https://sites.google.com/a/dc.gov/cic/.

AGENDA

I. Call to Order (Board Chair)
II. Roll Call (Board Chair)
III. Hope Village – report release date May 17, 2013
IV. Update on: FCI Fairton and Video Visitation at DC Jail
V. FCI Manchester & USP McCreary
VI. Community Outreach Interns
VII. Questions/Comments
VIII. Schedule Next CIC Open Meeting and Set Open Meeting Schedule
IX. Vote to Close Remainder of Meeting, pursuant to DC Code 2-574(c)(1)
X. Closed Session of Meeting (if approved by majority of CIC Board)
XI. Adjournment (Board Chair)

CLOSED MEETING

I. Closed Session of Meeting (if approved by majority of CIC Board)
II. Adjournment (Board Chair)

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

Community Schools Incentive Initiative (CSII2013)

Announcement Date: **May 17th, 2013**
Request for Application Release Date: **May 31st, 2013**
Pre-Application Question Period Ends: **June 14th, 2013**
Application Submission Deadline: **July 3rd, 2013**

The Office of the State Superintendent of Education (OSSE) is soliciting applications for the Community Schools Incentive Initiative. The purpose of this initiative is to establish community schools. A community school is a public and private community partnership to coordinate educational, developmental, family, health, and after-school-care programs during school and non-school hours for students, families, and local communities at a public school or public charter school with the objectives of improving academic achievement, reducing absenteeism, building stronger relationships between students, parents, and communities, and improving the skills, capacity, and well-being of the surrounding community residents.

Eligibility: The Office of the State Superintendent of Education will accept applications from eligible consortia proposing substantive, evidence-based approaches to creating community schools. As defined by the Community Schools Incentive Act of 2012, an "eligible consortium" is an agreement established between an LEA (on behalf of one or more schools) in DC and one or more community partners (providers of eligible services as defined in the Community Schools Incentive Act of 2012) for the purposes of establishing, operating, and sustaining a community school.

Length of Award: The grant award period is one year.

Available Funding for Award: The total funding available for this award is $1,000,000. Eligible consortia may apply for an award amount up to $200,000.

Anticipated Number of Awards: OSSE has funding available for at minimum, five (5) awards.

The RFA and application materials will be posted at www.osse.dc.gov. For additional information regarding this grant competition or for RFA materials, please contact:

Nancy Brenowitz Katz, MS, RD, LD, Project Manager
Office of the State Superintendent of Education
Wellness and Nutrition Services Division
810 1st Street NE, 4th Floor
Washington, DC 20002
202-724-7893
nancy.katz@dc.gov

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 3E01 and 3G04

Petition Circulation Period: **Monday, May 20, 2013 thru Monday, June 10, 2013**
Petition Challenge Period: **Thursday**, **June 13, 2013 thru Wednesday, June 19, 2013**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

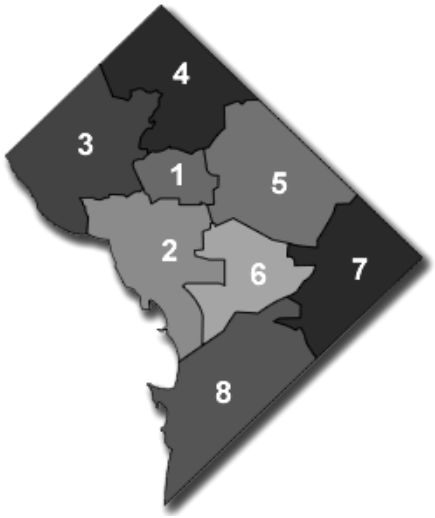
For more information, the public may call **727-2525**.

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of APRIL 30, 2013

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	45,521	2,976	860	18	169	12,928	**62,472**
2	32,094	6,496	283	26	159	12,855	**51,913**
3	39,502	8,075	410	20	128	13,152	**61,287**
4	52,017	2,665	616	9	179	10,481	**65,967**
5	54,501	2,292	611	17	169	9,584	**67,174**
6	53,489	6,647	600	21	195	13,707	**74,659**
7	52,509	1,424	486	1	131	7,369	**61,920**
8	50,667	1,485	494	3	192	8,277	**61,118**
Totals	380,300	32,060	4,360	115	1,322	88,353	**506,510**
Percentage By Party	**75.08%**	**6.33%**	**.86%**	**.02%**	**.26%**	**17.44%**	**100.00%**

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF APRIL 30, 2013

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY



ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
http://www.dcboee.org

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,487	44	14	1	11	246	**1,803**
22	3,707	307	32	2	8	1,029	**5,085**
23	2,830	175	68	3	6	787	**3,869**
24	2,625	263	39	0	9	883	**3,819**
25	4,201	476	77	1	7	1,402	**6,164**
35	3,687	241	74	0	14	1,156	**5,172**
36	4,547	298	81	2	17	1,268	**6,213**
37	3,303	160	57	0	9	783	**4,312**
38	2,835	144	60	1	10	785	**3,835**
39	4,291	231	109	3	17	1,126	**5,777**
40	3,985	236	108	1	25	1,229	**5,584**
41	3,441	210	71	2	20	1,116	**4,860**
42	1,876	64	32	2	6	520	**2,500**
43	1,756	73	25	0	4	383	**2,241**
137	950	54	13	0	6	215	**1,238**
TOTALS	**45,521**	**2,976**	**860**	**18**	**169**	**12,928**	**62,472**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	721	170	7	0	11	473	**1,382**
3	1,490	450	17	1	13	761	**2,732**
4	1,720	491	9	1	8	880	**3,109**
5	2,299	784	19	1	10	966	**4,079**
6	2,746	1,157	29	2	23	1,747	**5,704**
13	1,410	303	7	1	1	533	**2,255**
14	3,136	495	28	1	12	1,174	**4,846**
15	3,346	368	27	6	15	1,061	**4,823**
16	3,896	443	38	4	12	1,137	**5,530**
17	5,018	711	49	6	32	1,775	**7,591**
129	2,069	369	13	2	6	858	**3,317**
141	2,539	282	27	0	9	773	**3,630**
143	1,704	473	13	1	7	717	**2,915**
TOTALS	**32,094**	**6,496**	**283**	**26**	**159**	**12,855**	**51,913**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,251	436	18	0	4	585	**2,294**
8	2,424	719	25	2	8	830	**4,008**
9	1,238	562	11	0	11	571	**2,393**
10	1,754	494	9	1	9	704	**2,971**
11	3,520	1,023	48	3	9	1,514	**6,117**
12	519	217	3	0	4	238	**981**
26	3,025	401	34	2	5	1,042	**4,509**
27	2,610	324	20	1	6	679	**3,640**
28	2,535	659	35	4	9	962	**4,204**
29	1,371	309	17	0	4	502	**2,203**
30	1,362	270	17	0	5	317	**1,971**
31	2,426	383	21	0	10	636	**3,476**
32	2,916	421	32	3	6	725	**4,103**
33	3,113	424	38	2	12	884	**4,473**
34	3,882	591	29	0	12	1,371	**5,885**
50	2,261	350	20	2	11	561	**3,205**
136	929	147	10	0		371	**1,457**
138	2,366	345	23	0	3	660	**3,397**
TOTALS	**39,502**	**8,075**	**410**	**20**	**128**	**13,152**	**61,287**

D.C. BOARD OF ELECTIONS

MONTHLY REPORT OF VOTER REGISTRATION STATISTICS

WARD 4 REGISTRATION SUMMARY

As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,314	82	47	2	8	486	**2,939**
46	3,216	92	34	0	15	662	**4,019**
47	3,219	178	39	3	15	861	**4,315**
48	3,002	154	37	0	11	649	**3,853**
49	930	51	17	0	6	225	**1,229**
51	3,387	623	27	0	10	732	**4,779**
52	1,331	237	6	0	2	264	**1,840**
53	1,278	80	20	0	4	316	**1,698**
54	2,507	115	39	0	7	547	**3,215**
55	2,758	85	39	1	14	527	**3,424**
56	3,378	107	38	0	14	795	**4,332**
57	2,843	100	36	0	17	538	**3,534**
58	2,530	69	24	1	3	446	**3,073**
59	2,835	101	38	1	8	456	**3,439**
60	2,372	100	25	0	8	749	**3,254**
61	1,816	63	19	0	3	339	**2,240**
62	3,410	155	31	0	5	421	**4,022**
63	3,599	137	63	0	14	703	**4,516**
64	2,445	64	17	1	6	374	**2,907**
65	2,847	72	20	0	9	391	**3,339**
Totals	**52,017**	**2,665**	**616**	**9**	**179**	**10,481**	**65,967**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,259	203	61	5	10	1,006	**5,544**
44	3,014	239	32	3	15	712	**4,015**
66	5,042	147	38	0	12	609	**5,848**
67	3,256	126	25	0	9	442	**3,858**
68	2,052	184	33	1	9	454	**2,733**
69	2,410	87	20	0	9	300	**2,826**
70	1,665	78	21	1	3	288	**2,056**
71	2,654	74	36	1	8	393	**3,166**
72	4,890	132	31	1	15	816	**5,885**
73	2,037	111	34	2	6	403	**2,593**
74	4,445	209	64	0	12	884	**5,614**
75	3,391	134	52	0	8	706	**4,291**
76	1,314	56	14	0	4	261	**1,649**
77	3,233	123	38	0	11	580	**3,985**
78	3,092	81	33	0	8	486	**3,700**
79	2,134	71	15	2	8	389	**2,619**
135	3,222	189	52	1	16	605	**4,085**
139	2,391	48	12	0	6	250	**2,707**
TOTALS	**54,501**	**2,292**	**611**	**17**	**169**	**9,584**	**67,174**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,407	410	52	1	21	1,128	**6,019**
18	4,261	266	48	0	15	935	**5,525**
21	1,164	57	18	0	5	269	**1,513**
81	5,170	377	53	1	19	1,042	**6,662**
82	2,699	277	26	1	11	608	**3,622**
83	3,926	439	41	2	13	986	**5,407**
84	2,078	457	29	2	9	647	**3,222**
85	2,907	586	28	2	9	874	**4,406**
86	2,402	293	29	1	7	547	**3,279**
87	2,979	245	29	1	13	615	**3,882**
88	2,266	334	21	0	7	566	**3,194**
89	2,728	758	32	2	7	905	**4,432**
90	1,708	286	14	1	6	528	**2,543**
91	4,287	383	49	2	19	1,039	**5,779**
127	4,208	292	56	2	13	958	**5,529**
128	2,290	216	32	1	10	671	**3,220**
130	881	368	10	0	3	354	**1,616**
131	1,709	429	15	2	4	602	**2,761**
142	1,419	174	18	0	4	433	**2,048**
TOTALS	**53,489**	**6,647**	**600**	**21**	**195**	**13,707**	**74,659**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,814	90	18	0	8	317	**2,247**
92	1,692	41	13	0	10	249	**2,005**
93	1,695	47	17	0	5	238	**2,002**
94	2,116	57	18	0	3	276	**2,470**
95	1,826	51	21	0		316	**2,214**
96	2,533	76	27	0	7	381	**3,024**
97	1,589	35	14	0	4	208	**1,850**
98	1,992	44	25	0	4	273	**2,338**
99	1,572	45	15	0	4	240	**1,876**
100	2,238	43	14	0	5	279	**2,579**
101	1,849	37	21	0	6	206	**2,119**
102	2,615	57	29	0	7	328	**3,036**
103	3,810	99	40	0	13	578	**4,540**
104	3,105	83	28	0	11	456	**3,683**
105	2,563	62	27	0	4	396	**3,052**
106	3,331	78	23	0	7	469	**3,908**
107	1,918	60	17	0	4	298	**2,297**
108	1,275	40	8	0	2	142	**1,467**
109	1,098	39	9	0	1	115	**1,262**
110	4,349	131	35	1	10	510	**5,036**
111	2,710	68	29	0	9	398	**3,214**
113	2,501	78	21	0	5	324	**2,929**
132	2,318	63	17	0	2	372	**2,772**
TOTALS	**52,509**	**1,424**	**486**	**1**	**131**	**7,369**	**61,920**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of APRIL 30, 2013

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,385	67	13	1	8	336	**2,810**
114	3,476	115	32	0	22	573	**4,218**
115	3,311	78	29	1	11	687	**4,117**
116	4,359	116	43	0	18	685	**5,221**
117	2,096	55	17	0	10	334	**2,512**
118	2,961	85	36	0	11	456	**3,549**
119	3,194	136	50	0	11	601	**3,992**
120	2,095	47	22	0	6	351	**2,521**
121	3,622	90	39	1	14	590	**4,356**
122	2,090	56	21	0	6	316	**2,489**
123	2,682	134	28	0	14	507	**3,365**
124	2,930	71	18	0	5	409	**3,433**
125	5,090	131	47	0	16	803	**6,087**
126	4,190	134	40	0	18	759	**5,141**
133	1,549	47	10	0	5	199	**1,810**
134	2,479	53	32	0	7	328	**2,899**
140	2,158	70	17	0	10	343	**2,598**
TOTALS	**50,667**	**1,485**	**494**	**3**	**192**	**8,277**	**61,118**

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 3/31/2013 and 4/30/2013

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	**379,754**	**32,016**	**4,351**	**109**	**1,320**	**88,148**	**505,698**
Board of Elections Over the Counter	13	1	1	0	0	2	**17**
Board of Elections by Mail	30	1	0	0	1	7	**39**
Board of Elections Online Registration	64	8	2	1	0	19	**94**
Department of Motor Vehicle	466	59	3	0	0	195	**723**
Department of Disability Services	4	0	0	0	0	1	**5**
Office of Aging	0	0	0	0	0	0	**0**
Federal Postcard Application	0	0	0	0	0	0	**0**
Department of Parks and Recreation	0	0	0	0	0	0	**0**
Nursing Home Program	11	2	0	0	0	2	**15**
Dept. of Youth Rehabilitative Services	1	0	0	0	0	5	**6**
Department of Corrections	9	1	1	0	0	6	**17**
Department of Human Services	4	0	0	0	0	0	**4**
Special / Provisional	97	17	4	1	0	30	**149**
All Other Sources	47	3	0	1	0	15	**66**
+Total New Registrations	**746**	**92**	**11**	**3**	**1**	**282**	**1,135**

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	92	6	3	0	2	19	**122**
Administrative Corrections	12	0	0	0	0	93	**105**
+TOTAL ACTIVATIONS	**104**	**6**	**3**	**0**	**2**	**112**	**227**

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	2	0	0	0	0	1	**3**
Moved Out of District (Deleted)	22	1	0	0	0	3	**26**
Felon (Deleted)	0	0	0	0	0	0	**0**
Deceased (Deleted)	65	35	0	0	0	15	**115**
Administrative Corrections	317	27	4	0	1	57	**406**
-TOTAL DEACTIVATIONS	**406**	**63**	**4**	**0**	**1**	**76**	**550**

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	239	43	18	3	9	125	
- Changed From Party	-137	-34	-19	0	-9	-238	
ENDING TOTALS	**380,300**	**32,060**	**4,360**	**115**	**1,322**	**88,353**	**506,510**

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit (#5905-R2) to the Architect of the Capitol, to operate the listed diesel-fired emergency generator engine located in Washington, DC. The contact person for the facility is James Styers, Environmental Engineer, at (202) 226-6636.

Emergency Generator to be Permitted

Equipment Location	Address	Equipment Size	Model Number	Serial Number	Permit Number
Thurgood Marshall Federal Judiciary Building	One Columbus Circle NE Washington, DC 20002	930 kW (1324 hp)	3508-DITA	23Z03708	5905-R2

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit is as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Total Particulate Matter, PM (Total)	0.31	0.08
Sulfur Oxides (SO_x)	0.016	0.004
Nitrogen Oxides (NO_x)	37.40	9.35
Volatile Organic Compounds (VOCs)	0.78	0.20
Carbon Monoxide (CO)	2.03	0.51

The application to operate the generator and the draft renewal permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45

P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 17, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (#6264-R1) to Washington Aqueduct, U.S. Army Corps of Engineers, Baltimore District, to operate the listed diesel-fired emergency generator engine located at the Dalecarlia water treatment plant in Washington, DC. The contact person for the facility is Shabir Choudhary, Section Supervisor, at (202) 764-2771.

Emergency Generator to be Permitted

Equipment Location	Address	Equipment Size	Model Number	Serial Number	Permit Number
Dalecarlia WTP (Admin Building)	5900 MacArthur Boulevard, NW Washington, DC	125 kW (186 hp)	J125UC SDMO	J125UC06018862	6264-R1

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from the generators, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Dalecarlia Water Treatment Plant Generator:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Total Particulate Matter, PM (Total)	1.84	0.46
Sulfur Oxides (SO_x)	0.075	0.02
Nitrogen Oxides (NO_x)	18.7	4.68
Volatile Organic Compounds (VOCs)	18.7	4.68
Carbon Monoxide (CO)	2.45	0.61

The application to operate the generator and the draft renewal permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 17, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permits (#6261-R1, #6262-R1, and #6263-R1) to Washington Aqueduct, U.S. Army Corps of Engineers, Baltimore District, to operate the listed diesel-fired emergency generator engines located at the McMillan Reservoir in Washington, DC. The contact person for the facility is Shabir Choudhary, Section Supervisor, at (202) 764-2771.

Emergency Generators to be Permitted

Equipment Location	Address	Equipment Size	Model Number	Serial Number	Permit Number
McMillan WTP	2500 1st St. NW Washington, DC 20001	600 kW (1135hp)	KTA38-G1 Cummins	95981-01	6261-R1
McMillan WTP	2500 1st St. NW Washington, DC 20001	600 kW (1135hp)	KTA38-G1 Cummins	95981-03	6262-R1
McMillan WTP	2500 1st St. NW Washington, DC 20001	600 kW (1135hp)	KTA38-G1 Cummins	95981-02	6263-R1

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from the generators, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the units are as follows:

For the three (3) identical McMillan Water Treatment Plant Generators:

Pollutant	**Emission Rate (each generator) (lb/hr)**	**Maximum Annual Emissions (each generator) (tons/yr)**
Total Particulate Matter, PM (Total)	0.79	0.20
Sulfur Oxides (SO_x)	0.46	0.12
Nitrogen Oxides (NO_x)	27.2	6.80
Volatile Organic Compounds (VOCs)	0.80	0.20
Carbon Monoxide (CO)	6.24	1.56

The applications to operate the generators and the draft renewal permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 17, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

NOTICE OF PUBLIC COMMENT PERIOD EXTENSION

AIR QUALITY TITLE V OPERATING PERMIT AND GENERAL PERMIT FOR WASHINGTON GAS COMPANY, WATERGATE CENTRAL PLANT

Notice is hereby given that the comment period for the draft permit for Washington Gas Company to operate equipment at the Watergate Central Plant, 2500 Virginia Avenue NW, has been extended to June 17, 2013.

The original Public Notice for the permit was published in the *D.C. Register* at 60 DCR 006778 (May 10, 2013).

The application, the draft permit, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the District Department of the Environment, 1200 First Street NE, 5th Floor, Washington DC 20002.

A public hearing on this permitting action will not be held unless DDOE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. Hearing requests or comments should be directed to Stephen S. Ours, DDOE Air Quality Division, 1200 First Street NE, 5th Floor, Washington DC 20002. Questions about this permitting action should be directed to Olivia Achuko at (202) 535-2997 or olivia.achuko@dc.gov.

No written comments or hearing requests postmarked after June 17, 2013 will be accepted. However, all comments or public hearing requests submitted since the beginning of the original comment period (May 10, 2013) will be considered and do not need to be resubmitted. For more information on the proposed permitting action, please see the original Public Notice at 60 DCR 006778 (May 10, 2013) or http://ddoe.dc.gov/node/535922.

DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY
In-Person Assister Program
Notice of Funding Availability
Application Release Date: On or Before May 24, 2013
Application Submission Deadline: 30 calendar days after release

Overview

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (ACA). This law put into place comprehensive reforms that improve access to affordable health insurance coverage for all Americans. It aims to protect consumers from unfair health insurance practices and allows all Americans to make health insurance choices that work best for them. At the same time it guarantees access to care for the most vulnerable populations and provides new ways to lower costs and improve the quality of care.

As part of the ACA, all states and the District of Columbia will have new insurance marketplaces. The District has established the Health Benefit Exchange Authority to setup an insurance marketplace for individuals and small businesses to help them compare and purchase health insurance plans. This Exchange marketplace will offer private health insurance with better prices, better choices, and better quality. Individuals with incomes up to $46,000 and families of four with incomes up to $95,000 that don't have access to employer based health insurance or Medicaid will be eligible to receive tax credits to make health insurance coverage more affordable.

To successfully enroll these individuals, families, and businesses into health insurance coverage, the District is developing a set of robust outreach and enrollment mechanisms. One of these resources, the In -Person Assister (IPA) Program, will help consumers learn about, apply for and enroll in an appropriate health insurance product, which includes Medicaid and private health insurance options available through the Exchange. The District's IPA program aims to:

1) Reduce the number of uninsured individuals in the District through a) raising awareness of coverage options; b) facilitating enrollment in a qualified health insurance plans and insurance affordability programs; and c) promoting the retention of coverage.
2) Develop a highly knowledgeable IPA workforce to educate consumers and small businesses on their full range of health coverage and access options and educate consumers about how to understand and use health coverage.
3) Coordinate with related programs and entities, serving as a one-stop shop with the ability to connect individuals, families and businesses to other services.
4) Track performance and outcomes.

The DC Exchange marketplace will issue a Request for Application (RFA) seeking applications from qualified organizations who will serve as In-Person Assister entities in the District of Columbia.

Eligible Applicants

Eligible applicants can be not-for-profit, for-profit, community-based, civic, health, or faith-based organizations located in the District, that may have trusted relationships and networks for reaching out to hard to reach uninsured and underinsured populations. Each In-Person Assister organization selected will receive significant training to perform eligibility and enrollment duties to reach target populations.

Applicants may include individual organizations or groups of organizations working in partnership. Applications on behalf of more than one organization must include letters of intent or similar documents confirming the roles of each organization in the application.

Eligible Uses of Funds

This RFA will make available up to $10,000,000 in grants, subject to Federal approval, to eligible organizations. The size of individual awards will vary based on the population and service area proposed by the applicant. The performance period will be July 2013 until December 31, 2014.

RFA Release and Amendments

The RFA will be available at www.dchbx.com under the District of Columbia Health Benefit Exchange Authority, www.opgd.dc.gov under the District of Columbia Grants Clearinghouse, and other locations to be announced. The RFA will be released on or before May 24, 2013. The deadline for submission of applications will be 5:00pm EST, 30 calendar days after release.

Prospective applicants will need to submit contact information in order to receive any amendments or clarifications that might be issued. Instructions for submitting such information will be made available with the RFA.

Pre-proposal Conferences

There will be multiple pre-proposal conferences for organizations with questions scheduled for after release of the RFA. The scheduled dates and times will be in the RFA.

KIPP DC PUBLIC CHARTER SCHOOL

INVITATION TO BID

Soliciting Sealed Bids For: Modular Classrooms

Copies of bidding packages will be available for pick-up beginning Monday, May 20, 2013 between the hours of 9:00 am – 4:00 pm, at the KIPP DC – Douglass Campus located at 2600 Douglass Rd. SE; Washington, DC 20020. Electronic copy of this solicitation is available by request to jsalsbury@pmmcompanies.com. The bid package includes all project specifications and bidding instructions including a pre-bid meeting at 10:30 AM on Monday, June 3 at the project. Bids must be delivered to the office of KIPP DC, located at 1003 K St. NW, Washington, DC 20001 or via electronic mail at jsalsbury@pmmcompanies.com by 4:00 PM June 10, 2013

Soliciting Sealed Bids For: School Improvements

Bid packages for this project will be available for order beginning Tuesday, May 28, 2013 by visiting ABC Imaging's Blue Print On Line website at http://www.bpol-ng.com. To obtain a bid package click on the Public Jobs button on the far left side of the web page. Follow the prompt to sign in as a new user and enter only the following information:

Name
Email
Password

Please record this information for future access to the web site. Once logged in you can view the KIPP DC – Benning and Douglass Campus School Improvements project.

Once the files have been viewed they may then be obtained by ordering a set through one of 10 plus local ABC Imaging locations or the files may be downloaded. For either option payment may be made via credit card.

If there are questions related to the BPOL-NG site please email support@blueprintonline.com. The bid package includes all project specifications and bidding instructions including a pre-bid meeting at 10:00 AM on Friday, May 31at the project located at 2600 Douglass Rd. SE, Washington, DC 20020 after that, at 11:00 AM at the project located at 4801 Benning Rd. SE, Washington, DC 20019. Bids must be delivered to the office of PMM at 15938 Derwood Rd. Rockville, MD 20855 or via electronic mail at jsalsbury@pmmcompanies.com by 4:00 PM June 10, 2013.

DEPARTMENT OF MENTAL HEALTH
NOTICE OF FUNDING AVAILABILITY

The District of Columbia Department of Mental Health (DMH) hereby announces the availability of one-time sub-grants to agencies certified by DMH as Support Employment Program providers pursuant to Title 22-A DCMR Chapter 37. DMH is offering providers, who are utilizing current Employment Specialist staff at capacity, up to twenty-two thousand six hundred eighty-five dollars ($22,685.00) per provider, to be used for the specific purpose of hiring an additional full-time Employment Specialist and defraying approximately 50% of the annual salary for this new employee.

A. SUMMARY AND PURPOSE OF GRANT

The purpose of this sub-grant, the Supported Employment Expansion Initiative, is to provide one-time infra-structure development assistance funding to certified Supported Employment Program ("SEP") providers so they can serve additional consumers who are now being referred by CSA's who are complying with DMH's supported employment assessment and referral procedures. Grant funds will be offered to Certified SEPs that are currently operating at capacity with existing ES staff and need additional staff to expand their services. The funding is intended to cover up to 50% of the full-time annual salary for one additional ES. The Grantee agency will be expected to add one new staff person to existing ES staff levels, to contribute at least 50% to the salary costs for the new employee, and to maintain new ES staff levels through billings for services provided. The new staff will provide all aspects of supported employment services in accordance with 22-A DCMR Chapter 37 and DMH Policy 508.1A and shall carry a caseload of 20 consumers. This should add approximately 100 new slots to DMH's service capacity by August 30, 2013 and enable DMH to meet required benchmarks in the Dixon case settlement agreement.

C. BACKGROUND AND NEED

The grant awards are intended to benefit consumers who need mental health services and supports, specifically supported employment services. They are intended to expand capacity of existing SEPs.

D. NOTIFICATION OF GRANT OPPORTUNITY

This is a non-competitive grant, since all DMH-certified Supported Employment Program providers are eligible to apply and will receive the same grant funds, provided the Program is currently operating at capacity (twenty (20) consumers served by each Employment Specialist).

In addition to publication in the D.C. Register, this Notice of Funding Availability, as well as the Request for Applications will be published on the OPGS website and sent directly to all certified Supported Employment providers by confirmed e-mail or confirmed FAX.

E. ELIGIBILITY CRITERIA

Applicants must:

1. Be currently certified by DMH as a Mental Health Rehabilitation Services Provider, and must also be certified by DMH as a Supported Employment Program provider.

2. Submit a timely application.

3. Be able to demonstrate that the Supported Employment Program is operating at capacity, defined as twenty (20) consumers being assigned to and served by each Employment Specialist, and therefore requires additional staff in order to measurably expand the number of consumers served.

4. Enter into a Grant Agreement with DMH and comply with Agreement requirements and conditions including, but not limited to: timetables with respect to hiring an additional Employment Specialist ("ES"); matching grant moneys awarded by DMH by paying for 50% or more of the new ES's salary; commitment to maintain increased ES staffing levels; accepting outside referrals for the Supported Employment Program; performing required monitoring and reporting; compliance with applicable District of Columbia laws and regulations governing sub-grants and mental health grants referenced above.

F. AMOUNT OF FUNDING AND GRANT AWARDS

The amount of funding for the award period shall not exceed $22,685.00 for each DMH-certified supported employment provider, who meets eligibility criteria, for the year ending September 30, 2013.

G. PAYMENTS TO GRANTEES

Payments will be made to grantees in 2 installments, the first upon submitting a signed copy of the job offer and acceptance for a new Employment Specialist, including the salary, benefits, start date and employment terms. The second installment shall be issued upon submission of an invoice after the ES has been employed for at least 8 weeks.

H. GRANTEE REPORTING

Grantees shall submit all reports required by the Sub-Grant Agreement and by 22-A DCMR Chapter 37 and DMH Policy 508.1A.

Inquiries regarding this NOFA should be directed to Mr. Steven Baker, DMH Supported Employment Program Manager, Department of Mental Health, 64 New York Avenue, Northeast, 3rd Floor, Washington D.C. 20002. Mr. Baker may be contacted at (202) 673-7597 or via e-mail at Steven.Baker@dc.gov. The Request for Applications will be available for pick-up from Mr. Baker at DMH no later than May 16, 2013, will be published on the OPGS website and will also be sent to each DMH Certified Supported Employment Provider via e-mail no later than Friday May 17, 2013. The deadline for submitting applications is May 24, 2013.

THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00 a.m. on Thursday, May 23, 2013. The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Room 3/4. Notice of a location or time change will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

I. CALL TO ORDER

II. DETERMINATION OF A QUORUM

III. APPROVAL OF AGENDA

IV. CONSENT AGENDA

A. READING AND APPROVAL OF MINUTES

1. April 25, 2013
2. May 6, 2013

V. NONCONSENT AGENDA

A. EXECUTIVE REPORTS

1. Executive Management Report / David Small, Interim CEO

B. MEDICAL STAFF REPORT

1. Chief of Staff Report / Dr. Gilbert Daniel, COS

C. COMMITTEE REPORTS

1. Finance Committee Report / Mr. Steve Lyons, Chair
2. Strategic Steering Committee Report / Dr. Margo Baily, Chair
3. Governance Committee Report / Mr. Virgil McDonald, Chair
4. Patient Safety & Quality Committee Report / Dr. Shannon Hader, Chair

D. OTHER BUSINESS

1. Old Business
2. New Business

E. ANNOUNCEMENT

1. The next Governing Board Meeting will be held at 9:00am, June 27, 2013 at United Medical Center/Conference Room 2/3.

F. ADJOURNMENT

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss contracts and collective bargaining agreements. D.C. Official Code §§2-575(b)(2)(4A)(5).

OPTIONS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

1. Commercial Maintenance and Ground Services for a 65,810 sq ft. building with 47 classrooms and 30 offices
2. HVAC maintenance services for a 65,810 sq. ft building.
3. Plumbing service maintenance contract for 65,810 sq ft building.
4. Security services to serve a 400 student population from grades 6-12.

All bids will be due by 4pm on June 4th. Work to commence on July 1st. For full RFP, please contact:

Dr. Charles Vincent
Options PCS 1375 E St NE, DC 20002
202 5471028 ext 205
cvincent@optionsschool.org

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLIC MEETING REGARDING
SURPLUS RESOLUTION PURSUANT TO D.C. OFFICIAL CODE §10-801

The District will conduct a public meeting to receive public comments on the proposed surplus of District property. The date, time and location shall be as follows:

Property:	McMillan Sand Filtration Site Square: 3128 Lot: 0800 located at 2501 First Street, N.W.
Date:	Thursday, June 6th, 2013
Time:	6:30 p.m.
Location:	All Nations Baptist Church 2001 North Capitol Street, N.E., Washington, DC 20002
Contacts:	Shiv Newaldass, Shiv.Newaldass@dc.gov

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after June 15, 2013.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on May 17, 2013. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: June 15, 2013**
Recommended for appointment as a DC Notaries Public **Page 2**

Artemel	Deniz	McEnearney Associates, Inc 4315 50th Street, NW	20016
Bah	Yebe	Capital One Bank 1200 F Street, NW	20004
Barger	John Max	Ackerman Brown, PLLC 1250 Connecticut Avenue, NW, Suite 200	20036
Barringer	Lorna	Kirkland & Ellis, LLP 655 Fifteenth Street, NW, Suite 1200	20005
Beam	Brittany A.	McEnearney Associates, Inc 4315 50th Street, NW	20016
Benjamin	James	US Court of Appeals for the Federal Circuit 717 Madison Place, NW	20439
Berkely	Bettie L.	Department of Human Services 64 New York Avenue, NE	20002
Booker	Karen	Evolve Property Management 1344 H Street, NE	20002
Bradford	Wendy R.	The QED Group, LLC 1250 Eye Street, NW, Suite 1100	20005
Brasa	Liana	Inter-American Development Bank 1300 New York Avenue, NW	20577
Brown	Charlotte L.	Berkeley Research Group, LLC 1919 M Street, NW, Suite 800	20036
Buxton	Valerie	Edmund J. Flynn Company 5100 Wisconsin Avenue, NW, Suite 514	20016
Campbell	China Y.	Veteran Affairs Medical Center 50 Irving Street, NW	20422
Cohen	Heidi	Department of Treasury 1500 Pennsylvania Avenue, NW	20220

D.C. Office of the Secretary **Effective: June 15, 2013**
Recommended for appointment as a DC Notaries Public **Page 3**

Cole	Jerolyn D.	Community Connections, Inc. 801 Pennsylvania Avenue, SE, Suite 201	20003
Contreras-Frazier	Imelda Y.	Carliner & Remes, P.C. 1140 Connecticut Avenue, NW	20036
Corbin	David C.	Gregory Edwards, LLC 1120 Connecticut Avenue, NW, Suite 261	20036
Damron	Susan	Brinks Hofer Gilson & Lione 1775 Pennsylvania Avenue, NW	20006
Davis	Craig	Ruppert's Real Restaurant 1017 7th Street, NW, 2nd floor	20001
Davis	Patricia Craney	Self 4642 A Street, SE	20019
Deal	Valerie	Office of the Attorney General for the DC, Civil Enforcement Section 441 4th Street, NW, Suite 630S	20001
DeBlaine	Deborah	Loeb & Loeb, LLP 901 New York Avenue, NW	20001
Dixon	Charlene	NIH Federal Credit Union 2200 Pennsylvania Avenue, NW, Suite 160E	20037
Eisen-Markowitz	Jack	Self 3314 Mount Pleasant Street, NW, Apt. 1	20010
Gantt	Candace L.	Grosvenor Americas 1701 Pennsylvania Avenue, NW, Suite 1050	20006
Gregori	Peter A.	Atlantic Closing and Escrow, LLC 5335 Wisconsin Avenue, NW, Suite 440	20015

Haas	Nancy	World Wildlife Fund 1250 24th Street, NW	20037
Hackley	Margaret A.	Martinez & Johnson Architecture, PC 1412 Eye Street, NW	20005
Hall	Erica L.	NeighborWorks America 1325 G Street, NW, Suite 800	20005
Harvey, Jr.	Stephenson F.	The Harvey Law Group, PLLC 1629 K Street, NW, Suite 300	20006
Head	Veronica Regina	BBYO 2020 K Street, NW, 7th Floor	20007
Hinton	Francis L.	Police Federal Credit Union 300 Indiana Avenue, NW, Suite 4067	20004
John	Clifford E.	Capital One Bank, N.A. 5714 Connecticut Avenue, NW	20015
Johnson	Latechia Nicole	Self 1007 16th Street, NE	20002
Judd	Amanda	Kuder, Smollar & Friedman, PC 1350 Connecticut Avenue, NW, Suite 600	20036
Kerr	Catalina	Clerk's Office for the House of Representatives 1718 Long House Office Building	20515
Langford	Victoria A.	Self 1240 Perry Street, NE	20017
Lawrence	Latichia	East-West Abstracts 1220 L Street, NW, Suite 100-347	20005
Lewis	Danielle	Catalist, LLC 1090 Vermont Avenue, NW, Suite 300	20005

D.C. Office of the Secretary **Effective: June 15, 2013**
Recommended for appointment as a DC Notaries Public **Page 5**

Lombard	Denice Z.	Self 1328 L Street, SE	20003
Marshall	Cherry-Ann	Bass, Berry & Sims, PLC 1201 Pennsylvania Avenue, NW, Suite 300	20004
Mason	Asia L.	Far Southeast Family Strengthening Collaborative, Inc 2041 Martin Luther King, Jr., Avenue, SE, Suite 304	20020
Moses	Janet L.	PMI Global Services Inc. 1399 New York Avenue, NW, Suite 400	20005
Palacios	Ayna	Edmund J Flynn Company 5100 Wisconsin Avenue, NW, Suite 514	20016
Paulo	Marcelo	BB&T Bank 3101 14th Street, NW	20010
Pratt	Philip A.	Government of the District of Columbia, Child and Family Services Agency 200 I Street, SE	20003
Quirindongo	Jacqueline	Jenkins Security Consultants, Inc. 2001 Bunker Hill Road, NE	20018
Rance	Lindsay M.	Simpson Thacher & Bartlett, LLP 1155 F Street, NW	20004
Reed	Janai C.	J. Reed Law and Litigation Services 717 D Street, Suite 300	20004
Richardson	Cybil L.	Department of Veteran Affairs Medical Center 50 Irving Street, NW, Suite 1B105	20422
Roxas	Claudine S.	Ballard Spahr, LLP 1909 K Street, NW	20006
Scott-Bedford	Odeal	Veteran Affairs Medical Center 50 Irving Street, NW	20422

Segovia	Astrid A.	Bard, Rao + Athanas Consulting Engineers, LLC 1901 L Street, NW, Suite 325	20036
Simonson	Shatara	Wells Fargo (Dunbar at Howard) 1901 7th Street, NW	20001
Starks	Andria L.	USDOJ, Antitrust Division Executive Office – Personnel 450 Fifth Street, NW	20530
Stevenson	Joy	Self (Dual) 4705 Kansas Avenue, NW	20011
Stossel	Kristine E.	Worldwide Settlements, Inc. 1425 K Street, NW, Suite 350	20005
Sylver	Marilyn F.	Capital One Bank 1200 F Street, NW	20004
Tebebe	Berhane	ES & Associates, LLC 1214 Franklin Street, NE	20017
Thurman	Sherrick V.	State Department Federal Credit Union 301 4th Street, SW	20547
Tyler, Jr.	Marvin A.	US Department of Justice, Antitrust Division 450 5th Street, NW, Suite 3100	20530
Webster	Barry Leon	Veterans Health Administration-Washington 50 Irving Street, NW	20422
White	Loisa Maritza	Self (Dual) 5101 Fitch Street, SE, T-2	20019
Zivanovic	Theresa Lynn	Saxony Cooperative Apartments 1801 Clydesdale Place, NW	20009

DISTRICT OF COLUMBIA TAX REVISION COMMISSION

NOTICE OF PUBLIC MEETING

The District of Columbia's Tax Revision Commission (the "Commission) will be holding a meeting on Monday, May 20, 2013 from 3:00 p.m. to 6:00 p.m. The meeting will be held at One Judiciary Square, 441 4th Street, NW, Room 1107, Washington, DC 20001. The agenda for the meeting is below.

For additional information, please contact Ashley Lee at (202) 478-9143 or Ashley.lee@dc.gov

AGENDA

I. Call to Order

II. Approval of Minutes from May 6, 2013 Meeting

III. Councilmember Tommy Wells

IV. Real Property Tax Overview

V. Residential Real Property Tax Assessment Cap

VI. Real Property Tax Classification

VII. D.C. Tax Revision Commission Business

VIII. Adjournment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF SPECIAL MEETING

The District of Columbia Taxicab Commission will hold a Special Meeting on Friday, May 24, 2013 at 10:00 am. The Special Meeting will be held in the Old Council Chambers at 441 4th Street, NW, Washington, DC 20001.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Contact the Assistant Secretary to the Commission, Ms. Mixon, on 202-645-6018, extension 4, if you have further questions.

DRAFT AGENDA

I. Call to Order

II. Commission Communication

III. Adjournment

THE ARTS & TECHNOLOGY ACADEMY

INVITATION TO BID

Soliciting Sealed Bids For: Roof Replacement

Bid packages for this project will be available for order beginning Monday, May 20, 2013 by visiting ABC Imaging's Blue Print On Line website at http://www.bpol-ng.com. To obtain a bid package click on the Public Jobs button on the far left side of the web page. Follow the prompt to sign in as a new user and enter only the following information:

Name
Email
Password

Please record this information for future access to the web site. Once logged in you can view the ATA Roof Replacement project.

Once the files have been viewed they may then be obtained by ordering a set through one of 10 plus local ABC Imaging locations or the files may be downloaded. For either option payment may be made via credit card.

If there are questions related to the BPOL-NG site please email support@blueprintonline.com. The bid package includes all project specifications and bidding instructions including a pre-bid meeting at 1:00 PM on Wednesday, May 29 at the project located at 5300 Blaine Street, NE, Washington, DC 20019. Bids must be delivered to the office of PMM at 15938 Derwood Rd. Rockville, MD 20855 or via electronic mail at jsalsbury@pmmcompanies.com by 4:00 PM June 7, 2013.

Soliciting Sealed Bids For: Existing Playground Renovation

Copies of bidding packages will be available for pick-up beginning Monday, May 20, 2013 between the hours of 9:00 am – 4:00 pm, at the offices of PMM located at 15938 Derwood Rd.; Rockville, Maryland 20855 Telephone: (301) 251-9151. Electronic copy of this solicitation is available by request to jsalsbury@pmmcompanies.com. The bid package includes all project specifications and bidding instructions including a pre-bid meeting at 2:00 PM on Wednesday, May 29 at the project located at 5300 Blaine Street, NE, Washington, DC 20019. Bids must be delivered to the office of PMM or via electronic mail at jsalsbury@pmmcompanies.com by 4:00 PM June 7, 2013

WASHINGTON YU YING PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

AFTER SCHOOL EDUCATION

Enrichment Classes

RFP for Enrichment Classes for Students in After School Care

Washington Yu Ying PCS invites all interested parties to submit proposals to provide enrichment classes to students who participate in our after school care program. We are seeking integrated arrays of science, technology, engineering, art, and math workshops that combine traditional woodworking, sewing, tinkering and contemporary technologies. Deadline for submission is Saturday, June 1st. Please email proposals and supporting documents to rfp@washingtonyuying.org.

Science Education Program

RFP for Science Education Program for Students in After School Care

Washington Yu Ying PCS invites all interested parties to submit proposals to provide hands on science education to students who participate in our after school care program. We are seeking a program that will introduce children to a world of discovery by encouraging scientific literacy. Deadline for submission is Saturday, June 1st. Please email proposals and supporting documents to rfp@washingtonyuying.org.

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, May 23, 2013 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	Summary of Internal Audit Activity - Internal Audit Status	Internal Auditor
3.	Executive Session	Chairman
4.	Adjournment	Chairman

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, May 23, 2013 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	April 2013 Financial Report	Director of Finance & Budget
3.	Action Items	Chairman
4.	Agenda for June Committee Meeting	Chairman
5.	Adjournment	Chairman

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 18182-A of Lincoln-Westmoreland Housing, Motion for a Two-Year Extension of BZA Order No. 18182, pursuant to § 3130 of the Zoning Regulations.

The original application was pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the height requirements under subsections 770.1 and 2604.2, a variance from the floor area ratio requirements under subsection 771.2, a variance from the rear yard requirements under subsection 774.1, a variance from the parking requirements under subsection 2101.1, a variance from the loading requirements under subsection 2201.1, and a special exception from the roof structure requirements under subsection 411.5, to allow the construction of a new apartment building in the ARTS/C-2-B District at premises 1718-1734 7th Street, N.W. (Square 419, Lots 846 and 847).

HEARING DATE (Orig. Application): March 15, 2011
DECISION DATE (Orig. Application): April 5, 2011
FINAL ORDER ISSUANCE DATE (No. 18182): April 14, 2011
DECISION DATES ON MOTION TO EXTEND ORDER: April 23 and May 7, 2013

ORDER ON MOTION TO EXTEND THE VALIDITY OF BZA ORDER NO. 18182

The Underlying BZA Order

On April 5, 2011, the Board of Zoning Adjustment (the "Board" or "BZA") approved Lincoln-Westmoreland Housing's (the "Applicant") request for a variance from the height requirements under §§ 770.1 and 2604.2, a variance from the floor area ratio ("FAR") requirements under § 771.2, a variance from the rear yard requirements under § 774.1, a variance from the parking requirements under § 2101.1, a variance from the loading requirements under § 2201.1, and a special exception from the roof structure requirements under § 411.5, to allow the construction of a new apartment building in the ARTS/C-2-B District. Thus, pursuant to 11 DCMR § 3103.2, the Board granted variances from the height requirements under §§ 770.1 and 2604.2, a variance from the floor area ratio ("FAR") requirements under § 771.2, a variance from the rear yard requirements under § 774.1, a variance from the parking requirements under § 2101.1, a variance from the loading requirements under § 2201.1, and a special exception from the roof structure requirements under § 411.5, to allow the construction of a new apartment building in the ARTS/C-2-B District at premises 1718-1734 7th Street, N.W. (Square 419, Lots 846 and 847). Order No. 18182 (the "Order") was issued April 14, 2011. (Exhibit 31.)

Under the Order, and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued – until April 14, 2013.

Section 3130.1[1] states:

> No order [of the Board] authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility(EEF), unless within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1.)

Motion to Extend

On March 7, 2013, the Board received a letter and Form 150 from the Applicant, which requested, pursuant to 11 DCMR § 3130.6,[2] a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on April 14, 2013. (Exhibit 33.) The Applicant submitted additional information in support of the Motion to Extend on May 2, 2013, that provided more documentation of the "good cause" for the extension request. (Exhibit 35.)

On April 23, 2013, the Board convened a public meeting to consider the Motion to Extend BZA No. 18182 for two years. At that meeting, the Board requested additional information from the Applicant, including supporting documentation attesting to a "showing of good cause." The Board set a deadline of May 3, 2013 for the requested additional information. On May 2, 2013, the Applicant submitted a signed and notarized affidavit from its Development Manager that indicated that he had written and attested to the accuracy of the previously submitted letter with justifications for the request for an extension, to supplement the record and meet the good cause requirements of 11 DCMR § 3130.6. Additionally, the Applicant submitted two letters of support, one from the Senior Vice President of AGM Financial Services, Inc. which is the lender that has been working with the Applicant to secure project funding for the Applicant's project, and the other from the D.C. Housing Finance Agency ("DCHFA") which is the agency issuing the bonds and overseeing the tax credits for the project. (Exhibit 35.)

The Applicant served its extension request on the parties to the case and provided them the requisite 30 days in which to respond, pursuant to § 3130.6. The Applicant served the request to the Chair of Advisory Neighborhood Commission ("ANC") 2C, which is the affected ANC and the only other party to the case, and to the Office of Planning ("OP"), notifying them of the Applicant's motion for a two-year time extension and sharing all documentation in support of that motion with them. (Exhibit 33.)

[1] Section 3130.1 was amended by the addition of the phrase "except as permitted in § 3130.6" by the Zoning Commission in Z.C. Case No. 09-01. The amendment became effective on June 5, 2009.

[2] Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

The project is within the boundaries of ANC 2C. ANC 2C did not submit a report or respond to the motion. OP filed a report recommending that the Board grant the Applicant's request for a two-year extension of Order No. 18182 based on the evidence of the Applicant's sworn testimony. OP's report also indicated that the Applicant has continued to make efforts to proceed with the project's building permit phase. (Exhibit 34.)

To demonstrate good cause for its request for an extension, the Applicant's May 2nd filing contained an affidavit from Robert Agus, Development Manager for the Applicant, who indicated that he has been leading the development projects at the subject properties for the Applicant and is attesting to the accuracy of the facts presented in the "Justification for Request" submitted with the Motion to Extend. (Exhibit 35.) That Justification for Request stated that the Applicant has encountered delays in securing financing from DCHFA and the U.S. Department of Housing and Urban Development ("HUD"). The Applicant stated that DCHFA issues tax exempt bonds to support development of affordable rental properties, allocates "4% Low Income Housing Tax Credits" to help secure equity for developments, and also makes loans for pre-development costs. The Applicant plans to use all three DCHFA sources of funding. The Applicant also indicated that the senior staff and board members of DCHFA are supportive of the Applicant's plan. However, due to DCHFA procedural and board changes, including a prolonged vacancy on the DCHFA board, the closing on the Applicant's pre-development loan occurred a full year later than anticipated. This delay caused the Applicant to be unable to pay for its design team to complete the permit plans on schedule. Additionally, the Applicant expects to purchase air rights from WMATA above that portion of Lot 846 that WMATA took to build the Metro, but there have been delays beyond the Applicant's control in obtaining the necessary approvals and agreements with WMATA. Also, one of the project's funding sources is a mortgage insured and credit-enhanced by HUD. Because of the aforementioned WMATA and DCHFA delays, the submission of applications to HUD for mortgage insurance and credit enhancement has been delayed as well. (Exhibit 33.)

The Applicant also submitted two letters to supplement the previously filed request for an extension of time. Both letters indicated support for the project. One letter was from the Senior Vice President of AGM Financial Services, Inc. which is the lender that has been working with the Applicant to secure HUD project funding for the Applicant's project, and the other is from DCHFA's Executive Director indicating that that the agency has been working with the Applicant, remains supportive, and expects to issue approximately $22 million in tax exempt bonds to fund the project. (Exhibit 35.)

The Applicant's time extension motion first was put on the Board's April 23, 2013 decision meeting agenda. At that meeting, the Board requested additional supporting documentation pursuant to the requirements of § 3130.6 and rescheduled its decision for May 7, 2013. In response to the Board's request for additional documentation, the Applicant submitted its supplemental filing on May 2, 2013, containing the affidavit from the Applicant's Development Manager and the two letters of support from DCHFA and

from AFM Financial Services, Inc. regarding the Applicant's efforts to obtain financing for the project. (Exhibit 35.)

As discussed herein, the Applicant submitted a request for a time extension with supplemental information in support of that request and documented the reasons for the delays in obtaining pre-development and construction financing and the necessary agreements for air rights from WMATA. The DCHFA's Executive Director provided a letter of support as well as the financial services company assisting the Applicant in securing HUD financing. The Applicant demonstrated its difficulties and efforts in securing pre-development and construction financing for the project, completion of the permit plans, finalizing the approval of the construction plans, and purchase of air rights, thereby showing good cause for granting the two-year extension of the Board's prior approval. The Applicant's filings indicated that the Applicant has been unable to secure financing and obtaining necessary approvals for the project due to delays beyond its reasonable control. The Applicant has attested that it has been working consistently and diligently to move forward with the project, but that a time extension is required in order for it to have sufficient time in which to complete obtaining financing, permits, and other approvals so can proceed with the project. (Exhibits 33 and 35.)

At its decision meeting on May 7, 2013, the Board found that the requirements of 11 DCMR § 3130.6 had been met and granted the Applicant the two-year extension of BZA Order No. 18174 until April 14, 2015.

According to the Applicant, the reasons for its request to the Board to extend Order No. 18182 for another two years are because of the inability of securing financing and approvals for construction of the project due to delays in obtaining financing from DCHFA and HUD and other approvals beyond its reasonable control. The Applicant demonstrated that over the last two years, the Applicant has made considerable progress to continue to proceed with the project in good faith, but has had difficulty securing pre-development and construction financing due to delays beyond its control at the agencies from which it needs to obtain approvals and financing. To show good cause for a time extension of the Order, the Applicant's filings included an affidavit from the Applicant's Development Manager, who was able to provide first-hand documentation of the Applicant's efforts as well as its difficulties in securing financing and other approvals. (Exhibit 35.) The Applicant attested that since the Board's approval in BZA Case No. 18182, the Applicant has been proceeding in good faith with the project as approved, but has been unable to obtain sufficient pre-development and construction financing and other approvals due to the conditions beyond the Applicant's control. The Applicant also submitted two letters of support, one from DCHFA and another from a financial services company assisting the Applicant with its HUD applications. These letters reiterate the reasons for delay and urge the Board to grant the Applicant the time to complete the project. (Exhibit 35.)

In addition, the Applicant indicated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on April 14, 2011. Also, there have been no changes to the Zone District

classification or the Comprehensive Plan applicable to the property. The extension would allow the Applicant the necessary additional time in which to secure financing, complete its permit plans, obtain agreement to purchase air rights from WMATA, and file for building permits. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant additional time to secure financing and apply for a building permit.

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Subsection became effective on June 5, 2009.

Subsection 3130.6 of the Zoning Regulations states in full:

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

(b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and

(c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6.)

Pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. The Applicant filed its request on March 7, 2013, thus meeting the required 30-day period for tolling. Pursuant to 11 DCMR § 3130.9, the Board granted the tolling of the Order's expiration date to provide the Board time in which to consider the request for a two-year extension of that Order.

The Board found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Board found that the Applicant demonstrated that it was proceeding in good faith with the project as approved through its work with DCHFA, WMATA, and the financial services company assisting the Applicant with its HUD financing applications. Notwithstanding these efforts, the Applicant submitted adequate evidence of the difficulties beyond its reasonable control in obtaining sufficient pre-development and construction financing and in obtaining other necessary approvals to constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated April 14, 2011 (Exhibits 8 and 22, attachment B – Plans and Elevations, in the record). There have been no changes to the Zone District classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's original Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18182-A for a two-year time extension of Order No. 18182, which Order shall be valid until **April 14, 2015**, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Lloyd J. Jordan, Robert E. Miller, S. Kathryn Allen, and Jeffrey L. Hinkle (by absentee ballot) to APPROVE; one Board member 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: May 13, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18398 of Kenneth L. and Ellen J. Marks, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow an addition to a one-family row dwelling, not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), and enlargement of nonconforming structures (§ 2001.3), in the R-3 District at premises 2130 Bancroft Place, N.W. (Square 2532, Lot 802).[1]

HEARING DATE: November 7, 2012
DECISION DATE: January 8, 2013

DECISION AND ORDER

This self-certified application was submitted on April 25, 2012 by Kenneth L. Marks Trustee (the "Applicant"), the owner of the property that is the subject of the application, on behalf of Kenneth L. Marks and Ellen J. Marks. The application, as finally amended, requests a special exception under § 223 of the Zoning Regulations to allow construction of an addition to a one-family row dwelling not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), and enlargement of a nonconforming structure (§ 2001.3), in the R-3 District at 2130 Bancroft Place, N.W. (Square 2532, Lot 802). Following a public hearing, the Board of Zoning Adjustment (the "Board") voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 27, 2012, the Office of Zoning ("OZ") provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 2; Advisory Neighborhood Commission ("ANC") 2D, the ANC in which the subject property is located; and Single Member District/ANC 2D02. Pursuant to 11 DCMR § 3112.14, on June 1, 2012, OZ mailed letters providing notice of the hearing to the Applicant, ANC 2D, and the owners of all

[1] The caption of this case has been modified to reflect an amendment of the original application by the Applicant. As originally submitted, the application sought area variances from requirements pertaining to lot occupancy (§ 403.2), rear yard (§ 404.1), and enlargement of a nonconforming structure (§ 2001.3) to allow the construction of an addition at the Applicant's dwelling. The applicant was amended after the Applicant's proposal was revised in a manner that allowed consideration as a special exception under § 223.

property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on June 1, 2012 (59 DCR 6284).

Party Status. The Applicant and ANC 2D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application to a group comprising the Sheridan-Kalorama Historical Association and neighboring residents of Bancroft Place: Marie Drissel and R. Curtis Bristol; Norman R. Pozez and Melinda Bieber; and Deborah Carstens. The Board denied a request for party status in opposition to the application from Preserve Our Green Space in Sheridan-Kalorama, whose representative testified as a person in opposition.

Applicant's Case. The Applicant provided evidence and testimony from Kenneth Marks and two architects, James Martin and Arthur Lohsen. Mr. Lohsen was recognized as an expert in architecture. The witnesses described the proposed addition: a new third floor above the second floor of the existing dwelling, a new second-floor addition above an existing one-story accessory garage at the rear of the property, and a new breezeway that would connect the existing dwelling with the new second story above the garage. According to the Applicant, the application satisfied all requirements for approval of the requested zoning relief, including that the project would not create adverse impacts on light, air, or privacy at neighboring properties.

Party in opposition. The party in opposition argued that the application should be denied because the subject property and several others in the vicinity were all subject to conservation easements designed to protect façades and open space for the scenic enjoyment of the general public, and due to this easement, the relief cannot be granted. (Exhibit 46.) The opposition also contended that the proposed construction at the subject property would create "negative effects on the immediate neighbors" in the form of a "31-foot wall outside [one neighbor's] windows on what is supposed to be open space" and the breezeway, whose "sole purpose is to connect the new, second story addition over the garage (the proposed master bedroom) to the main part of the house."

OP Report. By memorandum dated October 31, 2012, OP recommended approval of the application based on OP's conclusion that the Applicant's proposal would satisfy the requirements for zoning relief.

DDOT Report. By memorandum dated August 27, 2012, the District Department of Transportation ("DDOT") indicated no objection to approval of the variances originally requested by the Applicant.

ANC Report. By report submitted September 5, 2012, ANC 2D indicated that, at a public meeting held August 27, 2012 with a quorum present, the ANC voted 2-0 to oppose the Applicant's original application, citing concern about lot occupancy and the "loss of open/green space by granting a variance which will result in a covered courtyard…." (Exhibit 38.)

At a public meeting held December 17, 2012, ANC 2D voted 2-0 to adopt a resolution urging the Board to "defer a decision until such time that the applicants demonstrate that the proposed changes have been approved" by the holder of the conservation easement, or to deny the application. According to the ANC, the Applicant's plan would (i) "have a deleterious effect on the light and air of the immediate adjacent neighbor at 2128 Bancroft Place owing to the proposed construction of a large 9-foot wall immediately adjacent to her property," (ii) "reduce green space in the Sheridan-Kalorama neighborhood," (iii) "diminish the neighbors' enjoyment of their properties" and alter the character of the neighborhood. (Exhibit 59.)

Persons in support or in opposition. The Board received letters from persons opposed to the application, who generally cited the historic nature of the property and rear yard requirements that would preclude approval of the requested relief. The Board also heard testimony in opposition to the application on behalf of Preserve Our Green Space in Sheridan-Kalorama, who alleged that the Applicant's project would have a substantial adverse effect on the use and enjoyment of neighbors' property, since the proposed breezeway would eliminate one-fourth of an open, formally designed garden and would have the effect of walling off the neighbors from a significant amount of the view, sun, and light of the garden, contrary to the intent of the applicable zoning requirements.

FINDINGS OF FACT

The Subject Property

1. The subject property is an interior lot located on the south side of Bancroft Place, N.W. (Square 2532, Lot 802). The lot is rectangular, 25 feet wide and 95 feet deep. The rear lot line abuts a public alley that is 15 feet wide.

2. The subject property is improved with a one-family row dwelling that was originally constructed in 1907 as a one-story addition to the property abutting to the east (2128 Bancroft Place). A second story was added in 1926, and the property was converted to a separate dwelling in 1960. A detached accessory garage, with two parking spaces, is located at the rear of the lot, accessible from the public alley. The existing rear yard is 52.5

feet deep, and the area between the dwelling and the accessory garage contains a landscaped courtyard.

3. The accessory garage has a roof deck with perimeter plantings and a privacy fence. The deck is accessed via stairs in the courtyard.

4. The subject property is nonconforming with respect to lot occupancy, as the existing lot occupancy is 62% and the maximum permitted as a matter of right is 60%. (11 DCMR § 403.2.) A maximum of 70% is permitted if approved as a special exception under § 223.3.

5. The lots on either side of the subject property are improved with three-story row dwellings. Other properties in the vicinity are improved primarily with three- or four-story row dwellings along Bancroft Place as well as row dwellings and apartment houses in the southern portion of the square across the public alley from the Applicant's lot.

6. The subject property is located within the Sheridan-Kalorama historic district. The property is subject to a "scenic, open space and architectural façade easement" held by the L'Enfant Trust, which covers exterior aspects of the property.

The Applicant's Project

7. The Applicant proposes to enlarge the existing dwelling on the subject property by constructing a third-floor addition on the dwelling, a second-floor addition on the accessory garage, and a breezeway, or "hyphen," connecting the two existing structures along the eastern edge of the property to create one enlarged building.

8. The enclosed breezeway, which will connect the ground floor of the existing dwelling with a master suite constructed on the new second floor of the garage, will be six feet wide and approximately 15.5 feet in height. (Because of a change in grade at the subject property, the first floor of the existing building is above grade at the rear of the building.) The space below the breezeway in the courtyard, approximately seven feet in height, will remain open for landscaping as part of the courtyard. The breezeway, which will have a flat roof and will be located on the eastern edge of the property, was designed to avoid blocking existing light into the courtyard.[2]

[2] The Applicant revised the proposed design of the breezeway during the hearing to lower its overall height and to remove a banister that would have been installed on its roof. The Board finds that the revised design will help to lessen any potential impacts on light and air to the abutting property to the east as a result of the construction of the breezeway, as well as making the breezeway less visually intrusive.

9. The roof of the new second story over the existing garage will be planted with a green roof that will provide additional landscaping at the subject property and increase the sustainability of the house, but is not intended for recreational use. The top of the breezeway will be an open walkway to connect the second story of the existing residence with the green roof to provide access for maintenance purposes.

10. The planned addition will increase lot occupancy from the existing 62% to 70% due to the new breezeway. Because the new construction will connect the existing accessory garage to the Applicant's dwelling, creating one structure, the addition will eliminate the rear yard at the subject property. Building height, with the planned third-floor addition, will be approximately 31.5 feet.

11. The Applicant submitted shadow studies undertaken by the architect, which illustrated that the planned addition will create minimal changes on light and air at the subject property and at abutting properties.

12. The abutting property to the west of the subject property contains a solid masonry wall, approximately 44 to 50 feet tall, with one window facing the Applicant's courtyard. The Applicant's architects considered locating the proposed breezeway along that wall but decided on the eastern edge instead due to concerns about the structural integrity and water damage associated with the wall on the western edge, which is more than 100 years old, and due to the layout of the Applicant's property, especially the eastern location of an existing stair. The Applicant indicated an intent to install an appropriate architectural treatment of the breezeway wall to enhance its appearance from the property to the east.

13. After construction of the breezeway, the depth of the courtyard will remain the same at approximately 26 feet. The width of the existing courtyard will remain the same except for the presence of the breezeway, which will be approximately six feet wide, thus providing an open space approximately 20 feet wide with an area of approximately 340 square feet, a reduction of 180 square feet from the current courtyard area of 520 square feet. The green roof installed above the new second story will provide approximately 700 square feet of plantings at a higher level than the courtyard, which is at grade.

Harmony with Zoning

14. The R-3 District is designed essentially for row dwellings mingled with one-family detached and semi-detached dwellings, and is intended to maintain a family-life environment. (11 DCMR § 320.1.)

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CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow construction of an addition to a one-family row dwelling not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), and enlargement of a nonconforming structure (§ 2001.3), in the R-3 District at 2130 Bancroft Place, N.W. (Square 2532, Lot 802). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 223, an addition to a one-family dwelling or flat may be permitted as a special exception, even when the addition will not meet all applicable zoning requirements, subject to certain conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, and in particular the light and air available to neighboring properties must not be unduly affected, the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and the addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 223 and 3104.1. The Board credits the testimony of the Applicant and OP that the proposed addition will not unduly affect light or air available to neighboring properties, especially in light of the relatively small size of the Applicant's dwelling compared to the size of immediately neighboring properties, which will limit the shadow impacts of the Applicant's proposal. The third-story addition and the new second story above the garage will have negligible impacts on light and air available to neighboring properties. Both lots abutting the Applicant's property are improved with three-story row dwellings that will remain higher than the Applicant's enlarged dwelling at the front. The second-story addition over the existing garage, which will replace the existing privacy fence and plantings, will be similar in height to neighboring dwellings, and at a distance from properties located across the alley to the south. Similarly, the planned breezeway will be located so as to minimize light and air effects on neighboring properties. While the breezeway will create a new, higher structure along the eastern property line, the Board credits the testimony of the Applicant's architect and the shadow studies in concluding that the impact on light and air to the abutting property, specifically its

second story and outdoor space located on its western edge, will not be substantial; the impact on that area from the large residence located to the west of the Applicant's property will continue to affect the neighboring property to the east to a greater extent than the new breezeway.

The change in lot occupancy associated with the Applicant's project, which is solely attributable to the breezeway, will be an increase of eight percent; thus, the existing nonconforming lot occupancy will remain within the parameters permitted by special exception under § 223. While the project will eliminate the rear yard at the subject property due to the connection of the garage and residence into one building, the accessory garage is an existing structure and its enlargement through the addition of a second story will not unduly affect light or air available to neighboring properties.

Similarly, the Board finds that the Applicant's project will not compromise the privacy of use or enjoyment of neighboring properties. As noted by OP, neither the third-story addition nor the addition above the garage will provide sightlines to neighboring properties to the east or west. The breezeway will be in close proximity to the neighboring property to the east, but will not include windows on its eastern face and its roof will be used only occasionally to provide access needed for maintenance of the green roof above the garage addition.

The Board was not persuaded by the party in opposition that the Applicant's project would diminish enjoyment of neighboring properties due to the loss of sunlight, air, or views, or due to the loss of green space and trees on the subject property, which the party in opposition claimed as a neighborhood amenity. The Board concurs with the Applicant's assertion that the factors at issue with respect to § 223 – primarily the impacts on light and air available to neighboring properties as well as the effect on privacy of use and enjoyment of neighboring properties – do not require an unchanging view of the Applicant's lot from adjoining properties. The preservation of existing landscaping in the courtyard is not mandated by the Zoning Regulations, regardless of whether the Applicant planned to enlarge the dwelling. In this case, the Applicant has proposed to retain a large portion of the courtyard as open space and to install a green roof on the second-floor addition to the garage, so that a portion of the existing landscaping that is removed will be replaced.

The Board concludes that the planned addition, together with the original building, as viewed from the street and alley, will not substantially visually intrude upon the character, scale, or pattern of houses along the subject street frontage. The new construction will not be intrusive or overly large relative to the size of neighboring properties, most of which are three or four stories in height and have garages located along the rear property lines. The Applicant has committed to providing architectural details along the breezeway wall to improve its appearance from the

neighboring property to the east, and will provide new greenery above the garage addition and maintain much of the existing courtyard visible from neighboring properties. The Board credits the testimony of OP that the Applicant's expanded structure will be generally compatible with the character, scale, and pattern of neighboring houses in part because many properties in the immediate vicinity of the subject property exceed the 60% lot occupancy permitted as a matter of right, and several have second-floor living spaces above their garages.

The Board concludes that the planned addition satisfies the requirements of § 223 and is unlikely to result in a substantially adverse effect on the privacy of use and enjoyment of any abutting or adjacent dwelling or property, or unduly affect light and air available to neighboring properties. The Board also concludes that the addition planned by the Applicant will be in harmony with the general purpose and intent of the Zoning Regulations by promoting the residential use of the property, consistent with the family-life environment favored by the R-3 zoning designation of the subject property, and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations.

The Board was not persuaded by the party in opposition or ANC 2D that this application should be denied or held in abeyance for reasons relating to the existence of a conservation easement on the Applicant's property. The Board's discretion in reviewing this application for special exception approval of an addition to the Applicant's residence is limited to a determination of whether the Applicant has satisfied the requirements of §§ 223 and 3104.1 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden* v. *District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995). The scope of the Board's authority is defined by statute. (*See* D.C. Official Code § 6-641.07 (2008).) Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations*." (D.C. Official Code § 6-641.07(d) (2008) (emphasis added).) The Board does not have the power to amend any regulation. (D.C. Official Code § 6-641.07(e) (2008).) Accordingly, the Board must deliberate on the merits of the instant application relative to the requirements specified in §§ 223 and 3104.1. Because those requirements do not address issues relating to the neighbors' expectations of compliance with the easement as an element of the enjoyment of their properties, the Board lacks the legal authority to deny the application for a special exception solely on the ground that

the Applicant's proposal will allegedly violate the provisions of a conservation easement.[3] The Board makes no finding with respect to whether the Applicant's proposal would be consistent with the terms of the conservation easement, which is outside the purview of the Zoning Regulations.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, the Board concurs with OP's recommendation to approve the application as consistent with zoning requirements. The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 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) (2001).) In this case, ANC 2D adopted a resolution urging the Board to deny the application or defer its decision pending approval of the project as permitted under the conservation easement. The ANC raised issues and concerns pertaining to an alleged deleterious effect on the light and air available at the adjacent residence at 2128 Bancroft Place associated with construction of a wall for the breezeway, a reduction in the neighborhood's green space, and a reduction in the neighbors' enjoyment of their properties and an adverse change in the character of the neighborhood. The Board fully credits the unique vantage point that ANC 2D holds with respect to the impact of the Applicant's project on the ANC's constituents. However, for the reasons discussed above, the ANC did not offer any persuasive advice, based on the requirements set forth in the Zoning Regulations, that would cause the Board to conclude that the application should be denied.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 223 of the Zoning Regulations to allow construction of an addition to a one-family row dwelling not meeting requirements for lot occupancy (§ 403), rear yard (§ 404), and enlargement of a nonconforming structure (§ 2001.3) in the R-3 District at 2130 Bancroft Place, N.W. (Square 2532, Lot 802). Accordingly, it is **ORDERED** that the application is **GRANTED**.

VOTE: **3-1-1** (Lloyd J. Jordan, Nicole C. Sorg, and Jeffrey L. Hinkle voting to APPROVE; Robert E. Miller opposed; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

[3] Similarly, the Board finds no reason to hold this application, which concerns only zoning issues, in abeyance pending the disposition of any proceedings that may occur with respect to the easement or to matters concerning historic preservation.

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FINAL DATE OF ORDER: May 7, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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. 18418 of Pilgrim Baptist Church, pursuant to 11 DCMR § 3104.1 for a special exception to permit a church program under § 216 to allow use of an existing building in the R-4 District as administrative offices for an adjacent church at premises 712 I Street, N.E., (Square 0888, Lot 0800).

HEARING DATE: October 23, 2012
DECISION DATE: October 23, 2012 (Bench Decision)

ORDER DISMISSING APPLICATION BECAUSE NO RELIEF IS NEEDED

This application was submitted on May 30, 2012, by Pilgrim Baptist Church, the owner of the property that is the subject of the application (the "Applicant" or the "Church"). The application was filed pursuant to 11 DCMR § 3104.1 for a special exception under § 216 to establish a church program at an existing building at 712 I Street, N.E., consisting of administrative offices for the Church. The Church is located in a separate building on the adjacent lot at 700 I Street, N.E. Based upon the record before the Board, and having given great weight to the recommendations of the Advisory Neighborhood Commission ("ANC") 6A, the Board of Zoning Adjustment ("Board") concludes that the Applicant does not require zoning relief.

Preliminary Matters

Notice of Application and Notice of Public Hearing. By memoranda dated June 7, 2012, the Office of Zoning ("OZ") sent notice of the application to the District Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 6; ANC 6A, the ANC for the area within which the subject property is located; and the single-member district ANC 6A01. A public hearing was scheduled for October 23, 2012. Pursuant to 11 DCMR § 3113.13, on July 27, 2012, OZ mailed notice of the hearing to the Applicant, the owners of the property within 200 feet of the subject property, and ANC 6A.

Requests for Party Status. There were no requests for party status.

Persons in Support/Opposition. The Board received no letters in support and one letter in opposition stating, among other things, that the Church had taken over residential buildings in the neighborhood.

Government Reports

OP. By report dated October 12, 2012, OP recommended approval of the application, subject to

the Church providing additional information relating to certain criteria contained in § 216. (Exhibit 24.) OP opined that the Applicant – who seeks authorization for five years – also needed variance relief from § 216.7, which allows Board authorization for a period of time up to only three years.

DDOT. By report dated October 17, 2012, DDOT indicated "no objections to the approval of the requested special exception." (Exhibit 26.)

ANC Report. At a duly noticed public meeting on October 11, 2012 with a quorum present, ANC 6A voted 5-1-0 (with 5 Commissioners required for a quorum) to support the Church's application. (Exhibit 23.) However, the ANC also opined that, because the building will house only administrative activities for the Church (as well as a Church school and small Church music groups), no zoning relief was required.

FINDINGS OF FACT

The Property and the Surrounding Area

1. The Pilgrim Baptist Church (the "Church") is located at 700 I Street, N.E., in the R-4 Zone.

2. The Church owns the property on which it is located, as well as the adjacent property located at 712 I Street, N.E., a semi-detached one-family dwelling (hereafter known as "the subject property").

3. The rest of the block consists of attached row dwellings and two vacant lots.

The Administrative Functions at 712 I Street

4. The Church has owned the subject property since 2011 and has used the building for administrative purposes on an "as needed basis".

5. The Church proposes to expand its administrative functions at the subject property and will provide offices for up to five Church staff members.

6. The Church proposes to provide Church office space, meeting rooms, and storage space for files and equipment at the subject property.

7. All proposed activities will be in support of the Church's operations, and all administrative offices will be operated by Church employees.

CONCLUSIONS OF LAW

The Board concludes that no zoning relief is required. Because the proposed administrative

functions are an integral part of the Church's operations, the administrative activities at the subject properties may operate as a matter-of-right as part of the Church. For zoning purposes, there is only one use at both properties, the "church" use. A "church or other place of worship" is allowed to operate as a matter-of-right beginning in the R-1 Zone, carrying through to the R-5 Zone. (*See*, §§ 201.1(d), 303.3(a), 320.3(a), 330.5(a), and 350.4(a).) As such, the administrative activities which support the Church's mission are allowed as part of the "church" use.

The fact that the Church building and the administrative building are on two separate record lots does not alter this conclusion. The D.C. Court of Appeals has held that a special exception for a non-profit use may be extended to a building on an adjacent record lot. *Georgetown Residents Alliance, et. al., v. District of Columbia Bd. of Zoning Adjustment*, 802 A.2d 359 (D.C. 2002). Similarly, the Board has recognized that a matter-of-right use may extend across record lot lines. As explained in *Appeal No. 16791 of Southeast Citizens for Smart Development, Inc., and ANC 6B* (June 21, 2002), the Board need not consider each record lot in isolation. In the *Southeast Citizens* case, the Board found that four adjacent buildings on separate record lots were a single "community based residential facility" for zoning purposes.

Analogously, there is no reason why the two buildings here, on adjacent but separate record lots, cannot be considered part of the same "church" use. As stated in the Findings of Fact, the proposed administrative functions are an integral part of the Church's operations. The activities will be conducted by Church employees in support of the Church's mission. Because the administrative functions may operate as a matter-of-right, no special exception relief is required.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 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) (2001).) In this case, ANC 6A voted to support the application, but noted that it did not believe special exception relief was necessary. For the reasons discussed above, the Board considers the ANC's advice to be persuasive.

The Board is also required to give "great weight" to the recommendations of the Office of Planning. (D.C. Law 8-163, D.C. Official Code § 6-623.04). Because OP addressed only the special exception criteria, the Board concludes that OP's advice was not legally relevant to this matter.

For the reasons stated above, and having given great weight to the issues and concerns of ANC 6A, the Board concludes that the application was incorrectly filed for special exception relief. Accordingly, it is hereby **ORDERED** that the application is **DISMISSED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Anthony J. Hood, Nicole C. Sorg, and Jeffrey L. Hinkle to DISMISS; one Board seat vacant.)

BZA APPLICATION NO. 18418
PAGE NO. 4

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: May 7, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18430 of Jomo B. Oludipe, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements of § 401.3, and a variance from the side yard requirements of §405.9, to allow the construction of two one-family, semi-detached dwellings in the R-2 District at premises 154 and 156 Forrester Street, S.W. (Square 6239, Lots 11 and 12).

HEARING DATES: November 2, 2012, December 4, 2012
DECISION DATE: December 4, 2012

DECISION AND ORDER

On June 14, 2012, Jomo B. Oludipe ("Applicant") filed an application requesting variance relief to permit construction of two semi-detached, one-family dwellings in an R-2 Zone District at address 154 and 156 Forrester Street, S.W. ("Subject Properties"). The Applicant was directed to file this application with the Board of Zoning Adjustment (the "Board") by the Office of the Zoning Administrator ("ZA") at the Department of Consumer and Regulatory Affairs after a review of the plans showed that the variances[1] were necessary to allow the Applicant's proposed construction. Following a public hearing, on December 4, 2012, the Board voted 4-0-1 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 19, 2012, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 8D, the ANC within which the subject property is located, Single Member District 8D04, and the Councilmember for Ward 8. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register* and on August 3, 2012, sent such notice to the Applicant, ANC 8D, and all owners of property within 200 feet of the subject property. At the November 2, 2012 hearing the Board discovered that the Applicant had not posted the street frontage of the Subject Properties with a hearing notice as required by 11 DCMR § 3113.14, and continued the hearing to December 4, 2012 to permit the Applicant to do so. The Applicant submitted an affidavit demonstrating compliance with 11 DCMR §§ 3113.14 and 3113.15, prior to the hearing on December 4, 2012.

[1] The ZA's letter erroneously cited 11 DCMR § 404.1 as the Regulation requiring an eight foot minimum side yard in the R-2 Zone District. The correct cite is 11 DCMR § 405.9.

Parties. ANC 8D was automatically a party to this application. No other requests for party status were received by the Board.

Applicant's Case. The Applicant requested area variances needed to construct two one-family, semi-detached dwellings on the Subject Properties. The Applicant asserted that the application satisfied the requirements set forth in the Zoning Regulations, and pointed out that development of semi-detached dwellings on the lots without relief would result in very narrow structures, no more than 14 feet wide. The Applicant submitted plans and architectural drawings showing his proposed development for the Subject Properties, comprised of two one-family, semi-detached dwellings, each sited on its own lot.

Government Reports. By report dated October 16, 2012, OP recommended approval of the variance relief necessary to allow construction of the Applicant's proposed two one-family, semi-detached dwellings, that is, area variances from: § 401.3 for lot area and lot width; and from § 405.9, for the minimum width of side yards. The report addressed the three part area variance test and concluded that the Application satisfied its requirements. The report indicated that the Subject Properties were formerly developed with two semi-detached dwellings similar to what the Applicant was proposing, that these structures were demolished in the 1970s, and that the lots had been vacant since that time. The report further indicated that granting the variances would allow the Applicant to develop the Subject Properties in a manner consistent with the development pattern of the rest of the block, and that almost all the lots on the same side of the street have identically sized lots, and are developed with similar semi-detached dwellings with four foot side yards.

DDOT submitted a report dated October 18, 2012, stating that the proposed project would have no adverse impacts on the District's transportation network.

ANC Report. By letter dated December 3, 2012, ANC 8D indicated that the ANC considered the application at a public meeting held on November 15, 2012 with a quorum present. At the conclusion of the meeting, ANC 8D approved a resolution opposing the application. The letter stated that the ANC voted to oppose the application because the ANC believed the Applicant had not provided sufficient evidence that his proposed project was cohesive with the neighborhood, that the proposed project would burden adjacent homes, that a single family dwelling on the Subject Properties was preferable to the Applicant's proposal, and that the Applicant had not satisfied his burden of proof.

FINDINGS OF FACT

The Subject Properties and Surrounding Area

1. The Subject Properties are adjacent parcels located on the south side of Forrester Street,

S.W., between Martin Luther King Jr. Ave, S.W. and Galveston Place, S.W. (Square 6239, Lots 11 and 12).

2. The lots were subdivided prior to the enactment of the 1958 version of the Zoning Regulations when the neighborhood was developed around 1941.

3. The Subject Properties were formerly developed with two semi-detached dwellings in separate ownership. The lots have been vacant since the 1970s.

4. The Subject Properties are identical in size and shape. Both lots are rectangular, 22 feet wide and 112 feet deep, containing 2,464 square feet of lot area. They are nonconforming as to minimum lot area and lot width.

5. The properties directly to the east and west of the subject are identical in size and shape to the Subject Properties. The properties are developed with one-family, semi-detached dwellings with four foot side yards. A public alley 16 feet wide abuts the properties to the rear.

6. The predominant development pattern on the block is semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties. The seven properties immediately to the west of the Subject Properties on the south side of Forrester Street, S.W. are developed with semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties. The 18 properties immediately to the west of the Subject Properties on the south side of Forrester Street, S.W. are developed with semi-detached, single family dwellings with four foot side yards, on lots with the same dimensions as the Subject Properties.

The Applicant's Project and Relief Required

7. The Applicant proposes to construct two, one-family, semi-detached dwellings, on the Subject Properties, one on each lot. Each dwelling will be two stories, and 31 feet, two inches in height. The semi-detached dwellings will each have a four foot side yard, measured from the side of the buildings to the lot lines, whereas eight foot side yards are required. (11 DCMR § 405.9.)

8. As noted, both lots are 22 feet wide and contain 2,464 square feet of lot area. The minimum lot width for a one-family semi-detached dwelling in the R-2 Zone is 30 feet and the minimum lot area is 3,000 feet.

Zone Plan

9. The Subject Properties are located in the R-2 Zone District, which consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. It is expected that

these areas will continue to contain some small one-family detached dwellings. (11 DCMR §300.1.)

10. The proposed two-story dwellings will have building heights of 31 feet, two inches. The R-2 Zone District permits a maximum building height of 40 feet and three stories. (*See* 11 DCMR § 400.1.)

11. The lot occupancy of the Subject Properties will be 38%. The R-2 Zone District permits a maximum lot occupancy of 40%. (*See* 11 DCMR § 403.2.)

12. The Subject Properties will have a 44-foot minimum rear yard. The R-2 Zone District permits a 20-foot minimum rear yard. (*See* 11 DCMR § 404.1.)

13. The semi-detached, one-family dwelling is a matter-of-right use in the R-2 Zone District.

14. The lot width, lot area and four foot side yards proposed are not out of character for the vicinity, as most of the neighboring properties have the same lot dimensions and side yards.

15. The windows on the proposed dwellings have been placed so as not to significantly interfere with the privacy of the neighbors, nor will the dwellings themselves unduly restrict the air or sunlight reaching nearby dwellings.

CONCLUSIONS OF LAW

The Variance Standard

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property … or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property…." (D.C. Official Code § 6-641.07(g)(3) (2008 Supp.), 11 DCMR § 3103.2.) The "exceptional situation or condition" of a property need not arise from the land and/or structures thereon, but can also arise from "subsequent events extraneous to the land." *De Azcarate v. Bd. of Zoning Adjustment,* 388 A.2d 1233, 1237 (D.C. 1978). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." (D.C. Official Code § 6-641.07(g)(3) (2008 Repl.), 11 DCMR § 3103.2.)

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning*

Adjustment, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances, therefore, he had to demonstrate an exceptional situation or condition of the property and that such exceptional condition results in a practical difficulty in complying with the Zoning Regulations. Lastly, the Applicant had to show that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

Exceptional Situation

The lots have an exceptionally long and narrow shape, 22 feet in width and 112 feet deep. They have also been vacant since the 1970s. Subdividing the two lots would create a large lot that would be out of character with the neighborhood. Although other properties in the area have similar lengths and widths, the property is generally exceptional within a larger geographic context. Together these represent a confluence of factors demonstrating an exceptional condition or circumstances.

Practical Difficulty

The narrowness of the lots creates a practical difficulty in conforming to the Zoning Regulation's minimum side yard requirement. Strict application of the side yard requirement would require construction of very narrow structures, creating a practical difficulty for the owner. Development of the lots with semi-detached dwellings with conforming side yards would result in buildings just 14 feet wide. The fact that these lots have remained vacant for three decades corroborates the finding that they cannot be developed under matter of right standards.

Zone Plan

The requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Applicant's proposed project maintains the block's development pattern of semi-detached single family dwellings with four foot side yards on 22-foot wide lots. The Project will not impair the light and air available to nearby residences. The windows have been placed so as not to significantly interfere with the privacy of the neighbors.

Great weight to the Office of Planning

The Board is required by § 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) to give great weight to OP recommendations. The Board has carefully considered OP's recommendation for approval and concurs in its recommendation.

Great weight to the ANC

The Board is required by § 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)) to give great weight to any issues and concerns raised in the written report submitted by ANC 8D in this proceeding. The Board credits the unique vantage point that ANC 8D holds with respect to the impact of the requested zoning relief on the ANC's constituents. However, the Board concludes that the ANC did not offer persuasive evidence that would cause the Board to find that the requested zoning relief should not be approved.

ANC 8D recommended denial of the application on the grounds that the Applicant had not provided sufficient evidence that his proposed project was cohesive with the neighborhood, that the proposed project would burden the space of adjacent homes, that a single family dwelling on the Subject Properties was preferable to the Applicant's proposal, and that the Applicant had not satisfied his burden of proof.

The Board is not persuaded by the ANC's statement that the Applicant had not provided sufficient evidence that the project was cohesive with the neighborhood. The plans submitted with the application show that the project is composed of semi-detached row dwellings with four-foot side yards. The lot size, lot width, side yards and proposed development envelope of the Applicant's proposal are the same as the predominant development pattern of the block. The Board believes that the proposed development is consistent with the character of the surrounding residential neighborhood and with the low-density residential intent of the R-2 Zone. For this reason the Board is not persuaded by the ANC's advice.

The Board does not find the ANC's advice that the proposed project would be a burden on the space of adjacent homes persuasive. The lot size, lot width, side yards and proposed development envelope of the Applicant's proposal are the same as the adjacent properties to the east and west on the south side of Forrester Street. The four foot side yard of the proposed project would match the four foot side yard of the adjacent properties creating an eight foot space for light and air to circulate and reach the adjacent semi-detached dwellings.

The Board does not find the ANC's recommendation that the Applicant develop the properties with a single family dwelling legally persuasive because semi-detached dwellings are permitted in an R-2 Zone. Whether the ANC would prefer to see a different type of matter of right development is not relevant to any of the three prongs of the variance test.
Finally, the Board does not find the ANC's advice that the Applicant has not met the relevant legal standard persuasive because, for the reasons discussed above, the Board has concluded that the Application has entirely met its burden.

Based on the findings of fact, and having given great weight to the recommendations of OP and to the written report of ANC 8D, the Board concludes that the Applicant has satisfied the requirements for area variances from the minimum lot area and lot width requirements of § 401.3, and the minimum side yard requirement under § 405.9, to construct two one-family, semi-detached dwellings in the R-2 Zone District at 154 and 156 Forrester Street, S.W. (Square

6239, Lots 11 and 12). Accordingly, it is hereby **ORDERED** that the application, subject to Exhibit 29 – Revised Plans, is **GRANTED**.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Robert E. Miller 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: May 7, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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.

BZA APPLICATION NO. 18430
PAGE NO. 8

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

Order No. 18486-A of Application of AG Georgetown Park Holding 1, LLC, Motion for Minor Modification of Approved Plans for Application No. 18486, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow a bowling alley under § 908.1, in the W-1 and W-2 Districts at premises 3222 M Street, N.W. (Square 1200, Lot 868).

HEARING DATE (original application):	January 15, 2013
DECISION DATE (original application):	January 15, 2013
FINAL ORDER ISSUANCE DATE (Order No. 18486):	January 24, 2013
MODIFICATION DECISION DATE:	May 7, 2013

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION OF APPROVED PLANS

Background.

On January 15, 2013, the Board of Zoning Adjustment (the "Board" or "BZA") approved the application of AG Georgetown Park Holding 1, LLC (the "Applicant"). The Applicant's original request was for a special exception under § 908.1 to allow a bowling alley accessory to a restaurant at premises 3222 M Street, N.W. (Square 1200, Lot 868) in the W-1 and W-2 Districts. BZA Order No. 18486, approving the original request, was issued January 24, 2013. That order approved special exception relief to allow a 12-lane bowling alley in the Georgetown Park Mall. (Exhibit 41.)

Request for Minor Modification of the Approved Plans

On April 22, 2013, the Applicant submitted a request for a minor modification to the plans approved in BZA Order No. 18486 that granted special exception relief to allow a bowling alley pursuant to § 908.1, in the W-1 and W-2 Districts at premises 3222 M Street, N.W. In its motion the Applicant indicated that, pursuant to § 3129 of the Zoning Regulations, it was requesting modifications to the plans to increase the bowling alley by two additional lanes, from 12 to 14, on the lower level of the restaurant, and to move all of the bocce lanes from the second floor to the first floor of the restaurant. (Exhibit 44.) The record indicates that the request for modification was served on all of the parties to the case[1]: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 2E, the affected ANC, and the Single District Member. (Exhibit 44.)

[1] The Georgetown Park Unit Owners' Association ("Association") had requested and initially was granted party status in opposition to the original application; however, upon executing an agreement with the Applicant which the Board made part of the record, the Association subsequently withdrew its opposition and party status request. (Exhibit 41.)

Section 3129, specifically § 3129.3, indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." The motion was filed within the two-year period following the final order in the underlying case and thus is timely.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a report, dated April 23, 2013, recommending approval of the Applicant's request to modify the approved plans as these changes would allow for even further separation between the bowling alley and the residences on the upper levels of the building. (Exhibit 46.) The affected ANC, ANC 2E, did not submit a report or respond to the motion. In its report OP indicated that subsequent to the public hearing on the original application, the Applicant had continued to work with the Georgetown Park Unit Owners' Association to address soundproofing and noise mitigation. OP stated that the proposed modification would help to address the Association's concerns. (Exhibit 46.)

No objections to the request for minor modification were submitted by any parties to the case. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans. Subsection 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.)

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a modification to the approved plans, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification is minor and no material facts have changed upon which the Board based its decision on the underlying application that would undermine its approval.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of approved plans is hereby **GRANTED.** In all other respects Order No. 18486 and the conditions therein remain unchanged.

VOTE on Modification of Order No. 18486: 4-0-1

(Lloyd J. Jordan, S. Kathryn Allen[2], and Peter G.May (by absentee vote) APPROVE; Jeffrey L. Hinkle, not present or voting; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 14, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

[2] Ms. Allen indicated that she had reviewed the record of the original case in order to participate on this request for modification.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18503 of Keystar Spring Place, LLC, pursuant to § 3103.2, for variance relief under § 2101.1 to reduce the number of required parking spaces and under § 2201.1 to eliminate the required loading berth and loading platform to permit the construction of a 64-unit rental apartment building within the C-2-A District at premises located on Spring Place, N.W. (Square 3186, Lots 0001 and 0804).

Application No. 18505 of Keystar Spring Place LLC and Anabel Pestana pursuant to § 3103.2, for variance relief under § 2101.1 to reduce the number of required parking spaces and under § 2201.1, to reduce the required length of the loading berth, to eliminate the required service/delivery space and to reduce the size of the loading platform to permit the construction of an 87-unit rental apartment building within the C-2-A District at premises 1795 Bull Place, N.W. and 7051-7053 Spring Place, N.W. (Square 3185, Lots 0052 and 0822).

HEARING DATES: February 26, 2013, and March 26, 2013
DECISION DATE: March 26, 2013

DECISION & ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearings on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 4B and to owners of property within 200 feet of the site. The two applications by the Applicant involve properties separated only by a public right-of-way and are part of a common scheme of development, and the Board granted the Applicant's request to consolidate the two applications. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted an adopted resolution taken at its February 5, 2013 meeting supporting the applications "with some conditions and concerns" and additional recommendations taken at its meeting on March 25, 2013. The Office of Planning ("OP") and the District Department of Transportation ("DDOT") submitted reports in support of the application.

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from §§ 2101.1 and 2201.1. No parties appeared at the public hearing in opposition to this

application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended, now codified at D.C. Code § 1-309.10(d)(3)(A)) to give "great weight" to the issues and concerns raised in the affected ANC's written recommendations. To give "great weight" the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case, although ANC 4B supported the zoning relief granted, it did so subject to conditions that went beyond the list of conditions developed and agreed to by the Applicant, OP and DDOT. In particular, ANC 4B wanted the Board to mandate that the Applicant construct at its own cost that section of the Metropolitan Branch Trail south of the site to Cedar Street, N.W. to afford ADA-access to the Takoma Park Metrorail Station. The Board does not find that this requirement is needed to mitigate any potential adverse impacts of the relief granted. The proposed conditions suffice.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from §§ 2101.1 and 2201.1, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to each of the two properties that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall extend its proposed multi-use trail for the entire length of Spring Place from Chestnut along its property to facilitate pedestrian access to its site. The segment from the Applicant's property to Chestnut shall be on the existing paved street and shall be demarcated by pavement markings (no bollards).

2. The Applicant shall, in cooperation with DDOT, complete a full engineering design and seek to facilitate the acquisition of all necessary easements and agreements from the adjacent property owners to allow for the construction of a multi-use trail by the District of Columbia extending from the southern end of Spring Place to the sidewalks on the north side of Cedar Street.

3. The Applicant shall install a "Do Not Block Intersection" sign per DDOT standards for the southbound approach of Blair Road at its intersection with Chestnut Street.

4. The Transportation Demand Management (TDM) strategies described in the Applicant's TIS shall be amended to require that the proposed transit subsidies, car-share and bike share memberships be provided to all residents on an on-going basis rather than just the initial set of residents. Applicant shall offer to each tenant household one of the following: 1) one annual car share membership, 2) one annual Capital Bikeshare membership, or 3) an annual $60 Metro farecard.

5. The Applicant shall provide a minimum of 75 secure long-term bicycle parking spaces (combined) to be located within the two buildings.

6. A minimum of three (3) inverted U-style bicycle racks to be installed at an entrance to each building.

7. The Applicant shall redesign the loading area to accommodate loading movements for a 25-foot vehicle without the need for multiple turns and shall provide simplified maneuvering for a professionally operated 30-foot vehicle. At the intersection of the alley and Spring Place, the Applicant will provide additional safety measures, including a speed-bump adjacent the multi-use trail, convex safety mirrors and warning signage for both trail users and drivers.

8. The Applicant shall create and implement a loading management instruction plan for tenants that addresses scheduling and safety concerns related to truck movements in public space. Applicant shall agree on truck lengths, as determined by DDOT, to be permitted in the loading alley with a maximum length of 30 feet. Trucks, not professionally operated, shall be limited to 25 feet.

9. Applicant agrees to restrict issuance of Residential Parking Permits at this location in an agreement acceptable to OP and DDOT.

10. For a period of two years after the completion of the project's final phase, the Applicant shall provide annual reports to the ANC and DDOT concerning the transportation issues discussed above.

11. The Applicant shall provide a surface car-share space so that tenants and the general public may access the car share vehicle.

12. In the event that the extension of the Metropolitan Branch Trail from the subject property to Cedar Street is not constructed by the time the buildings on the subject property are ready for occupancy, the Applicant shall construct, at its own cost, an extension of the

sidewalk on the southeast side of Chestnut Street from Spring Place to Blair Road in order to afford ADA-access to the Takoma Park Metrorail Station.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle and Peter G. May to Approve; S. Kathryn Allen not participating in the second day of the public hearing, not voting)

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: May 14, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, 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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN

WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 13-08
(Square 5914, LLC – Consolidated PUD and Related Map Amendment @ Square 5914, Parcels 229/161, 229/160, 229/153, 229/151, and 229/103 and Lots 6 and 7)
May 14, 2013

THIS CASE IS OF INTEREST TO ANC 8E

On May 2, 2013, the Office of Zoning received an application from Square 5914, LLC (the "Applicant") for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Parcels 229/161, 229/160, 229/153, 229/151, and 229/103 and Lots 6 and 7 in Square 5914 in Southeast Washington, D.C. (Ward 8), which is located on a site at the intersection of 13th Street and Alabama Avenue, S.E., across from the Congress Heights Metrorail Station. The property is currently zoned R-5-A. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, to C-3-B.

The Applicant proposes to construct an apartment building with approximately 205-215 apartment units and ground-floor retail at the corner of 13th Street and Alabama Avenue, S.E., as well as a 236,000-square-foot office building, with ground-floor retail, adjacent to the entrance of the Congress Heights Metrorail Station.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://.dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Fire and Emergency Management Services Department,	
Petitioner,	
and	PERB Case No. 08-A-03
	Opinion No. 951
International Association of Firefighters, Local 36,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case:

On February 21, 2008, the District of Columbia Fire and Emergency Management Services Department ("FEMS" or "Department") filed an Arbitration Review Request ("Request") in the above captioned matter. FEMS seeks review of an arbitration award ("Award") which rescinded the charges and penalties assessed against Firefighters Michael Roy and Frelimo Simba ("Grievants"). FEMS asserts that the Arbitrator was

without authority and exceeded his jurisdiction by directing FEMS to advise Firefighter Roy in writing that he was free to apply for any position for which he was qualified and that he would be considered in accordance with his qualifications. (See Request at p. 2). The International Association of Firefighters, Local 36 ("Union"), opposes the Request.

The issue before the Board is whether "the arbitrator was without, or exceeded his or her jurisdiction". D.C. Code § 1-605.02(6) (2001 ed).

II. Discussion:

On January 6, 2006, a resident of the 3800 block of Gramercy Street N.W. discovered an unknown man lying on the sidewalk in front of the resident's home. The resident's wife called 911 and the Office of Unified Communications ("OUC") dispatched fire, police and ambulance personnel to the scene. (See Award at p. 5). These emergency responders "did not detect serious injuries, illness, or evidence that the then un-known man had been physically attacked. He had no identification in his pocket, but was wearing a wedding band and a watch. Stereo headphones were found on the ground near him on the grass. Because he was vomiting, and because one or more of the responders thought they smelled alcohol, the man was presumed to be intoxicated. Consequently, the man was identified as a low priority patient and transported to the Howard University Hospital (Howard) Emergency Department where, after lying in a hallway for more than an hour, medical personnel discovered that he had a critical head injury." (Award at p. 5). The man was later identified by a police officer as David Rosenbaum. (See Award at pgs. 5-6). On January 7, 2006, Howard determined that Mr. Rosenbaum had a head injury and reported that information to MPD. (See Award at p. 6). Police initiated an assault and robbery investigation. (See Award at p. 6). "Despite surgery and other medical interventions to save him, Mr. Rosenbaum died on January 8, 2006. The autopsy report issued on January 13, 2006, by the Office of the Chief Medical Examiner listed the cause of death as "BLUNT IMPACT TRAUMA OF THE HEAD, TORSO, AND EXTREMITIES," and the manner of death was determined to be "HOMOCIDE."" (Award at p. 6).

The Office of the Inspector General ("OIG") conducted a review of FEMS' response to the January 6th scene. (See Award at p. 6). Firefighters Roy and Simba were asked to prepare reports of their involvement with the January 6th response. (See Award at p. 7). OIG issued a report on June 15, 2006, ordering the Trial Board to determine if Firefighters Roy and Simba had "omitted material information during the investigation [of the January 6th incident] and if so, did they fail to follow appropriate medical protocols." (Award at p. 9). Firefighter Roy was charged "with obstructing a Department investigation by, *inter alia*, reporting that he did not observe any injuries or bleeding on the scene; and was charged with violation of medical protocols by, *inter alia*, not deriving a [Glasgow Coma Scale] GCS score." (Award at p. 9). Firefighter Simba was similarly charged "with obstructing a Department investigation and violation of medical protocols in respect to, *inter alia*, information supplied concerning bleeding at the scene and failure to derive a GCS score." (Award at p. 9).

A Trial Board hearing was conducted and concluded on January 26, 2007. During these proceedings the Grievants argued in a motion to dismiss that the charges did not meet the 75-day time limit required by Article 32, Section B of the parties' Collective Bargaining Agreement ("CBA").[1] The Union filed its "Time Limits Grievance" on January 26, 2007. The Trial Board issued its decisions in April 2007.

> The Trial Board divided two to two on the charges leveled against [Firefighter] Simba. In accordance with the CBA procedures, the Assistant Chief intervened and found Simba guilty as charged and adopted the Trial Board's recommended penalty of 120 duty-hours suspension on Charge 1, and 132 duty-hours suspension on Charge 2. On May 1, 2007, new-Fire Chief Dennis L. Rubin advised Simba that it was his decision to terminate Simba effective May 2, 2007.
>
> [Firefighter] Roy was unanimously found not guilty on Charge 2 [sic], obstructing a Department investigation, but the Trial Board divided two to two on Charge 2, that Roy failed "to perform a proper assessment on a patient with altered mental status." The Assistant Fire Chief intervened and found Roy guilty on this charge and adopted the Trial Board's recommended penalty of 84 duty-hours suspension. On May 1, 2007, Chief Rubin advised Roy that it was his decision to suspend him for 192 duty-hours, to commence May 4, 2007.

(Award at p. 10).

On April 30, 2007, Chief Rubin and Mayor Fenty announced at a press conference that the penalties assessed would be increased against Simba to termination and for Roy to a suspension for "one-month followed by an assignment in [FEMS'] organization where, for the rest of his career, he will not have contact with the public." (Award at p. 11). On May 1, 2007, the Union filed a Penalty Grievance. (See Award at p. 11).

The grievances were submitted to arbitration and the penalties against Firefighters Roy and Simba were held in abeyance pending the results of the arbitration. (See Award at p. 11). Arbitrator John Truesdale determined the two issues to be:

[1] Article 32 Section B of the parties' CBA requires Initial Written Notification of charges provided to the members "within seventy-five (75) days after the alleged infractions or complaint or such time as the employer becomes aware of the alleged infraction or complaint." (Award at p. 3).

Time Limits Grievance

Whether the Agency violated the CBA when it issued Initial Written Notification of the potential discipline to FFs Simba and Roy on June 26, 2006.

If so, what should be the remedy?

Penalty Grievance

Whether the Department violated Article 32 F.5 or 6 of the CBA (and/or corresponding provision of the Order Book) when the Fire Chief rejected the penalty recommendations of the Trial Board as to Firefighter Simba and Roy and chose, instead, to terminate Simba and, as to Roy, to impose a lengthier unpaid suspension and to bar Roy for the remainder of his career from holding a position within the Department that would allow him contact with the public.

If so, what should be the remedy?

(Award at p. 2).

At arbitration, the Union argued that Article 32, Section B of the parties' CBA was violated because the Department learned of the alleged infractions by the Grievants on January 19, 2006, and that the notification of charges to the Grievants was not made until after 75-days. Consequently, the Union asked that the charges against Roy and Simba be dismissed. In addition, the Union argued that the restriction against Roy of having contact with the public be rescinded. (See Award at p. 13). FEMS argued that it was not aware of the alleged infractions until the issuance of the OIG report in June of 2006, and therefore the notifications were issued within the 75-day time limit. (See Award at p. 14). In addition, the Department reversed its decision to augment the recommendations of the Trial Board prior to the arbitration. (See Award at p. 14). The Department stated that if the penalties are imposed, they will not exceed the recommendations of the Trial Board. (See Award at p. 14).

The Arbitrator found that FEMS was aware of the alleged infractions in January 2006 and that the Initial Written Notifications to Firefighters Roy and Simba were not brought until June 26, 2007. Consequently, the Arbitrator found that the notifications were not timely issued. (See Award at p. 16).

As to the Penalty Grievance, the Arbitrator noted that Article 32, Section F (5) and/or (6) of the Parties' CBA provide that the Fire Chief may not increase the Trial Board's recommendations. (See Award at p. 16). The Arbitrator also indicated that the

augmentation of the penalties against Roy and Simba violated the parties' CBA, and that neither grievant suffered any loss of pay or benefits. (See Award at p. 16). However, the Arbitrator noted that Firefighter Roy had been transferred to the Training Academy, and that there had been no formal rescission of Chief Rubin's pronouncement at the April 30 press-conference that Roy would no longer be permitted to have contact with the public. (See Award at p. 16).

For the reasons noted above, the Arbitrator determined that: FEMS violated (1) Article 32, Section B of the parties' CBA by issuing the Initial Written Notifications against Firefighters Roy and Simba more than 75-days after FEMS became aware of their alleged infractions; (2) Article 32, Section F (5) and/or (6) by increasing the recommended penalties of the Trial Board. As a remedy, the Arbitrator rescinded the charges and penalties assessed against the Grievants and directed that FEMS advise Roy in writing that he: (1) is free to apply for any position within FEMS for which he is qualified; and (2) will be considered in accordance with his qualifications. (See Award at pgs. 16-17).

FEMS filed the instant arbitration review request, stating:

> The reasons for appealing the award are as follows: The Arbitrator ruled that the Fire Chief's statement that FF Roy would never be assigned to a public contact position constituted an enhancement of the penalty recommended by the Trial Board, in violation of the [parties' CBA]. In so doing, he exceeded his authority by attempting to preempt an inchoate and theoretical violation because the Union presented no evidence that FF Roy had applied for a public contact position and been denied. The CBA authorizes the arbitrator to rule on actual disputes regarding violation of the [CBA]. It does not empower arbitrators to rule on violations that might occur at some unknown point in the future or otherwise penalize the agency for potentially future allegations of contractual violation(s). In order for the Arbitrator to properly establish jurisdiction over such a dispute, the Union would need to allege some evidence that FF Roy has been actively denied the ability to apply for and receive a public contact position. This clearly has not been done. As a result, the Arbitrator exceeded the jurisdiction granted by the CBA in violation of Board Rule 538.3(a).

(Request at pgs. 2-3).[2]

[2] Board Rule 538.3(a) provides "[t]hat in accordance with D.C. Code Section 1-605.2(6), the only grounds for an appeal of a grievance arbitration award to the Board are the following:

When a party files an arbitration review request, the Board's scope of review is extremely narrow. Specifically, the Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in only three limited circumstances:

1. If "the arbitrator was without, or exceeded his or her jurisdiction";
2. If "the award on its face is contrary to law and public policy"; or
3. If the award "was procured by fraud, collusion or other similar and unlawful means."

D.C. Code § 1-605.02(6) (2001 ed.).

In the present case, FEMS claims that the Arbitrator "exceeded his authority by attempting to preempt an inchoate and theoretical violation because the Union presented no evidence that FF Roy had applied for a public contract position and been denied." (Request at p. 2). FEMS argues that the CBA only allows an arbitrator to rule on actual disputes and not on future violations which have not yet occurred. The Board believes that FEMS' request represents a disagreement with the Arbitrator's finding that there was a violation of Article 32 of the parties' CBA by augmenting the penalty against Roy to include a prohibition against working in contact with the public. FEMS' argument fails because it is not a future violation at issue but the augmentation of the penalty upon which the Arbitrator found a violation. Thus, FEMS' assertion that there was no evidence of a violation of the parties' CBA because Firefighter Roy had not yet applied for, or been denied, a position with public contact is, therefore, without merit.

We have held and the District of Columbia Superior Court has affirmed that, "[i]t is not for [this Board] or a reviewing court . . . to substitute their view for the proper interpretation of the terms used in the [parties' CBA]." *District of Columbia General Hospital v. Public Employee Relations Board*, No. 9-92 (D.C. Super Ct. May 24, 1993). See also, *United Paperworkers Int'l Union AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, an arbitrator's decision must be affirmed by a reviewing body "as long as the arbitrator is even arguably construing or applying the contract." *Misco, Inc.*, 484 U.S. at 38. We have explained that:

> [by] submitting a matter to arbitration "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings and conclusions on which the decision is based."

(a) The arbitrator was without authority or exceeded the jurisdiction granted.

District of Columbia Metropolitan Police Department v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee, 47 DCR 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); D. *C. Metropolitan Police Department and Fraternal of Police, Metropolitan Police Department Labor Committee (Grievance of Angela Fisher)*, 51 DCR 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

FEMS' contention that was the Arbitrator was without authority to direct FEMS to rescind the Fire Chief's pronouncement that Firefighter Roy would be prohibited from applying or holding a position of public contact is merely a disagreement with the Arbitrator's finding that it violated Article 32, Section F (5) and/or (6) of the parties' CBA and requests that we adopt its interpretation of the CBA and version of the facts. "[T]his Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator." *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union No. 246*, 34 DCR 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). In the present case, the parties submitted their dispute to Arbitrator Truesdale. Neither FEMS' disagreement with the Arbitrator's interpretation of Article 32, Section F (5) and/or (6) nor FEMS' disagreement with the Arbitrator's findings and conclusions, are grounds for reversing the Arbitrator's Award. See *MPD and FOP/MPD Labor Committee (on behalf of Keith Lynn)*, Slip Op. No. 845, PERB Case No. 05-A-01 (2006).

In view of the above, we find no merit to FEMS' arguments. We find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or in excess of his authority under the parties' CBA. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

(1) The District of Columbia Fire and Emergency Medical Services' Arbitration Review Request is denied.

(2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 16, 2010

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No.08-A-03 was transmitted via Fax and U.S. Mail to the following parties on this the 16th day of July 2010.

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U.S. MAIL

Sheryl V. Harrington
Secretary

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	)	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 383,	)	
Complainant,	)	PERB Case No. 09-U-04
v.	)	Opinion No. 1301
DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES,	)	
and	)	
DISTRICT OF COLUMBIA OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING,	)	
Respondents.	)	

DECISION AND ORDER

I. Statement of the Case

On November 1, 2008, the American Federation of Government Employees, AFL-CIO, Local 383 ("Complainant," "Union", or "Local 383") filed a document styled "Unfair Labor Practice Complaint and Request for Preliminary Relief and Temporary Restraining Order" ("Complaint") against the District of Columbia Department of Youth Rehabilitation Services ("DYRS," "Agency," or "Respondents"), and the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB," or "Respondents"). The Complainant alleged that the Respondents violated the Comprehensive Merit

Protection Act ("CMPA"), D.C. Code § 1-617.04(a)(1), (2), and (5) by DYRS's unilateral decision to reclaim office space it previously allowed Local 383 to use and by OLRCB's refusal to bargain with Local 383 about DYRS's actions. (Complaint at 2).

On November 17, 2008, the Respondents filed a Motion to Dismiss Request for Preliminary Relief and Temporary Restraining Order ("Motion"), alleging that the Union's request for preliminary relief should be denied. In addition, on November 24, 2008, the Respondents filed an Answer to Unfair Labor Practice Complaint ("Answer"). The Public Employee Relations Board ("Board") denied the Complainant's Motion for Preliminary Relief and referred the Complaint to a Hearing Examiner for disposition. (Slip Opinion No. 957).

On December 15, 2009, a hearing was held. On March 8, 2010, the Complainant filed a Post Hearing Brief, and on March 17, 2010, the Respondents filed a Post Hearing Brief. On April 21, 2010, the Hearing Examiner filed a Report and Recommendation ("Report").

Hearing Examiner Lois Hochhauser found that Article IV, Section B of the Supplemental Agreement from the Union's Exhibit 1 contained a contractual provision that was relevant to the Union's use of the office. (Report at 6-7). Then the Hearing Examiner concluded that the Respondents had both statutory and contractual obligations. *Id.* at 9. She stated that "the Board has determined that where there are violations of statutory and contractual provisions, the outcome will be determined by whether the parties have provided for the resolution of contractual disputes through a grievance and arbitration process in their collective bargaining agreement."[1] *Id.* She found that "Article 30 of the Agreement contained a grievance procedure, and the Agreement defines a grievance as any alleged violation of this Agreement. Thus, a remedy was available through the grievance procedure of the Agreement." *Id.* She explained that if the contractual agreement provided for such a process, the Board lacks jurisdiction, and the parties must utilize the processes outlined in the Agreement. *Id.* Accordingly, the Hearing Examiner recommended that the Complaint be dismissed. *Id.* at 10.

The Complainant filed Exceptions with the Board, ("Exceptions"), alleging that because the issue of the Supplemental Agreement had not been addressed by the parties, the Hearing Examiner should have allowed them to brief that issue. (Exceptions at 5-6). The Respondents filed an opposition to the Exceptions ("Opposition"), maintaining that the Hearing Examiner had authority to address the issue based on Board Rule 550.13.[2] (Opposition at 4). The Complainant filed a Response to the Opposition ("Response"), pointing out that the Respondents did not argue that either Local 383 or DYRS was a party to the Supplemental Agreement relied upon by the Hearing Examiner. (Response at 2).

On August 5, 2011, the Board issued a Remand Order and an Order for Briefs. (Slip Opinion No.

[1] The current Board precedent provides that the Board will defer jurisdiction in cases only where the issue is strictly contractual.

[2] 550.13 – Authority of Hearing Examiner (cont.)

Hearing Examiners shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order, Hearing Examiners shall have all powers necessary to that end including, but not limited to, the power to:

***

(f) Call and examine witnesses and introduce documentary or other evidence.

1027 at 7). The Board found that the Hearing Examiner's findings concerning its jurisdiction may not be supported by the record. *Id.* Thus, the Board remanded the matter to the Hearing Examiner to develop a full record. *Id.* On September 30, 2011, the Complainant submitted a Remand Brief, and On October 3, 2011, the Respondents submitted a Remand Brief. In its brief, the Complainant asserted that the Union's submission of the Supplemental Agreement into evidence was erroneous, and therefore, it should not control the substantive outcome of the case. (Complainant's Remand Brief at 8-14). In addition, the Complainant submitted that PERB had jurisdiction over this matter because the Respondents failed to bargain over the mandatory subject of office space. *Id.*

After the remand hearing, the Hearing Examiner issued another Report and Recommendation ("Remand Report") on November 30, 2011. No party filed exceptions to this report. The Hearing Examiner's Remand Report is before the Board for disposition.

II. Background

The Complainant is the exclusive bargaining representative of certain employees of DYRS, and John Walker is the president of the Union. (Remand Report at 4). DYRS is an agency and an employer within the meaning of the CMPA. *Id.* OLRCB is responsible for collective bargaining on behalf of the government. *Id.* Approximately since 1999, Local 383 has occupied some manner of office space provided by DYRS. (Complainant's Post Hearing Brief at 2). From approximately 2003, until February 2008, there were two offices in use by Local 383: one office for the Union's exclusive use and another for Mr. Walker's non-union DYRS work. *Id.* at 3. On November 6, 2007, DYRS verbally notified Mr. Walker that it required either the union office or his cubicle to be vacated because of an office space shortage. *Id.* Additionally, DYRS's request was submitted in writing to Mr. Walker in a letter dated November 14, 2007. *Id.*

DYRS and Local 383 met on December 4, 2007 to discuss the office issue. (Remand Report at 5). On December 5, 2007, Local 383 submitted a letter to OLRCB stating that it considered the elimination of the space a mandatory subject of bargaining. *Id.* OLRCB responded and agreed to impact and effect bargaining. *Id.* The matter was resolved sometime in February 2008, when DYRS merged Mr. Walker's DYRS cubicle into the Union's office, which remained secure with a key kept by Mr. Walker. *Id.* From that time forward, Local 383 had continuously occupied the merged office space. (Complainant's Post Hearing Brief at 3).

In September 2008, Mr. Walker was separated from DYRS pursuant to a reduction-in-force (RIF), but he remained in the position of Local 383 president. (Remand Report at 5). In a letter, dated October 23, 2008, DYRS notified to vacate the remaining office space by October 30, 2008 and to perform his union representational duties by scheduling the use of a conference room. *Id.* On October 29, 2008, on behalf of Local 383, Yvonne Desjardins, the AFGE National Office Field Representative, demanded that the Agency reconsider its position regarding the elimination of the office space and asked for additional time to process vacating the office. *Id.* at 6. On October 29, 2008, DYRS responded, asserting that Local 383 was not entitled to an office, and Local 383 had been aware since 2007 of DYRS's directive to vacate the space. *Id.* DYRS

extended the deadline for Mr. Walker to vacate the office to November 13, 2008. *Id.* Local 383 placed its possessions in storage and at Mr. Walker's home, and he vacated the office space in November 2008. *Id.*

III. Discussion

The Complainant maintained that two Unfair Labor Practices were committed: 1) DYRS's ordering Local 383 to vacate its office space in October 2008; and 2) OLRCB's refusing to bargain over the order to vacate. (Remand Report at 7). The issues before the Hearing Examiner were whether the Respondents committed Unfair Labor Practices, and, under the circumstances, whether the Complainant sought to bargain and the Respondents refused the request. *Id.* at 3. The Hearing Examiner addressed the following questions in her reasoning:

A. Whether the supplemental agreement is relevant

In response to the questions directed to the parties by the Board in the Remand Order, the Hearing Examiner found that the Supplemental Agreement was submitted in error and had no relevance to this matter. *Id.* at 7. The record contains evidence that the Respondents acknowledged that the Supplemental Agreement does not pertain to DYRS and Local 383. (Respondents' Remand Brief at 2). The Board finds that the Hearing Examiner's findings are reasonable and supported by the record.

B. Whether providing office space to the Union is a mandatory subject of bargaining and advance notice was given

The Respondents asserted that no Unfair Labor Practices were committed because the collective bargaining agreement does not require the Agency to provide the Union with office space. (Motion at 3; Remand Report at 6). Further, the Respondents contended that the use of the space was voluntary on the part of the Agency. *Id.*

Moreover, the Respondents stated that even if there had been such an obligation to bargain over the order to vacate, the 2007 notice was closely related to the matter of 2008. (Remand Report at 7). Therefore, the Respondents argued that advance notice was given and the process of bargaining was already commenced. *Id.*

With regard to the Respondents' assertion, the Complainant alleged that the only subject of the December 2007 demand was the merger of Mr. Walker's work cubicle into Local 383's office; conversely, the Complainant argued that the subject of the October 2008 demand was the total elimination of Local 383's office space. (Complainant's Post Hearing Brief at 8-9). Therefore, the Complainant asserted that the October 2008 demand of total elimination was separate and distinct from the December 2007 demand for an office merger. *Id.*

The Hearing Examiner agreed with the Complainant's position that the matter was resolved when DYRS merged Mr. Walker's DYRS cubicle into Local 383's office on February

2008. (Remand Report at 5). The Hearing Examiner found that the Respondents' 2008 notice to the Union to vacate its office was not a continuation of the 2007 incidents. *Id. at* 8. Hence, the Board finds that advance notice was not given in this matter.

This Board has long held that an office space provided by an Agency to a Union is a term and condition of employment and is therefore a mandatory subject of bargaining. *International Brotherhood of Police Officers, Local No. 445, AFL-CIO, V. D.C. Department of Administrative Services,* 43 D.C. Reg. 1484, Slip Op. No. 401, PERB Case No. 94 U-13 (Aug. 5, 1994). Therefore, The Hearing Examiner concluded that the Agency's unilateral decision to eliminate the space allocated to a Union without prior notice and bargaining may constitute an Unfair Labor Practice. (Remand Report at 8). The Board finds that the Hearing Examiner's findings are reasonable and supported by the record.

C. Whether the use of office space is a past practice

The Hearing Examiner explored whether the use of office space constitutes a custom or past practice. *Id.* at 8-9. The Respondents denied any past practice of providing office space. *Id.* at 7. Even if there may have been such a past practice, the Respondents insisted that the practice ended when DYRS gave notice to Local 383 in 2007 to vacate one of office spaces. *Id.*

The Hearing Examiner found that since 1999, the evidence established that DYRS provided the Union with office space that it could keep secured and use for maintaining files and other Local 383 work. (Remand Report at 9). She found that since Mr. Walker became Local President, "the office space was located in proximity to the Local President's work site and that the Local office space moved with the location of its president." *Id.* Additionally, the Hearing Examiner found that the issue of office space was not addressed in the Master Agreement, but it was understood between the parties. *Id.* She stated that it is generally agreed that "[a past practice] must be readily ascertainable over a reasonable period of time as a fixed and established practice." (*Id.* at 8-9, citing *Celanese Corporation of America*, 24 Lab. Arb. Rep. BNA, 168 (Justin 1954)). In addition, the Hearing Examiner noted that the customs and past practices that parties have maintained over time are particularly important in the absence of a documented agreement. (*Id.* at 9, citing *Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960)).

The Hearing Examiner stated that "DYRS's notification of its decision to reclaim the space in 2008 was related to Mr. Walker's separation from the agency. These appear in two separate practices, and Mr. Walker's separation from DYRS was not sufficient to eradicate the past practice of providing the secured office space, although it would require a decision to be made as to where the office should be located." *Id.* Thus, the Hearing Examiner concluded that "there is sufficient evidence to determine that the provision to Local 383 of office space by DYRS was a custom or past practice." *Id.*

This Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op No. 451 at p. 4, PERB Case No. 95-U-02 (Sept, 19,

1995). See also *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 35 D.C. Reg. 8594, Slip Op. No. 285, PERB Case No. 86-U-16 (April 21, 10, 1992); *Charles Bagenstose et al. v. D.C. Public Schools*, 38 D.C. Reg. 4154, Slip Op. No. 270, PERB Case No. 88-U-34 (June, 6, 1991). In the instant case, the Board finds that the Hearing Examiner's findings are reasonable and supported by the record.

D. Whether providing an office to Local 383 is too costly

Additionally, the Respondents argued that the Agency incurred an additional cost for the space, and it was economically impractical to maintain the office. (Remand Report at 6). The Agency asserted that it should not be required to support critical Union functions by providing free office space. In fact, D.C. Code § 1-617.04(a)(2) (2001 ed.) specifically forbids the District from "contributing financial or other support [to unions that represent its employees]." (Respondents' Post Hearing Brief at 6). The Agency maintained that this level of support violates the law by providing impermissible financial support. *Id.* at 7.

With regard to this issue, the Hearing Examiner found that the Agency failed to offer any evidence that it incurred any additional cost, and thus, the Agency's argument lacked merit. (Remand Report at 8). The Board finds that the record contains evidence that the Respondents' own witness, Denis Durham, admitted that the former Local 383 office has been continuously empty since the day that Local 383 moved. (Complainant's Post Hearing Brief at 4). Therefore, the space remaining vacant at least until the hearing date in 2009 supports the Hearing Examiner's finding.

E. Whether the Complainant sought to bargain and the Respondents refused the request

The Hearing Examiner next considered whether the Complainant sought to bargain and the Respondents refused the request. (Remand Report at 3). The Hearing Examiner made the following findings of fact:

> "Following the issuance of the letter to Mr. Walker in October 2008 to have the Local vacate the office space, The AFGE National Office Field Representative, Yvonne Desjardins, contacted OLRCB on behalf of the Local, asking Respondents to reconsider the decision, requesting alternative space and asking for additional time. On October 29, 2008, Mr. Aqui responded on behalf of OLRCB, that the Local was not entitled to an office, that Complainant was aware since 2007 of DYRS's directive to vacate the space and that the deadline would be extended until November 13, 2008."

(*Id.* at 10)

The Respondents insisted that they did not refuse to provide any office space but rather directed the Union President to contact one of the Agency's employees to schedule the use of a

conference room to conduct union business related to the administration of the collective bargaining agreement. (Answer at 3; Respondents' Post Hearing Brief at 2).

Notwithstanding, the Complainant argued that the Respondents alternatively offered a conference room did not alleviate the severity of the loss of the office. (Complainant's Post Hearing Brief at 8). The Complainant asserted that the loss of an office deprived Local 383 of confidentiality and subjected it to remaining in a transient status. *Id.* Furthermore, the Complainant argued that one such example of the inconvenience of not having their own office space would result in Mr. Walker having to contact a storage company and having to go to the storage facility to search all boxed Union materials. (Remand Report at 6). As another example of the inconvenience the Union would be subjected to, it submitted that Mr. Walker would not be able to schedule a meeting without contacting DYRS to reserve a conference room. *Id.*

The Hearing Examiner found that Mr. Walker's testimony that the lack of an office has negatively affected the Union's ability to function was reasonable. *Id.* Based on a totality of the circumstances and the facts, the Hearing Examiner concluded that Local 383 had established that it sought to bargain on the matter in 2008, and the Respondents had refused this request. *Id.* at 10. The Board finds that the Hearing Examiner's findings are reasonable and supported by the record.

IV. Board's Conclusion

As required by PERB Rule 520.11, the Hearing Examiner concluded that, the Complainant had met its burden of proof by a preponderance of evidence, and as such, the Respondents had committed Unfair Labor Practices. She recommended that the Board awards the following relief: 1) the Respondents provide Local 383 with office space comparable to the space provided prior to November 2008; 2) the Respondents cease and desist from violating the CMPA; 3) Respondents post a Notice regarding the violations; and 4) Respondents notify the Board of compliance within 30 days of this Board's Decision and Order. *Id.* at 10-11.

The Respondents' arguments as to the appropriate findings and legal conclusions in this matter were rejected by the Hearing Examiner. What's more, this Board has held that a mere disagreement with the hearing examiner's findings is not grounds for reversal of the findings where they are fully supported by the record. See *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (Jan, 17, 2003); see also *American Federation of Government Employees, Local 874 v. D.C. Department of Public Works*, 38 D.C. Reg. 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-18 and 90-U-04 (March, 28, 1991).

Pursuant to D.C. Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the Hearing Examiner and the entire record. The Board finds the Hearing Examiner's analysis is reasonable, supported by the record, and consistent with Board precedent.

Therefore, the Board adopts the Hearing Examiner's recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is granted.

2. The District of Columbia Department of Youth Rehabilitation Services, and the District of Columbia Office of Labor Relations and Collective Bargaining, shall cease and desist violating D.C. Code § 1-617.04(a)(1), (2), and (5) by unilaterally eliminating Union office space and by refusing to bargain.

3. The District of Columbia Department of Youth Rehabilitation Services, its agents and representatives, shall restore the Union office space for the purpose of conducting union business.

3. The District of Columbia Department of Youth Rehabilitation Services, its agents and representatives, shall conspicuously post within ten (10) days from the issuance of this Decision and Order the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

4. Within fourteen (14) days from the date of this Decision and Order, the Department of Youth Rehabilitation Services, through the District of Columbia Office of Labor Relations and Collective Bargaining, shall notify the Public Employee Relations Board in writing that the attached Notice has been posted accordingly.

5. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

July 26, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-04 was transmitted via U.S. Mail and e-mail to the following parties on this the 30th day of July, 2012.

John Walker, President
AFGE, Local 383
P.O. Box 4478
Washington, D.C. 20017-0478
walkej@afge.org

U.S. MAIL and E-MAIL

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U.S. MAIL

Soohyun Lee
Intern

PERB Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA

1100 4th Street S.W.
Suite E630
Washington, D.C. 20024
Business: (202) 727-1822
Fax: (202) 727-9116
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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES ("DYRS"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1301, PERB CASE NO. 09-U-04 (July 26, 2012)

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered Department of Corrections to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1), (2) and (5) by the actions and conduct set forth in Slip Opinion No. 1301.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL cease and desist from discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under the Labor-Managements subchapter of the CMPA.

WE WILL NOT, in any like or related manner, retaliate, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

District of Columbia Department of
Youth Rehabilitation Services

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 26, 2012

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO,	
Complainant,	PERB Case No. 08-U-36
v.	Opinion No. 1377
District of Columbia Government,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO, ("Complainant" or "Union") and the District of Columbia Government ("Respondent" or "District") entered into a "Collective Bargaining Agreement between the District of Columbia and Labor Organizations Representing Compensation Units 1 and 2" ("Agreement"), which took effect in 2006. The Agreement established a Joint Labor-Management Technical Advisory Pension Reform Committee ("Committee") to develop an enhanced retirement program for employees hired after October 1, 1987, and set forth procedures to present that program to the City Council including preliminary submission of the program to the City Administrator.

The Union alleges in an unfair labor practice complaint it filed with the Board that the City Administrator failed and refused to act on the Committee's recommendations and that "the District has no intention of carrying out its duty to implement the joint report and recommendations mandated by Article 7, Section (3) (A) (d), of the . . . Agreement." (Amended Complaint at para. 9). The Union contends that by the alleged conduct "the District is interfering with, restraining and coercing employees in the exercise of their rights and refusing to bargain in good faith. . . ." (*Id.* at para. 10).

The matter was referred to a hearing examiner, who held a hearing and issued a Report and Recommendations ("R & R"). The R & R recites the following undisputed facts:

1. Complainant is the exclusive collective bargaining representative of certain employees in Compensation Units 1 and 2.

2. Respondent employs individuals in Compensation Units 1 and 2.

3. Complainant and Respondent are parties to a collective bargaining agreement (Agreement), which has an effective date of July 7, 2006 and remains in effect until the end of Fiscal Year (FY) 2010.

4. District of Columbia Government employees hired after October 1, 1987 do not receive the same retirement benefits as those who [were] hired before that date in that their pension system has no defined benefit component and no guaranteed pension.

5. The Agreement provided that the parties would appoint a committee to develop a retirement program for post-October 1987 hires; that the Committee would submit its report and recommendations to the City Administrator within 120 days of the effective date of the Agreement; and that by October 1, 2008, the District would plan and implement an enhanced retirement program which included deferred compensation and a defined benefit component. (Ex C-1).

6. Natwar Gandhi, Chief Financial Officer (CFO), submitted a memorandum dated September 14, 2006, to Linda Cropp, Chair of the Council of the District of Columbia entitled "Fiscal Impact Statement: "Compensation Collective Bargaining Agreement Between the District of Columbia Government and Compensation Units 1 and 2 . . . Compensation System Changes Approval Resolution of 2006. . . Draft Resolution to be Introduced. . .". The memorandum referred to the establishment of the Joint Committee which was tasked with proposing an enhanced retirement program, effective October 1, 2008, for eligible employees. It noted that the Agreement required the program to have "a deferred compensation component and a defined benefit component". The memorandum concluded:

> The fiscal effects of an enhanced retirement program to be developed by the [Joint Committee] cannot be determined at this time. The District's CFO will require the findings of the Committee in order to project the fiscal impact on the District's budget and financial plan. It would be noted that because of the size of the membership of the Collective

> Bargaining Units 1 and 2 and the projected aggregate of their annual salary, the Committee's findings have the potential to greatly impact the local consensus budget and financial plan. (Ex C-2). (emphasis added).

7. The Joint Committee submitted its recommendations to the City Administrator on February 7, 2008. (Ex C-3).

8. The City Administrator returned the plan to the Committee and asked that it revise its recommendations to make them more financially feasible for the District.

9. The Committee submitted revised recommendations to the City Administrator, who returned the revised recommendations to the Committee in June 2008.

10. AFSCME members of the Committee asked to meet with the City Administrator before continuing their participation on the Committee. The meeting took place on or about December 9, 2008.

11. At the meeting, each party designated its labor economist to work on the matter. Brian Klopp, AFSCME Labor Economist and Idi Ohikhuare, OLRCB Labor Economist, were designated to work on the matter on behalf of the parties. Mr. Klopp and Mr. Ohikhuare communicated about the matter in subsequent months. (Tr, 107-111).

12. The Committee has not met or submitted any recommendations since June 2008.

13. The CFO did not prepare a fiscal impact statement based on either of the Committee's submission[s].

14. None of the Committee's recommendations have been presented to the City Council for approval.

15. To date, Respondent has not implemented an enhanced retirement program pursuant to the Agreement.

(R & R at pp. 5-7).

The hearing examiner found that there were significant disputes over the provisions of the Agreement, that the District was amenable to continuing the process of developing a retirement program, that the Complainant did not prove that the Committee had completed its tasks, and that the Complainant did not prove bad faith and pervasive and unilateral changes on the part of the District. The hearing examiner concluded that the Complainant did not meet its

burden of proof by a preponderance of the evidence and recommended that the Board dismiss the complaint.

The Complainant filed Exceptions in which it stated that it excepted to the following findings and recommendations in the Report:

> 1. "In *AFGE, Local 872 v. D.C. Water and Sewer Authority*, 46 DCR 4398, Slip Op. No. 497, PERB Case No. 96-U-23 (1999), this Board utilized the approach taken by the National Labor Relations Board in *National Labor Relations Board in [sic] Electronic Reproduction Serv. Corp.*, 213 NLRB 758 (1978) and stated that it would limit its finding that an unfair labor [sic] existed to circumstances where 'no dispute' exists over contractual provisions at issue." (R&R at 14.)
>
> 2. (A) "On the other hand, if the City Administrator's role was only that of a conduit, as argued by Complainant, there would be no reason to have the document submitted to that office in the first place. It could be submitted directly to the CFO." (R&R at 15.)
>
> (B) Related to this exception, the Union further excepts to the Hearing Examiner's refusal to permit the Union to offer witness testimony regarding the role of the City Administrator. (See Tr. 116-17.)
>
> 3. "The Hearing Examiner found the one page submission did not, in her view, meet the contractual requirements of providing a report with recommendations which: '[e]stablish a formula cap for employee and employer contributions; [e]stablish the final compensation calculation using the highest three year consecutive average employee wages; [i]nclude retirement provisions such as disability, survivor death benefits, health and life insurance benefits; design a plan sustainable within the allocated budget; [and draft] and support legislation to amend the D.C. Code in furtherance of the "Enhanced Retirement Program.'" (Ex. C-1). The memorandum from the CFO stated that he would require 'the findings of the Committee in order to project the fiscal impact on the District's budget and financial plan.' (Ex. C-2). The document submitted by the Committee did not make findings. Thus, it is not established that the Committee had completed its tasks." (R&R at 16.)
>
> 4. "Viewing the totality of the circumstances, i.e., the omission of any guidance regarding the role of the City Administrator, or the reasonableness of Respondent's

> interpretation, the paucity of the Committee's final product, and the request by Respondent to continue this endeavor, the Hearing Examiner cannot make a finding of bad faith." (R&R at 16.)

(Exceptions at pp. 1-2). The Respondent filed an opposition to the Exceptions ("Opposition"). The Report, the Exceptions, and the Opposition are before the Board for disposition.

II. Discussion

A. Elements of the Alleged Unfair Labor Practice

As the hearing examiner noted, a "breach of a collective bargaining agreement is not a *per se* unfair labor practice." (R & R at p. 14) (citing *Green v. D.C. Dep't of Corrections*, 37 D.C. Reg. 8086, Slip Op. No. 257 at p. 4, PERB Case No. 89-U-10 (1990), and *AFGE, Local Union No. 3721 v. D.C. Fire Dep't*, 41 D.C. Reg. 1585, Slip Op. No. 297 at pp. 4-5, PERB Case No. 90-U-11 (1991)). Nonetheless, the Board has asserted jurisdiction where a violation of the collective bargaining agreement constitutes an unfair labor practice. *AFGE, Local 631 v. District of Columbia*, 59 D.C. Reg. 7334, Slip Op. No. 1264 at p. 4, PERB Case No. 09-U-57 (2012).

Among the tests the hearing examiner applied in determining whether there was an unfair labor practice were two tests that are not called for by the Board's precedents. First, the hearing examiner asserted without citation of authority that "[i]n order to establish an unfair labor practice, the Hearing Examiner must conclude that the City Administrator acted in bad faith by returning the product to the Committee for additional work." (R & R at 16). Contrary to this assertion, a showing of bad faith is not required in order to establish an unfair labor practice. *AFSCME Local 2087 v. Univ. of D.C.*, 59 D.C. Reg. 6064, Slip Op. No. 1009 at p. 7, PERB Case No. 08-U-54 (2009). A conclusion that a party failed to bargain in good faith does not equate to a conclusion that the party acted in bad faith. *Int'l Bhd. of Teamsters v. D.C. Pub. Schs.*, 36 D.C. Reg. 5993, Slip Op. No. 226 at p. 4 n.4, PERB Case No. 08-U-10 (1989). The hearing examiner determined that in view of the totality of the circumstances she could not make a finding of bad faith. (R & R at 16). In its fourth exception, the Complainant excepts to this determination, but as it is an unnecessary determination, the Complainant's exception is immaterial to the outcome of the case.

The second test that the hearing examiner erroneously added was a test for a repudiation of a collective bargaining agreement. The hearing examiner stated, "This Board must find that Respondent initiated pervasive unilateral changes to an existing agreement or rejected the bargaining relationship in order to conclude that a party has repudiated a collective bargaining agreement. American Federation of Government Employees, Local 3721 v. D.C. Fire Department, 39 DCR 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1992)." (R & R at p. 16). The cited case does not support the asserted proposition, but the Board has cited that case for the principle that when "pervasive unilateral changes in an effective agreement are precipitated by a fundamental rejection of a bargaining relationship, a request to bargain is not a prerequisite to finding a violation of a duty to bargain." *Dist. Council 20, AFSCME Locals 1200,*

2776, 2402 & 2087 v. D.C. Gov't, 46 D.C. Reg. 6513, Slip Op. No. 590 at p. 7, PERB Case No. 97-U-15A (1999). This principle is not germane to the present case as the Respondent does not contend that the Complainant failed to request bargaining.

The tests that the Board has applied in determining when a contractual violation is an unfair labor practice are discussed in *Teamsters Local Unions No. 639 & 730 v. D.C. Public Schools*:

> The Board has previously held that disputes over the meaning or application of terms of a collective bargaining agreement are matters for resolution through the grievance procedure rather than an Unfair Labor Practice Complaint. See, e.g., Fraternal Order of Police / Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department, 39 DCR 9617, Slip Op. No. 295 at n. 2, PERB Case No. 91-U-18 (1992). However, if an employer has entirely failed to implement the terms of a negotiated or arbitrated agreement such conduct constitutes a repudiation of the collective bargaining process and a violation of the duty to bargain. Cf., Electronic Reproduction Serv. Corp., 213 NLRB 758 (1974).
>
> In the absence of any specifics indicating a repudiation of the agreement as opposed to disputes over its terms, we conclude that this portion of the Complaint does not state a statutory violation, and it is, accordingly, dismissed.

43 D.C. Reg. 6633, Slip Op. No. 400 at p. 7, PERB Case No. 93-U-29 (1994). *See also D.C. Water & Sewer Auth. v. AFGE, Local 872*, 59 D.C. Reg. 4659 Slip Op. No. 949 at pp. 6-7, PERB Case No. 05-U-10 (2009).

The present case is one in which there is an absence of proof of a repudiation of the Agreement, and instead there are numerous disputes over the terms of the Agreement. As a result, the Complainant has not proven a statutory violation.

B. The Union Did Not Prove Repudiation of the Agreement.

The Union did not prove that the District entirely failed to implement the Agreement. The District did a number of things to implement the Agreement. In accordance with the Agreement, the District appointed three of the members of the Committee and also had technical advisors sitting with the Committee. (Tr. at p. 44; Ex. C-1 at p. 20). The City Administrator reviewed two reports of the Committee and requested changes. (R & R at p. 6). After the City Administrator requested changes, the City Administrator met with the Union's representatives

(*Id.*; Tr. at p. 81), and an economist for the Office of Labor Relations and Collective Bargaining met with the Union's economist. (R & R at p. 6; Tr. at pp. 103 & 106-107). Finally, the hearing examiner found that "Respondent presented credible evidence that it is amenable to continuing the process." (R & R at p. 16).

By sending the recommendations back to the Committee, the City Administrator did not repudiate the Agreement. In the District's view, the City Administrator's duty to perform under the Agreement did not arise because the Committee had not fulfilled the condition precedent of designing a plan sustainable within the budget and completing a report with its recommendations. (Respondent's Post-Hearing Br. at 7). Whether the Committee had fulfilled a condition precedent is a contractual issue not within the jurisdiction of the Board. *See F.O.P./Metropolitan Police Dep't Labor Comm. v. Metropolitan Police Dep't*, 59 D.C. Reg. 5427, Slip Op. 984 at pp. 7-8, PERB Case No. 08-U-09 (2009). The contractual nature of the issue is underscored by the Union's extended discussion in its post-hearing brief of canons of contractual interpretation that it regards as applicable. (Complainant's Post-Hearing Br. at pp. 18-20).

C. The Parties Have Genuine Disputes over the Terms of the Agreement.

"[W]hen a party simply refuses or fails to implement an award or negotiated agreement where no dispute exists over its terms, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." *AFGE, Local 872 v. D.C. Water & Sewer Auth.*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3. PERB Case No. 96-U-23 (1996). The Complainant correctly points out in its first exception that the phrase "where no dispute exists over its terms" as used in the preceding case, which the R & R cites, has been understood to refer to a *genuine* dispute. *See AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 51 D.C. Reg. 11403, Slip Op. No. 766 at p. 5, PERB Case No. 04-U-16 (2004); *AFGE, Local 631 v. D.C. Water & Sewer Auth.*, 51 D.C. Reg. 11379, Slip Op. No. 734 at p. 5, PERB Case No. 03-U-52 (2004). If a dispute asserted by a respondent is not genuine, failure to implement an agreement is an unfair labor practice. *Psychologists Union Local 3758 v. D.C. Dep't of Mental Health*, 59 D.C. Reg. 9770, Slip Op. No. 1260 at p. 3, PERB Case No. 06-U-40 (2012). This point does not change the result in the present case because the disputes over the terms of the Agreement are genuine.

The parties have genuine disputes concerning the duties of the Committee and of the City Administrator as set forth in article 7, section I(3)(A)(4)(c) and (d) of the Agreement. Those two sections provide:

> (c) Responsibilities of the [Committee]
>
> The Committee shall be responsible to:
>
> - Plan and design an enhanced retirement program for employees hired on or after October 1, 1987 with equitable sharing of costs and risks between employee and employer;

- Establish a formula cap for employee and employer contributions;
- Establish the final compensation calculation using the highest three-year consecutive average employee wages;
- Include retirement provisions such as disability, survivor and death benefits, health and life insurance benefits;
- Design a plan sustainable within the allocated budget;
- Draft and support legislation to amend the D.C. Code in furtherance of the "Enhanced Retirement Program."

(d) Duration of the Committee

> The Committee shall complete and submit a report with its recommendations to the City Administrator for the District of Columbia within one hundred and twenty (120) days after the effective date of the Compensation Units 1 and 2 Agreement.

(Ex. C-1 at pp. 20-21).

1. Duty to Design a Plan Sustainable within the Budget

The parties disagree on whether the Committee designed "a plan sustainable within the allocated budget" as required by section I(3)(A)(4)(c) of the Agreement. The Committee concluded that it carried out this duty, and the Complainant argued that the Committee's conclusion is entitled to deference. (Complainant's Post-Hearing Br. at pp. 6 & 17; Exceptions at p. 15). The Respondent and its witnesses insisted that the plan was not sustainable within the budget. (Tr. at pp. 25, 27-28, 61-65, 77-76; Respondent's Post-Hearing Br. at pp. 3 & 7).

2. Duty to Submit a Report with Recommendations to the City Administrator

The Agreement directs the Committee to "complete and submit a report with its recommendations to the City Administrator. . . ." (Ex. C-1, § I(3)(A)(4)(d)). The parties disagree about the import of the words "complete" and "recommendations" in this directive. The Respondent contends that the Committee's report and recommendations were not complete. (Tr. 75 & 96-97). Similarly, the hearing examiner noted that the Committee attached a one-page table to its report and recommendations. The hearing examiner found that that submission did not meet the requirements listed in section I(3)(A)(4)(c), which she quoted. In addition, the hearing examiner noted that a memorandum from the Chief Financial Officer stated that he would require "the findings of the Committee in order to project the fiscal impact on the District's budget and financial plan." (Ex C-2). The hearing examiner stated that the "document submitted by the Committee did not make findings." (R & R at p. 16).

In its third exception, the Complainant objects that "the Hearing Examiner reached beyond the parties' agreement to require compliance with a unilaterally issued memorandum by the Chief Financial Officer. This memorandum was not the parties' agreement." (Exceptions at p. 14). This assertion is inconsistent with the testimony of the Complainant's own witness, Al Bilik, Executive Assistant to the Union's Executive Director. Exhibit C-2 was introduced into evidence by the Complainant and identified by Bilik as "a condensed version of the agreement that negotiated [*sic*] that was referred to earlier. . . ." (Tr. at p. 39). Counsel for the Complainant had the witness read into the record the very language of the exhibit regarding findings that the hearing examiner also quoted to the dissatisfaction of the Complainant. (*Id.* at 41-42). Even if Exhibit C-2 were not what the Complainant's witness testified it was, the Complainant's objection would still be of no merit because the hearing examiner first noted that the Committee's report and recommendation did not satisfy the text of the Agreement and then alluded only secondarily to Ex. C-2.

Aside from the bearing of Ex. C-2 on the question, the Union's position is that the Committee by consensus agreed upon the submission. (Tr. at pp. 44-45 & 76; Exceptions at p. 15). The Union argues, "If the parties agreed that they made their submission to the City Administrator, it is not for the Hearing Examiner to second-guess the recommendations as being incomplete." (Exceptions at p. 15). This is an incongruous argument for the Complainant to make as the reason the hearing examiner took a second look at the Committee's recommendations is because the Complainant brought this case before the Board, which referred the case to the hearing examiner. If the hearing examiner simply assumed that either side's version of the facts was correct, she would not have been performing her assigned task and she could not make findings that would assist the Board in determining whether there was a genuine dispute. Because the hearing examiner performed her assigned task, it is clear from her findings and the arguments of the parties that there is a genuine dispute on what was required for the Committee's report to be complete.

In addition, the parties do not agree on the meaning of the word "recommendations" as used in section I(3)(A)(4)(d) of the Agreement. The District contends that the Committee was to make its recommendations to the City Administrator, who could reject them. (Tr. at pp. 85-86; Opposition at p. 4). The Union regards the City Administrator's role as ministerial and contends that the Agreement uses the word "recommendations" because "the plan could not be anything other than a recommendation until the City Council appropriated money to fund it." (Complainant's Post-Hearing Br. at p. 17).

Thus, the parties genuinely dispute the role of the City Administrator under the Agreement. The District adduced testimony and presented arguments in support of its view that the understanding and practice of the parties was that the City Administrator had an active role in the approval of recommendations. (Tr. at pp. 75, 79-80, 96; Opposition at pp. 8-9). Pursuant to that role, the City Administrator sent the recommendations back because they were not sustainable within the budget and were not consistent with the provisions of the Agreement. (Respondent's Post-Hearing Br. at p. 3). The Union denies that the Agreement gave the City Administrator the authority to reject recommendations, asserting that "the City Administrator's sole function in the pension reform process is to take the steps necessary to implement the plan."

(Complainant's Post-Hearing Br. at p. 17). The step the Union identifies in particular is the step of requesting the Chief Financial Officer to propose a fiscal impact statement. The City Administrator could make this request, but the Committee could not because only the mayor or his designee, a Council member, or a Council committee clerk may ask the Chief Financial Officer to prepare a fiscal impact statement. (*Id.* at 10-11).

The hearing examiner found logical flaws in both positions:

> If Respondent is correct, i.e., that the Committee makes recommendations to the City Administrator who then can respond to those recommendations, then it seems illogical to the Hearing Examiner that the parties would have explicitly provided that the Committee ceased to exist after it completed its submission to the City Administrator. The result would be that the City Administrator would not have an entity to which to respond. Thus, by default, the City Administrator would be the decision maker, a result not stated in the Agreement and not, to this reader, a reasonable interpretation of the language. (Elkouri & Elkouri, 6th ed., pp. 470-471). On the other hand, if the City Administrator's role was only that of a conduit, as argued by Complainant, there would be no reason to have the document submitted to that office in the first place. It could be sent directly to the CFO.

(R & R at p. 15).

The Complainant objects in its second exception that it gave a reason to have the Committee submit the document to the City Administrator rather than to the Chief Financial Officer directly: "In its brief, the Union presented a statutory[1] explanation for the parties' need to include the City Administrator in the process. But rather than consider the Union's argument, the Hearing Examiner determined the District's admittedly unreasonable explanation must be the only explanation, or at least that it was enough, in the absence of a counter-argument, to create a genuine dispute." (Exceptions at p. 10). In the *presence* of the Union's counter-argument, however, the District's argument that the City Administrator had decision-making authority is enough to create a genuine dispute.

Related to this exception, the Union excepts to the hearing examiner's refusal to allow Eric Bunn, president of Local 2725 of the American Federation of Government Employees, to testify on the contractual role of the City Administrator. *Id.* Before Mr. Bunn began his testimony, the hearing examiner tried to determine the probative value of his testimony on this point:

[1] Actually, the Union cited the website of the Chief Financial Officer rather than a statute in support of its assertion that only the mayor or his designee, a Council member, or a Council committee clerk may ask the Chief Financial Officer to prepare a fiscal impact statement. (Complainant's Post-Hearing Br. at p. 11).

> HEARING EXAMINER: But is that something your witness could testify about?
>
> MS. ZWACK: Yes. . . . Based on being part of the -- when in two negotiations and having drafted the Article 7.
>
> HEARING EXAMINER: I mean, how does he know what the authority of the City Administer is?
>
> MS. ZWACK: Based on a contractual authority?
>
> HEARING EXAMINER: Then he's interpreting what this is. . . . Again, I don't really want these provisions on [pages] 18, 19, 20 and 21 [of Ex. C-1] reviewed any more. They say what they say and each side interprets it differently, and I think the language is open to interpretation on both parts and I'm more interested in reading your final arguments on that, but I don't need for him to say, this is what he thinks it said, I really don't.

(Tr. at pp. 116-17).

Thus, the hearing examiner determined that the witness's testimony interpreting the Agreement would not have probative value. Issues concerning the probative value of evidence are reserved to the hearing examiner. *Bonaccorsy v. Exec. Council F.O.P./Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 3364, Slip Op. No. 826 at p. 6, PERB Case No. 03-S-01 (2011).

D. Conclusion

The evidence received by the hearing examiner along with the arguments of counsel are more than enough to support the hearing examiner's conclusion that "[t]he role of the City Administrator is only one of the items in the relevant provision of the Agreement that [the] Hearing Examiner found was 'reasonably susceptible of different constructions or interpretations'." (R & R at p. 15) (quoting *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979)). The Agreement's provisions calling for completion of a report and a plan sustainable within the budget are also reasonably susceptible of different interpretations. On all these matters the parties have genuine disputes. Those genuine disputes, along with the Union's failure to prove a repudiation of the Agreement, prevent the Union from establishing an unfair labor practice. Therefore, the Board adopts the hearing examiner's recommendation that the case be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

March 14, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 08-U-36 was served via U.S. Mail to the following parties on this the 27th day of March 2013:

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VIA U.S. MAIL

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VIA U.S. MAIL

Adessa Barker
Administrative Assistant

Government of the District of Columbia
Public Employee Relations Board

In the Matter of: District of Columbia Metropolitan Police Department Complainant, and Fraternal Order of Police, Metropolitan Police Department Labor Committee Respondent.	PERB Case No. 12-A-02 **Administrative Dismissal** Slip Op. No. 1379

EXECUTIVE DIRECTOR'S ADMINISTRATIVE DISMISSAL

The District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), on behalf of the District of Columbia's Metropolitan Police Department ("MPD"), filed an arbitration review request ("Request") in the above-captioned matter, asking the Board to review an arbitration award ("Award") that resolved a class grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP"). FOP filed an Opposition to the Request ("Opposition").

On April 27, 2012, PERB received a written Notice of Agency's Withdrawal of Arbitration Review Request in PERB Case No. 12-A-02, in reference to Arbitrator Paul Clark's Decision and Order in FMCS Case No. 10-01341-A.

Therefore, pursuant to PERB Rule 500.4, this matter is administratively dismissed with prejudice.

4/29/13
Date

Ondray T. Harris
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Administrative Dismissal in PERB Case No. 12-A-02 was transmitted via U.S. Mail to the following parties on April 29, 2013.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Department of Corrections,	
Petitioner,	
v.	PERB Case No. 10-A-03
Fraternal Order of Police/Department of Corrections Labor Committee,	Opinion No. 1380
Respondent.	**Motion for Reconsideration**

DECISION AND ORDER

I. Statement of the Case

On September 15, 2009, Arbitrator Stephen E. Alpern issued an award ("Award") that reinstated an employee who had been terminated by the District of Columbia Department of Corrections ("Department" or "Complainant"), reduced the penalty to a suspension without pay, and provided the Fraternal Order of Police/Department of Corrections Labor Committee the opportunity to file a motion for attorney's fees. The Arbitrator concluded that he had the authority to award attorney's fees under the Back Pay Act, 5 U.S.C. § 5596. (Award at p. 26).

The Department filed an arbitration review request, arguing that the Arbitrator's conclusion that he had authority to award attorney's fees exceeded his jurisdiction and was on its face contrary to law and public policy.[1] The Board found no basis for setting aside the Award and denied the arbitration review request. *D.C. Dep't of Corrections and FOP/Dep't of Corrections Labor Comm.*, Slip Op. No. 1306, PERB Case No. 10-A-03 (Aug. 18, 2011). The Department filed a motion for reconsideration ("Motion") on August 23, 2012, arguing again that the Arbitrator exceeded his jurisdiction and that the Award was on its face contrary to law and public policy. Specifically, the Department disputes the Arbitrator's interpretation of a provision of the parties' collective bargaining agreement ("Agreement") providing that "[a]ll parties shall have the right, at their own expense, to legal and/or stenographic assistance at the hearing." The Department contends that this provision requires parties to pay their own legal fees and waives their right under the Back Pay Act to collect attorney's fees.

[1] *See* D.C. Code § 1-605.02(6); PERB R. 538.3.

III. Discussion

A. Jurisdiction of the Arbitrator

An arbitrator derives his jurisdiction from the collective bargaining agreement and any applicable statutory or regulatory provision. *D.C. Water & Sewer Auth. v. AFSCME, Local 2091*, Slip Op. No. 1276 at p. 3, PERB Case No. 04-A-24 (June 12, 2012). The question of when an arbitrator's award is within that jurisdiction was "addressed in *Steel Workers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 597 (1960), wherein the Court stated that the test is whether the Award draws its essence from the collective bargaining agreement." *D.C. Pub. Schs. v. AFSCME, District Council 20 (on behalf of Johnson)*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987).

As it did in its arbitration review request, the Department relies in its Motion upon a superseded four-part inquiry concerning whether an award draws its essence from the collective bargaining agreement. The four-part inquiry was formulated by the Sixth Circuit in *Cement Divisions, National Gypsum Co. v. United Steelworkers of America*, 793 F.2d 759 (6th Cir. 1986), and formerly used by the Board in its arbitration review cases. The Department cites one of those cases, *D.C. Water and Sewer Authority and AFGE Local 631*, in which the Board paraphrased the four-part inquiry of *Cement Divisions*:

> An arbitration award fails to derive its essence from a collective bargaining agreement when the: (1) award conflicts with the express terms of the agreement; (2) award imposes additional requirements that are not expressly provided in the agreement; (3) award is without rational support or cannot be rationally derived from the terms of the agreement, and (4) award is based on general considerations of fairness and equity, instead of the precise terms of the agreement.

49 D.C. Reg. 11123, Slip Op. No. 687 at p. 6, PERB Case No. 02-A-02 (2002). In its Motion, Complainant asserts that "PERB cannot uphold a contract if any, not necessarily all, of the foregoing conditions apply." (Motion at p. 3).

Although Complainant regards the four-part inquiry of *Cement Divisions* as binding, we specifically note that the Sixth Circuit and this Board no longer do. The Sixth Circuit explained subsequent developments in the law in *Michigan Family Resources, Inc. v. SEIU Local 517*:

> During the 20 years since *Cement Divisions*, the Supreme Court has refined the standard of review in this area in two cases, [*United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29 (1987) and *Major League Baseball Players Association v. Garvey*, 532 U.S. 504 (2001),] both of which suggest that *Cement Divisions*

> gives federal courts more latitude to review the merits of an arbitration award than the Supreme Court permits. . . . Accordingly, instead of continuing to apply *Cement Divisions*' four-part inquiry, a test we now overrule, we will consider the questions of "procedural aberration" that *Misco* and *Garvey* identify. *Misco*, 484 U.S. at 40 n.10. Did the arbitrator act "outside his authority" by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract"? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

475 F.3d 746, 751-53 (2007).

The Board recognized the overruling of *Cement Divisions* in its original opinion in this matter, *District of Columbia Department of Corrections*, Slip Op. No. 1306 at p. 7, and in many other opinions issued over the past three years in which the Board has made clear that it will use the above test adopted in *Michigan Family Resources* and not the test adopted in *Cement Divisions*. *See F.O.P./Metro. Police Dep't Labor Comm. (on behalf of James) and D.C. Metro. Police Dep't*, Slip Op. No. 1293 at p. 12, PERB Case No. 10-A-10 (July 11, 2012); *D.C. Water & Sewer Auth. v. AFSCME, Local 2091*, Slip Op. No. 1276 at p. 4 & n.2, PERB Case No. 04-A-24 (June 12, 2012); *F.O.P. Dep't of Corrections Labor Comm. v. D.C. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. 1271 at p. 7, PERB Case No. 10-A-20 (2012); *D.C. Dep't of Fire & Emergency Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at pp. 3-4, PERB Case No. 10-A-09 (2012); *D.C. Dep't of Consumer & Regulatory Affairs v. AFGE, Local 2725*, Slip Op. No. 1249 at p. 4, PERB Case No. 10-A-06 (Mar. 27, 2012); *D.C. Dep't of Hous. & Cmty. Dev. and AFGE, Local 2725*, 59 D.C. Reg. 12610, Slip Op. No. 1228 at p. 15, PERB Case No. 09-A-08 (2011); *Nat'l Ass'n of Gov't Employees (on behalf of Geter) and D.C. Office of Unified Commc'ns*, 59 D.C. Reg. 6832, Slip Op. No. 1203 at pp. 6-7, PERB Case No. 10-A-08 (2011); *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Baldwin)*, 59 D.C. Reg. 6787, Slip Op. No. 1133 at pp. 7-8, PERB Case No. 09-A-12 (2011); *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Johnson)*, 59 D.C. Reg. 3959, Slip Op. No. at p. 9 & n.2, PERB Case No. 08-A-01 (2010).

The Board's original opinion in this matter applied the *Michigan Family Resources* test and found that it was satisfied, and thus it properly found that the award drew its essence from the Agreement. *D.C. Dep't of Corrections*, Slip Op. No. 1306 at pp. 7-8. Despite all of the cases cited above, which were issued before the Department filed its Motion, the Department analyzes the case according to the superseded *Cement Divisions* test. In the midst of that analysis, the Department alludes only briefly to the *Michigan Family Resources* test, asserting that "the

Arbitrator rendered the contractual provision so meaningless that he cannot be said to have 'arguably construe[ed] or appl[ied] the contract.'" (Motion at pp. 5-6) (citing *D.C. Dep't of Corrections and F.O.P./Dep't of Corrections Labor Comm.*, Slip Op. No. 1306, PERB Case No. 10-A-03 (Aug. 18, 2011)). This assertion is nothing more than a disagreement with the Arbitrator's interpretation. The Arbitrator did not render the provision meaningless; rather, he quite reasonably gave it a different meaning than the Department advocates:

> The language merely states that the parties have the right, at their own expense, to legal or stenographic assistance (which is not recoverable under the Back Pay Act) at the hearing. Nothing in the language "clearly and unmistakably" states that a grievant may not subsequently make a claim for fees under the Back Pay Act when an arbitrator determines that a personnel action was unwarranted.

(Award at p. 26).

In so stating, the Arbitrator was clearly construing and applying the contract. The Department says nothing about the other grounds for reversal in the *Michigan Family Resources* test. More particularly, the Department does not allege that the Arbitrator resolved a dispute not committed to arbitration, committed fraud, had a conflict of interest, or acted dishonestly. Accordingly, the Motion offers no reason to reconsider the Board's decision that the Award drew its essence from the Agreement and, consequently, that the Arbitrator did not exceed his jurisdiction.

B. Law and Public Policy

A petitioner claiming that an arbitration award is contrary to law and public policy has the burden to specify applicable law and definite public policy that mandate that the arbitrator arrive at a different result. *Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333 at p. 3, PERB Case No. 12-A-01(2012). The Department relies on the case of *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009), in which the Supreme Court held that a clear and unmistakable requirement of a collective bargaining agreement between the Service Employees International Union and the Realty Advisory Board on Labor Relations ("RAB") to arbitrate ADEA claims was enforceable. Complainant asserts that in this case "the Supreme Court reasoned that it 'must respect [the] choice' of parties to arbitrate, when such choice was 'freely negotiated.'" (Motion at p. 7) (quoting *Pyett*, 556 U.S. at 260). Although Complainant asserts that this reasoning qualifies as definite public policy (Motion at p. 7 n.16), Complainant has not shown it to be definite public policy as Complainant altered the quotation from *Pyett* to overstate what the Court actually held. The choice that the Court said must be respected was a choice of Congress, not the parties:

> The NLRA provided the Union and the RAB with statutory authority to collectively bargain for arbitration of workplace discrimination claims, and Congress did not terminate that authority with respect to federal age-discrimination claims in the

> ADEA. Accordingly, there is no legal basis for the Court to strike down the arbitration clause in this CBA, which was freely negotiated by the Union and the RAB, and which clearly and unmistakably requires respondents to arbitrate the age-discrimination claims at issue in this appeal. Congress has chosen to allow arbitration of ADEA claims. The Judiciary must respect that choice.

Pyett, 556 U.S. at 260.

Not only is the alleged public policy indefinite, but also the Department's position on *Pyett* is indefinite as well. The Department contends in one part of its Motion that *Pyett* is analogous and in another part that it is distinguishable. The Department submits that the arbitration clause in *Pyett*[2] is analogous to the Agreement's provision that "[a]ll parties shall have the right, at their own expense, to legal and/or stenographic assistance at the hearing." In *Pyett*, the Department notes, the Court found that the parties negotiated a provision that required arbitration of ADEA claims and Congress had not terminated the parties' authority to do so. (Motion at p. 7). The Department claims that in the present case the parties to the Agreement similarly negotiated a provision requiring the parties to pay their own legal fees, and the Back Pay Act did not terminate the parties' authority to do so. (*Id.*). "Just as the Supreme Court did in *Pyett*, the PERB must respect the freely negotiated choices reached by the parties . . ." (*Id.* at 8).

Having drawn that analogy, the Department then distinguishes *Pyett*, apparently because the Arbitrator cited it: "To the extent that the Award relied on *Pyett*, such reliance is misplaced. *Pyett* examined whether a contractual clause may waive a substantive right (*i.e.*, right to not be age-discriminated against in the workplace). It did not examine whether a contractual clause may waive a remedy (*e.g.*, attorney fees), which is at issue here." (*Id.* at p. 8 n.17). The case is distinguishable but not for the reasons given by the Department, the first of which is false and the second of which conflicts with the Department's argument. First, *Pyett* did not examine whether a contractual clause may waive a substantive right. To the contrary, the Court took it as a given that "federal antidiscrimination rights may not be prospectively waived"[3] but closely examined whether the procedural right to litigate in federal court could be waived. Second, although it is true that the Court did not consider whether a contractual clause could waive a remedy, the Department's argument is that the waiver of ADEA procedural rights is analogous to the alleged waiver of a remedy in the instant case. If it is significant that the waiver in *Pyett* was not a waiver of a remedy, then the Department's analogy fails.

The correct distinction between *Pyett* and the instant case was drawn by the Arbitrator, who stated in his Award that the Court held

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[2] "There shall be no discrimination against any present or future employee by reason of race, creed, color, age, . . . or any other characteristic protected by law, including, but not limited to . . . the Age Discrimination in Employment Act . . . or any other similar laws, rules, or regulations. All such claims shall be subject to the grievance and arbitration procedures (Articles V and VI) as the sole and exclusive remedy for violations." *Pyett*, 556 U.S. at 252.
[3] 556 U.S. at 265.

> that the Union may waive the employee's procedural right to bring claims in federal court by "clearly and unmistakably" requiring the employee to arbitrate the claims. Whether or not the right to attorney's fees is a substantive right, the fact is that the language of the Agreement does not "clearly and unmistakably" waive the right to collect fees under the Back Pay Act. The language merely states that the parties have the right, at their own expense, to legal or stenographic assistance (which is not recoverable under the Back Pay Act) at the hearing. Nothing in the language "clearly and unmistakably" states that a grievant may not subsequently make a claim for fees under the Back Pay Act when an arbitrator determines that a personnel action was unwarranted.

(Award at p. 26).

The Department disagrees with the Arbitrator's interpretation of the Agreement and insists that the Agreement "requires, without exception, the parties to pay for their legal counsel." (Motion at p. 7). The Department's entire argument that *Pyett* is analogous and that the Award is contrary to law and public policy rests upon this rival interpretation of the Agreement. Notwithstanding, the Department's disagreement with the Arbitrator's interpretation of the parties' contract does not render the Award contrary to law and public policy. *AFGE, Local 1975 and Dep't of Pub. Works*, 48 D.C. Reg. 10955, Slip Op. No. 413 at pp. 2-3, PERB Case No. 95-A-02 (1995).

Where the Board's decision was reasonable, supported by the record, and based on Board precedent, we will find no basis for reversal of the Board's decision. *F.O.P./Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 6, PERB Case No. 08-U-19 (2011). Such is the case here, where the Department "has failed to allege any error of law or in the Board's reasoning which requires reconsideration of its decision." *F.O.P./Metro. Police Dep't Labor Comm. and D.C. Metro. Police Dep't*, Slip Op. No. 1283 at p. 2, PERB Case No. 07-U-10 (2008). Therefore, we deny Complainant's Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Corrections' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 30, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-A-03 is being transmitted to the following parties on this the 30th day of April 2013.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 11-A-11
v.	Opinion No. 1382
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner District of Columbia Metropolitan Police Department ("MPD") filed the above-captioned Arbitration Review Request ("Request"), seeking review of Arbitrator Donald Wasserman's Arbitration Award ("Award"). MPD asserts that the Arbitrator was without authority or exceeded his jurisdiction in awarding attorneys' fees to Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP"). (Request at 3). FOP filed an Opposition to the Request ("Opposition").

The Request and Opposition are now before the Board for disposition.

II. Discussion

A. Award

The Award stems from the termination of Grievant Phillip Thompson on November 10, 2009 (Award at 15). The Arbitrator determined that the Grievant's termination violated D.C. Code § 5-1031 (the "90-day rule"), placed the Grievant in administrative double-jeopardy, and was not supported by substantial evidence. (Award at 29-30). The Arbitrator ordered MPD to

reinstate the Grievant with back pay, benefits, and seniority. (Award at 30). In its Request, MPD does not dispute this portion of the Award.

In addition to reinstating the Greivant, the Arbitrator granted FOP's request for attorneys' fees, stating "[s]uch fees are in the interest of justice and shall be reasonable and in accord with the U.S. Code Title 5, Chapter 55, Section 5596, Back Pay Act." (Award at 30). It is this portion of the Award that MPD asks the Board to modify or overturn. (Request at 3).

B. Position of MPD before the Board

In its Request, MPD contends that the Arbitrator was without authority to award attorneys' fees to the Grievant's counsel. (Request at 3). MPD states that the Arbitrator's authority arises directly from the terms of the parties' collective bargaining agreement ("CBA"), and that courts are obligated to reverse awards in excess of an arbitrator's lawful authority. (Request at 4-5). MPD contends that the Award does not draw its essence from the CBA, and must be overturned if the Award (1) conflicts with the express terms of the CBA; (2) imposes additional requirements that are not expressly provided in the agreement; or (3) cannot be rationally derived from the terms of the CBA. (Request at 6; *citing D.C. Water and Sewer Authority v. American Federation of Government Employees, Local 872*, 54 D.C. Reg. 2582, PERB Case No. 04-A-10 (2007)).

Next, MPD alleges that although Article 19 E of the parties' CBA provides that the "fee and expense of the *arbitrator* shall be borne by the losing party," it does not require that the losing party "pay the fee and expense of *arbitration*." (Request at 6) (emphasis in original). MPD states that as the CBA does not provide for payment of attorneys' fees, the Arbitrator exceeded his authority in awarding attorneys' fees, and the Award should be overturned. (Request at 7).

C. Position of FOP before the Board

In its Opposition, FOP alleges that the Arbitrator did not exceed his authority in issuing an award of attorneys' fees. (Opposition at 6). FOP contends that the Arbitrator's authority for the Award is derived from Article 19 E of the parties' CBA, which "allows the Arbitrator the freedom to craft his or her own suitable remedy." (Opposition at 8). FOP analogizes the circumstances of this case to cases involving the "55-day rule" of Article 12, § 6 of the parties' CBA. (Opposition at 9). Although the CBA does not provide for a specific remedy for violations of the 55-day rule, arbitrators frequently use their discretion to craft a remedy. *Id.* FOP states that the Arbitrator did not exceed his authority because the CBA does not prevent an award of attorneys' fees, and Article 19 does not limit an arbitrator's remedial options. (Opposition at 10).

Further, FOP alleges that MPD's challenge to the Award is a mere disagreement with the Arbitrator's findings and conclusions. (Opposition at 10). FOP asserts that the facts of the case warranted an award of attorneys' fees, and the Arbitrator did not err in using the Back Pay Act to fashion the Award. (Opposition at 11).

D. Analysis

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6) (2001 ed.).

An arbitrator does not exceed his authority by exercising his equitable power to formulate a remedy unless the CBA expressly restricts his equitable power. *See Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee,* 59 D.C. Reg. 6787, Slip Op. No. 1133 at p. 8, PERB Case No. 09-A-12 (2011); *District of Columbia Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Further, a CBA's prohibition against awards that add to, subtract from, or modify the CBA does not expressly limit the arbitrator's equitable power. *Metropolitan Police Dep't*, Slip Op. No. 1133 at p. 8.

Contrary to MPD's allegations, the Arbitrator did not exceed his authority by formulating a remedy that awarded attorneys' fees to FOP. MPD has not cited any provision in the CBA which expressly limits an arbitrator's equitable power. (Request at 4-7). Therefore, the Arbitrator did not exceed his authority, and the Board will not overturn the Award on this ground.

MPD alleges that Article 19 E, § 5(7) does not provide that a losing party shall pay the fee and expense of arbitration, only the fee and expense of the arbitrator. (Request at 6). Article 19 E, § 5(7) states: "A statement of the arbitrator's fee and expense shall accompany the award. The fee and expense of the arbitrator shall be borne by the losing party, which shall be determined by the Arbitrator." (Request Attachment 2). For the Board to overturn the Award as in excess of the Arbitrator's authority, MPD must show that the CBA expressly limits an arbitrator's equitable power. *Metropolitan Police Dep't*, Slip Op. No. 1133 at p. 8. MPD's attempt to parse the language of Article 19 E does not provide the Board with such a limitation. Instead, MPD asks the Board to accept its interpretation of the CBA over that of the Arbitrator. (Request at 6). The Board will not overturn an arbitration award based simply upon the petitioning party's disagreement with the arbitrator's findings. *Fraternal Order of Police/Dep't of Corrections Labor Committee v. D.C. Dep't of Corrections*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012). Therefore, the Arbitration Review Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 1, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-A-11 was transmitted via U.S. Mail & e-mail to the following parties on this the 1st day of May, 2013.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Department of Health,	
Petitioner,	PERB Case No. 13-A-01
v.	Opinion No. 1383
American Federation of Government Employees, Local 2725, AFL-CIO,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner District of Columbia Department of Health ("Petitioner" or "Agency") filed the above-captioned Arbitration Review Request ("Request"), seeking review of Arbitrator Salvatore Arrigo's Arbitration Award ("Award"). Petitioner asserts that the Arbitrator exceeded his jurisdiction in issuing an Award that promoted Grievants Sharon Cave and Neng Fang[1] ("Grievants") from a DS-9 position to a DS-11 position, with back pay. (Award at 4). Additionally, Petitioner alleges that the portion of the Award granting attorneys' fees to Respondent American Federation of Government Employees, Local 2725 ("Respondent" or "Union") under the Federal Back Pay Act ("BPA") is contrary to law and public policy. (Award at 5).

Respondent filed an Opposition to the Arbitration Review Request ("Opposition"), denying the Petitioner's allegations, and raising six affirmative defenses: (1) the Request is not in compliance with Board Rule 538; (2) the Request is untimely; (3) the Agency improperly raised its BPA argument for the first time before PERB; (4) the Agency's arguments are based on a mere disagreement with the Arbitrator's interpretation of the parties' collective bargaining

[1] The underlying grievance filed in this case lists Grievant Fang's name as alternately "Fang" or "Fung." (Request Exhibit 3). The Award and Request use the name "Fang," as will the Board in this Decision and Order.

agreement ("CBA"); (5) the Agency failed to assert any positive law violated by the Award; and (6) the Board has ruled that the employees in Compensation Units 1 and 2 are covered by the BPA. (Opposition at 6).

The Request and Opposition are now before the Board for disposition.

II. Discussion

A. Award

The Award is based on a grievance filed by the Union on behalf of eleven[2] (11) sanitarians employed by the Agency. (Award at 2). The sanitarians are responsible for inspecting food establishments, food purveyors, mobile vendors, hotels, swimming pools, massage parlors, beauty salons, and barber shops for compliance with government regulations pertaining to safety and hygiene. *Id.* The grievance sought to have the eleven (11) grievants, paid at the DS-9 and DS-11 levels, promoted to a DS-12 position with back pay. (Award at 5). The Union described the issue to be determined by the Arbitrator as: "Is the District of Columbia Department of Health in Violation of Article 26, Section E[3], of the collective bargaining agreement by failing to pay its food inspection sanitarians equally for performing the same work and, if so, what shall be the remedy?" (Award at 5). The Agency stated the issues as: "(a) Whether this grievance is precluded by Article 26, Section G of the collective bargaining agreement as a classification/equal pay for equal work appeal, thus making the issue substantially non-arbitrable; and (b) Whether any of the 12 grievants are performing substantially similar work as Mr. Taylor performed when he was grade 12 Sanitarian from 2001 to 2006." (Award at 5-6). The Arbitrator found the issues to be determined as: (1) whether Article 26, Section G of the CBA precluded the grievance; (2) whether a "career ladder" to a DS-12 position was created by a 1998 job opening announcement; and (3) "the application of the contractual requirement of 'equal pay for substantially equal work.'" (Award at 6).

The Arbitrator dismissed the Union's request to have all eleven (11) grievants promoted to a DS-12 level, finding that while Article 26, Section G of the parties' CBA did not preclude the grievance, there was no career ladder to a DS-12 position. (Award at 10, 16). Neither the Petitioner nor the Respondent object to this portion of the Award. (Award at 16).

Each of the sanitarians held DS-11 positions except Grievants Cave and Fang, who held DS-9 positions. Though the Arbitrator refused to promote all of the grievants, including Grievants Cave and Fang, to a DS-12 position, he determined that "[e]ven considering that the

[2] The pleadings show an apparent disagreement as to the number of grievants involved in the grievance and arbitration proceedings. The grievance and Intent to Arbitrate list thirteen (13) grievants (Request Exhibit 3). The Award mentions eleven (11) grievants (Award at 1), while the Request states that there are twelve (12) grievants (Request at 4). As the exact number of grievants in the underlying grievance is not relevant to the outcome of this Decision and Order, the Board will refer to eleven (11) grievants, consistent with the Award at issue in this case.

[3] Article 26, § E states: "The parties agree that the principle of equal pay for substantially equal work shall be applied to all position classifications and personnel actions in accordance with the D.C. Code." (Request Exhibit 2 at p. 31).

thrust of the grievance sought the promotion of all grievants to grade 12, I find the grievance subsumes the issue of obtaining equal pay for substantially equal work for all employees, thereby opening for inquiry whether Ms. Cave and Mr. Fang are performing substantially equal work as the grade 11 sanitarians." (Award at 16-17).

After considering the Grievants' work histories, the Arbitrator concluded that "the facts herein support the finding that Ms. Cave and Mr. Fang are performing substantially equal work as that of existing grade 11 sanitarians," and determined that the Grievants should receive equal pay, be promoted to DS-11 as of the day the grievance was filed, and receive back pay to that date. (Award at 18).

In addition, the Arbitrator awarded the Union attorneys' fees pursuant to the BPA, to the extent that the grievance was sustained. (Award at 18).

B. Position of the Agency before the Board

In its Request, the Agency makes two allegations: first, that the Arbitrator exceeded his authority in resolving a dispute that was never committed to arbitration, and second, that the award of attorneys' fees is contrary to law and public policy. (Request at 4-6).

The Agency cites to Article 10, Section E(3) of the parties' CBA, which states that an arbitrator shall hear and decide only one grievance in each case unless the parties mutually agree to consolidate grievances. (Request at 4; Request Ex. 2 at p. 15). The Agency states that in the grievance, the Union requested that the eleven (11) sanitarians be promoted to a DS-12 level, based upon the Union's assertion that the sanitarians were performing the same level 12 work performed by a former DS-12 sanitarian in their department. (Request at 4). The Agency alleges that:

> [a]t no time was there any request or mention by the union to modify its grievance to request that Ms. Cave and Mr. Fang be promoted to a grade 11...[i]n each step of the grievance process the union stated that the remedy requested was the same remedy requested in its step one grievance, namely, that all [eleven] grievants be promoted to a grade 12. (Request at 4-5).

Further, the Agency argues that "[w]hile likely based on the same principle of equal pay for equal work espoused in Respondent's grievance," a remedy requesting that Grievants Cave and Fang be promoted to grade 11 would change the nature of the grievance. (Request at 5). Specifically, an assertion that the Grievants have been doing the work of the DS-11 sanitarians is a separate assertion requiring a separate remedy than the underlying grievance in this case, which contended that the eleven (11) sanitarians were doing the same work as a former grade 12 sanitarian. *Id.* The Agency alleges that in awarding Grievants Cave and Fang a promotion to DS-11, the Arbitrator "essentially ruled on a second grievance issue that was never presented to the Agency for a response and therefore never committed to arbitration." *Id.*

Additionally, the Agency alleges that the award of attorneys' fees is contrary to law and public policy. (Request at 5). The Agency states that the BPA "allows an employee who, *on the basis of a timely appeal*, is found to have been affected by an unwarranted personnel action resulting in the reduction of pay to collect reasonable attorneys' fees." *Id.* (emphasis in original). Further, the Union argued in its post-arbitration brief that it was entitled to attorneys' fees under the BPA if the grievance was sustained. *Id.* The Agency asserts that the Award did not sustain the grievance because the Award exceeded the Arbitrator's jurisdiction. (Request at 6). Further, because a grievance requesting Grievants Cave and Fang be promoted to grade 11 was never filed, there was no Agency decision on that issue from which to make a timely appeal. *Id.* The Agency alleges that since the grievance involving Cave and Fang's promotion "was not sustained and the award was not based on a timely appealed Agency decision, the award of attorneys' fees is contrary to law and public policy and should be overturned." *Id.*

As a second prong to its law and public policy argument, the Agency asserts that the BPA does not apply to the Grievants. (Request at 6-10). Specifically, the Agency contends that any application of the BPA was negated on February 4, 2005, when the D.C. government published final compensation regulations which implemented a new compensation system for Career, Legal, Excepted, and Management Supervisory Services. (Request at 7). The Agency states that the D.C. government's statutory and regulatory provisions do not provide for the award of attorneys' fees. *Id.*

In support of this contention, the Agency cites to *White v. D.C. Water and Sewer Authority*, 962 A.2d 258 (D.C. 2008), where the D.C. Court of Appeals found that the D.C. Water and Sewer Authority ("WASA") exempted itself from any entitlement to attorneys' fees under the BPA by establishing a comprehensive personnel system for its employees. (Request at 7-8). The Agency argues that the court in *White* "did not recognize any continued employee entitlement to attorneys' fees under the federal Back Pay Act which existed under the earlier compensation system." (Request at 8). Further, the Agency states that the D.C. Court of Appeals has consistently held that the BPA applies where there are no back pay provisions to replace it, and that the D.C. Council has "unequivocally specified in D.C. Official Code § 1-632.02(a)(5)(G)(2006 Repl.) that the federal Back Pay Act would one day cease to apply to District Employees." *Id., citing Zenian v. D.C. Office of Employee Appeals*, 598 A.2d 1161 (D.C. 1991); *District of Columbia v. Brown*, 739 A.2d 832, 835, 841 (D.C. 1991). The Agency concludes by stating that:

> [a] review of the [Comprehensive Merit Personnel Act], the District government's statutory authority for its employees and Chapter 11 of the new D.C. Personnel Regulations on compensation, in particular § 1149 on back pay, indicates that there is no provision for attorneys' fees in the instant case. Accordingly...given that there is no express federal or District statutory or regulatory authority that permits the award of attorneys' fees in this matter, each party should be responsible for its own counsel fees. (Request at 9).

C. Position of the Union before the Board

The Union disputes the Agency's assertion that the grievance was based on the Union's assertion that the eleven (11) sanitarians were performing grade 12 work, and that there was never a request to modify the grievance to request that Grievants Cave and Fang be promoted to grade 11. (Opposition at 2-3). The Union avers that it submitted the following issue to the Arbitrator:

> Is the District of Columbia Department of Health in violation of Article 26, Section E, of the collective bargaining agreement by failing to pay its food inspection sanitarians equally for performing the same work and if so, what shall be the remedy? (Opposition at 2; Award at 5).

The Union contends that during the arbitration hearing and in its briefs, the Agency never argued that the Union's presentation of the issue was beyond the scope of the original grievance. (Opposition at 2-3). Further, the Union states that the parties' CBA specifically authorizes an arbitrator to determine the issue or issues to be heard. (Opposition at 3; *citing* CBA Article 10, § E(8)[4], Opposition Exhibit B). The Union denies that the Arbitrator exceeded his authority in awarding a remedy less than the remedy initially requested, and points to Article 10, §E(12) of the CBA, which states that the arbitrator shall have full authority to award a remedy. (Opposition at 3).

On the matter of attorneys' fees, the Union alleges that it made its request for attorneys' fees in its opening statement the arbitration hearing[5], and fully briefed the issue in its brief to the Arbitrator. (Opposition at 3; Opposition Exhibit D) The Union contends that Agency did not raise its objections to the Union's request for attorneys' fees before the Arbitrator, and the Arbitrator did not rule on these objections. (Opposition at 3). The Union asserts that the Agency's argument against the award of attorneys' fees was waived and is not properly before the Board. *Id.* Further, it argued that the Agency has failed to state a law, public policy, or source of public policy violated by the Award, and the Agency's arguments were a mere disagreement with the Arbitrator's conclusions. (Opposition at 3-4).

In its Opposition, the Union raises six affirmative defenses: (1) the Request is not in compliance with Board Rule 538; (2) the Request is untimely; (3) the Agency improperly raised its BPA argument for the first time before the Board; (4) the Agency's arguments are based on a mere disagreement with the Arbitrator's interpretation of the parties' CBA; (5) the Agency failed

[4] Article 10, § 10(E)(8) of the parties' CBA states: "If the parties fail to agree to a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard consistent with this Agreement."

[5] At the hearing, the Union's counsel stated: "The Union asks that you order the promotions to be retroactive and award back pay to the date of the grievance and direct [the Agency] to pay the Union's attorneys' fees, in accordance with the federal Back Pay Act." (Opposition Exhibit C at 189).

to assert any positive law violated by the Award; and (6) the Board has ruled that the employees in Compensation Units 1 and 2 are covered by the BPA. (Opposition at 6).

D. Analysis

The Comprehensive Merit Personnel Act ("CMPA") authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6) (2001 ed.).

The Agency alleges that the Arbitrator exceeded his jurisdiction by resolving a dispute not committed to arbitration. (Request at 4). The Agency contends that by determining that Grievants Cave and Fang should be promoted to DS-11, the Arbitrator effectively created a second grievance, in violation of Article 10, § E(3) of the parties' CBA, which states that "[t]he arbitrator shall hear and decide only one (1) grievance in each case unless the parties mutually agree to consolidate grievances." (Request at 4; Request Exhibit 2 at p. 15). The Union contends that the parties' CBA permits an arbitrator to determine the issue or issues to be heard. (Opposition at 3). Article 10, § E(8) of the parties' CBA states that "[i]f the parties fail to agree to a joint submission of the issue for arbitration, each shall submit a separate submission and the arbitrator shall determine the issue or issues to be heard consistent with this Agreement." (Request Exhibit 2 at p. 15). The Union frames the DS-11 promotions not as a second grievance, but as an exercise of the Arbitrator's "full authority to award a remedy." (Opposition at 3; *citing* Article 10, § E(12), Opposition Exhibit B at p. 15).

An arbitrator's authority is derived "from the parties' agreement and any applicable statutory and regulatory provisions." *D.C. Department of Public Works and AFSCME Local 2091*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). By submitting a matter to arbitration, the parties agree to be bound by the arbitrator's interpretation of the parties' CBA, related rules and regulations, and evidentiary findings and conclusions. *See D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000). It is the Arbitrator's interpretation, and not the Board's, that the parties have bargained for. *See University of the District of Columbia v. University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320 at p. 2, PERB Case No. 02-A-04 (1992).

One of the tests that the Board has used to determine whether an arbitrator has exceeded his jurisdiction is "whether the Award draws its essence from the collective bargaining agreement." *D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987). The Board has adopted the Sixth Circuit's analysis of "essence of the agreement" issues:

> Did the arbitrator act "outside his authority" by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing

> the award? And in resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract?"

N*ational Ass'n of Government Employees, Local R3-07 v. D.C. Office of Communications*, 59 D.C. Reg. 6832, Slip Op. No. 1203, PERB Case No. 10-A-08 (2011) (*citing Michigan Family Resources, Inc. v. SEIU Local 517M*, 475 F.3d 746, 753 (2007). The Agency has not alleged that the Arbitrator committed fraud, had a conflict of interest or otherwise acted dishonestly, or that he was not arguably construing or applying the CBA.

In the instant case, the Board finds that the Arbitrator did not act outside his authority by determining that Grievants Cave and Fang were doing work substantially equal to a grade 11 sanitarian. Consistent with Article 10, § E(8) of the CBA, each of the parties submitted a separate statement of the issues, and the Arbitrator determined the issues to be heard. (Award at 5-6). The Arbitrator's formulation of the issues, specifically "the application of the contractual requirement of 'equal pay for substantially equal work,'" is broad enough to cover his consideration of the issue of whether Grievants Cave and Fang were being paid equally for substantially equal work. (Award at 6). As the Arbitrator stated, the grievance encompassed the issue of obtaining equal pay for substantially equal work for all employees, including whether Grievants Cave and Fang were receiving equal pay for performing work substantially equal to that of the grade 11 sanitarians. (Award at 16-17). After concluding that the grievants were not being paid equally, in violation of Article 26, §E of the parties' CBA, the Arbitrator exercised his equitable power to fashion a remedy of promotion to DS-11 and back pay for Grievants Cave and Fang. (Award at 17-18).

An arbitrator does not exceed his authority by exercising his equitable power, unless it is expressly restricted by the parties' collective bargaining agreement. *See MPD and FOP/MPDLC*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992). Rather than expressly limit the Arbitrator's ability to formulate a remedy, the parties' CBA specifically grants the Arbitrator "full authority to award a remedy." (Article 10, § E(12), Request Exhibit 2 at p. 15). Arbitrators bring their "informed judgment" to bear on the interpretation of CBAs, and that is "especially true when it comes to formulating remedies." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). The Agency's disagreement with the Arbitrator's decision to consider the positions of Grievants Cave and Fang, and his formulation of a remedy, do not present a statutory basis for review. *See Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 59 D.C. Reg. 3446, Slip Op. No. 845, PERB Case No. 05-A-01 (2006).

Next, the Agency alleges that the Arbitrator's award of attorneys' fees to the Union under the BPA is contrary to law and public policy. (Request at 4-6). In support of this allegation, the Agency argues that the Award does not meet the requirements for awarding attorneys' fees under the BPA because the grievance was not sustained, and that the BPA does not apply to D.C. government employees like Grievants Cave and Fang. (Request at 4-10). The Union contends that the Agency waived this argument by not raising it at the arbitration or in its briefs. (Opposition at 3).

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. A petitioner must demonstrate that the arbitration award compels the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 43 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *Fraternal Order of Police/Department of Corrections Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009). Disagreement with the arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law or public policy. *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984).

The Agency argues that the Award violates the language of the BPA itself. (Request at 5). 5 U.S.C. § 5596(b)(1)(A)(iii) states that "[a]n employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action" is entitled to reasonable attorneys' fees. As we determined above, the "equal pay for substantially equal work" issue regarding Grievants Cave and Fang does not constitute a separate grievance. Therefore, the grievance was sustained in part, and the Award does not violate the language of the BPA.

Additionally, the Agency contends that the BPA does not apply to D.C. government employees. (Request at 6-10). In support of this contention, the Agency cites to *White*, where the D.C. Court of Appeals found that WASA exempted itself from the CMPA, and thus any entitlement to attorneys' fees under the BPA, by establishing a comprehensive personnel system for its employees. (Request at 7-8).

The Board has determined that an agency has not exempted its employees from the CMPA unless those employees have been removed from Compensation Unit 1 or 2. *University of the District of Columbia v. AFSCME District Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333 at p. 5, PERB Case No. 12-A-01 (2012). The Department of Health is a subordinate agency of the Executive Office of the Mayor, and its Career Service employees are members of Compensation Units 1 and 2. D.C. Code § 1-603.01(17)(MM). As the Agency has not removed Grievants Cave and Fang from Compensation Units 1 and 2, they have not been exempted from the CMPA and the BPA. *University of the District of Columbia,* Slip Op. No. 1333 at p. 5. The Agency has failed to demonstrate that the Award presents a clear violation of law or compels the violation of an explicit, well defined, public policy grounded in law and or legal precedent. Therefore, this allegation must be dismissed. *Fraternal Order of Police/Department of Corrections Labor Committee,* 973 A.2d at 177.

The Union's first affirmative defense is that the Request is not in compliance with Board Rule 538. (Opposition at 6). The Union does not specify in its affirmative defense which part of Board Rule 538 is violated, but elsewhere in the Opposition asserts that "[t]he pleading emailed to the Union's attorney on October 12, 2012, contained no exhibits or attachments," and that the

pleading mailed to the Union through the Board's electronic filing system contained no exhibits or attachments. (Opposition at 1-2). Board Rule 538 requires the party filing an arbitration review request with the Board include a copy of the arbitration award, and it is to this portion of the rule that the Union presumably objects. *See* Board Rule 538.1(e). The Request filed with the Board via its electronic filing system shows that the Request was filed on October 1, 2012, together with three attachments titled "Exhibit 1, Arbitration Decision and Order," "Exhibit 2, Collective Bargaining Agreement," and "Exhibit 3, Union Grievances and Arbitration Demand." The Board finds that the Agency complied with Board Rule 538.1, and dismisses this affirmative defense.

The Union's second affirmative defense is that the Request is untimely. (Opposition at 6). Board Rule 538.1 states that arbitration review requests must be filed "not later than twenty (20) days after service of the award." The Award was mailed to the parties on September 5, 2012. (Award cover letter, Request Exhibit 1). Board Rule 538.1 provides that when an award is served via U.S. Mail, an additional five days should be added to the prescribed period of time to file a request for review with the Board. Therefore, the last day of the period of time to file the Request was September 30, 2012. As September 30, 2012, was a Sunday, the Request was due by Monday, October 1, 2012, pursuant to Board Rule 501.5. According to the Board's electronic filing system, the Request was filed with the Board on October 1, 2012. Therefore, the Request was timely filed, and this affirmative defense is dismissed.

The Union's third affirmative defense is that the Agency waived its ability to contest the Union's demand for attorneys' fees under the federal Back Pay Act. (Opposition at 6). This issue was decided on alternate grounds in the analysis portion of this Decision and Order.

The Union's remaining affirmative defenses are discussed in the analysis portion of this Decision and Order.

In light of the above, we find that the Arbitrator's ruling cannot be said to be clearly erroneous, contrary to law or public policy, or in excess of his authority under the parties' CBA. D.C. Code § 1-605.02(6). Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Health's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 1, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-A-01 was transmitted via File & ServeXpress to the following parties on this the 1st day of May, 2013.

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Public Employee Relations Board

In the Matter of:	
Harcourt Masi,	
Complainant,	PERB Case No. 09-U-25
v.	Opinion No. 1384
District of Columbia Department of Corrections,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant Harcourt Masi ("Complainant") filed the above-captioned unfair labor practice complaint ("Complaint) against Respondent District of Columbia Department of Corrections ("Respondent" or "Agency"), for an alleged violation of sections § 1-617.04(a)(2), (3), and (4) of the Comprehensive Merit Personnel Act ("CMPA")[1]. (Complaint at 5). Respondent filed an Answer ("Answer"), denying any violation of the CMPA and raised the following affirmative defenses:

> (1) Complainant fails to allege conduct that constitutes an unfair labor practice under §§ 1-617.04(a)(2), (3), and (4) of the D.C. Official Code (2001 ed., as amended). Complainant fails to allege that Respondent dominated, interfered with, or assisted in the formation, existence of administration of any labor organization, or contributed financial or other support to it, discriminated in regard to hiring against or took reprisals against Complainant as a result of his protected activity, that there was a nexus between his protected activity and Respondent's actions, that the Respondent

[1] In the Complaint, Complainant refers to "CMPA 1-618.4(a)(2)(3)(4)." The Board will assume that Complainant intended to refer the current D.C. Code § 1-617.04(a)(2), (3), and (4).

demonstrated anti-union animus and that he has suffered any harm as a result. As a result, the Complaint should be dismissed in its entirety, with prejudice.

(2) Complainant, through his collective bargaining representative, filed a grievance on November 21, 2008, under the provisions of the collective bargaining agreement between the parties, involving the same facts and circumstances. Said grievance is pending at the arbitration level (FMCS Case No. 090126-53289-A). Complainant has, therefore, admitted that his allegations regard contractual rather than statutory rights. PERB lacks jurisdiction to rule on allegations of violation of purely statutory rights.

(3) Complainant seeks a series of remedies that are inconsistent with each other, seeking simultaneously to be place[d][sic] on the promotion list, to be promoted, to be allowed to "re-take" the Phase III part of the test and to be promoted with a calculated score of zero for Phase III.

(Answer at 10-11). The issue before the Board is whether the Respondent violated D.C. Code § 1-617.04(a)(2), (3), or (5) by refusing to allow Complainant to take the third phase of a promotional exam after arriving late to the testing site. (Complaint at 5).

II. Discussion

A. Background

The parties agree that on November 1, 2008, Respondent issued an operations memorandum setting forth the upcoming promotion process for sergeants and lieutenants. (Complaint at 3; Answer at 3). Complainant took the Phase I written exam, scoring 98 out of 100 points. (Complaint at 3; Answer at 3). On the Phase II exam, Complainant scored 75 out of 100 points. (Complaint at 3-4; Answer at 3-4). The scores for the first two exams were averaged, and Complainant's resulting average score qualified him to advance to the Phase III exam. (Complaint at 4; Answer at 4-5). The Complainant alleges that he was placed on a "promotion list" with 63 other candidates, and that the Phase III exam served only to rank the candidates in order for promotion. (Complaint at 4). Respondent denies that the Complainant was placed on a "promotion list," and contends that the Complainant was placed on a list of candidates who passed both Phase I and Phase II of the promotional exam. (Answer at 4-5). Further, Respondent denies that the purpose of the Phase III exam was only "to rank the promotion candidates in order for promotion." (Answer at 5).

Department of Corrections Deputy Director Patricia Britton attended a meeting at Complainant's worksite, and informed the employees that there were more promotion candidates for sergeant than there were sergeant vacancies, and that sergeant candidates would have to undergo Phase III of the sergeant's promotional exam. (Complaint at 4; Answer at 5). Complainant was notified of the Phase III test date on the day prior to the Phase III exam.

(Complaint at 5; Answer at 5-6). Respondent asserts that participants in the Phase III exam were instructed to report to the testing facility "**promptly at 7:30 am**," and were informed that "[c]andidates arriving after the reporting examination time will not be allowed to take the examination. There will be **NO EXCEPTIONS**." (Answer at 5-6; Complaint Exhibit F, emphasis in original). Complainant arrived at the testing facility at 7:40 am, where he asserts other candidates were waiting in a conference room and no testing was in progress. (Complaint at 5). Respondent admits that the Complainant arrived at 7:40am, but denies that other candidates were waiting and no testing was in progress. (Answer at 6). At approximately 7:50 am, Deputy Director Britton instructed the Complainant to leave the conference room. (Complaint at 5; Answer at 6). Complainant alleges that Respondent removed his name from the "promotion ranking order disqualifying the complainant from being considered for future promotion as all of the other candidates." (Complaint at 5). Complainant states that this action is in violation of the CMPA. *Id.* Respondent contends that these allegations lack specificity sufficient for the Respondent to supply an answer, as the Complainant does not identify how, when, and under what circumstances his activities were statutorily protected. (Answer at 6).

Next, Complainant alleges that "Deputy Director Patricia Britton through her appointed managers directly or indirectly provided answers to the sergeant promotion exam on or before November 21, 2008 on the transport bus driven by Major Brown to the exam sight [sic], FOP/Labor Committee Chairperson filed a grievance against the agency's Deputy Director Patricia Britton on November 21, 2008." (Complaint at 8). Complainant asserts that Deputy Director Britton allowed sergeants who failed the lieutenant's exam to re-take the exam, in violation of the parties' CBA and D.C. personnel regulations. *Id.* Additionally, Complainant alleges that Deputy Director Britton permitted candidates who missed the Phase II exam to retake the exam at a later date, "but would not allow me to re-take the Phase III part of the exam because of her self made rule of no exceptions, which is a gross unfair labor practice." (Complaint at 8-9).

The Agency disputes each of these allegations, and asserts that the allegations are irrelevant and lack specificity sufficient for the Respondent to supply an answer. (Answer at 7-10). The Agency states that three candidates were permitted to take a revised Phase III exam on a subsequent date: one candidate who was late, but "for whom Management could not validate that he was timely and properly notified of the date and time of the Phase III portion of the exam; a candidate who was in the hospital; and a candidate who was on annual leave during the original Phase III exam. (Answer at 9).

B. Analysis

While a Complainant need not prove his case on the pleadings, he must plead or assert allegations that, if proven, would establish a statutory violation. *See Virginia Dade v. National Association of Government Employees, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees Local 631 v. D.C. Dep't of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); *Goodine v. FOP/DOC Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p.3, PERB Case No. 96-U-16 (1996). When considering the

pleading of a *pro se* complainant, the Board construes the claims liberally to determine whether a proper cause of action has been alleged and whether the complainant has requested proper relief. *See Osekre v. American Federation of State, County, and Municipal Employees Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998).

In the instant case, Complainant alleges that the Respondent violated the CMPA by refusing to allow him to take the Phase III promotional exam after arriving late, and by permitting other employees to take the Phase III exam after the initial testing date. (Complaint at 5-9). These allegations do not assert that the Agency's actions concerned the Complainant's exercise of his rights under the CMPA. Complainant has failed to assert allegations or evidence that would tie the Agency's actions to the asserted violation of D.C. Code § 1-617.04(a)(2), (3), and (4), or indeed any portion of D.C. Code § 1-617.04(a). D.C Code § 1-617.04(a) prohibits the D.C. government, its agents, and representatives from (1) interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by the CMPA; (2) dominating, interfering, or assisting in the formation, existence, or administration of any labor organization, or contributing financial or other support to it; (3) discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; (4) discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony; and (5) refusing to bargain collectively in good faith with the exclusive representative. The Complainant's allegation – that he was not allowed to take the Phase III promotional exam after arriving late – does not fall under any of the categories of prohibited actions in D.C. Code § 1-617.04(a).

There is no allegation of a nexus between the Agency's actions and the employee's exercise of his Section 1-617.01 rights. Therefore, the Complaint must be dismissed. *See American Federation of Government Employees, Local 2553 v. District of Columbia Water and Sewer Authority*, 59 D.C. Reg. 7300, Slip Op. No. 1252, PERB Case NO. 06-U-35 (2012).

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant Harcourt Masi's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 1, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-25 was transmitted via U.S. Mail and e-mail, where available, to the following parties on this the 1st day of May, 2013.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Department of Corrections	
Petitioner,	PERB Case No. 12-E-08
and	Opinion No. 1385
Fraternal Order of Police/Department of Corrections Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On August 29, 2012, the Board issued a Decision and Order in PERB Case No. 10-A-14, affirming an arbitration award, which was reviewed at the request of District of Columbia Department of Corrections ("DOC"). *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 59 D.C. Reg. 12702, Slip Op. No. 1326, PERB Case No. 10-A-14 (2012). On August 31, 2012, the Fraternal Order of Police/ Department of Corrections Labor Committee ("FOP") filed a Petition for Enforcement of the Board's Decision and Order for Slip Opinion Number 1326 ("Enforcement Petition"). On September 13, 2012, the DOC, through its representative the Office of Labor Relations and Collective Bargaining, ("OLRCB"), filed a Motion for Reconsideration of Slip Opinion No. 1326. On September 17, 2012, DOC filed a Motion to Dismiss the Enforcement Petition ("Motion to Dismiss"). On September 20, 2012, FOP filed an Opposition to Motion for Reconsideration. On September 24, 2012, FOP filed an Opposition to the Motion to Dismiss Enforcement Petition ("Opposition to Motion").

FOP's Petition for Enforcement is before the Board for disposition.

II. Background

On October 23, 2009, Arbitrator Joyce M. Klein ("Arbitrator") issued an award finding that charges against three (3) correctional officers were sustained in part and denied in part. The Arbitrator reduced the officers' removals to a fifteen (15) day suspension for one officer and a ten (10) day suspension for the two other officers. Slip Op. No. 1326, at 2. The Arbitrator retained jurisdiction over the issue of attorney's fees sought by FOP. *Id.* FOP submitted a motion for attorney's fees to the Arbitrator, which was opposed by DOC. *Id.* On January 12, 2010, the Arbitrator granted the Union attorney fees in the amount of $52,206.00 in a Supplemental Award ("Award").

On February 2, 2010, DOC filed an Arbitration Review Request of the Arbitrator's Supplemental Award ("Request") in the above-captioned matter, asserting that the Arbitrator exceeded her jurisdictional authority by granting attorney's fees to the Union. FOP filed an Opposition to the Request.

On August 23, 2012, the Board decided to deny DOC's Arbitration Review Request, finding that "the Arbitrator's conclusions are based on a thorough analysis and cannot be said to have exceeded his authority." *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, 59 D.C. Reg. 12702, Slip Op. No. 1326, PERB Case No. 10-A-14 (2012).

III. Discussion

On August 29, 2012, PERB issued Opinion No. 1326 to FOP and MPD via U.S. Mail and electronic service. On August 31, 2012, PERB received via electronic service FOP's Petition for Enforcement of the Board's Decision and Order in Opinion No. 1326. On September 13, 2012, DOC timely filed a Motion for Reconsideration of Opinion No. 1326.

In FOP's Enforcement Petition, FOP requests the Board to enforce its Decision and Order in Opinion No. 1326, because "[t]he District of Columbia has not complied with the award of attorneys fees." (Enforcement Petition at 3).

In its Motion to Dismiss, DOC argues that FOP's Enforcement Petition is deficient, because DOC's Motion for Reconsideration prevented Opinion No. 1326 from becoming final, until the Board's resolution of DOC's Motion for Reconsideration. (Motion to Dismiss at 2-3). DOC argues that Board Rules 560.1, 559.1, and 559.2 are dispositive of the issue. *Id.*

In FOP's Opposition to DOC's Motion to Dismiss, FOP argues that the Decision and Order stated that "this Decision and Order is final upon issuance," and that the Board designated a specific point of finality, which FOP argues was "upon issuance." (Opposition to Motion at 2) (quoting *District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 1326, at 6. FOP reasons that "[b]y designating a specific point of finality (upon issuance), PERB merely utilized the language in Rule 559.1, which states 'unless the order specifies otherwise.'" (Opposition at 2) (quoting Board Rule 559.1).

Board Rules 560.1, 559.1, and 559.2 provide in relevant part as follows:

> **560.1 - Enforcement**
>
> Board Rule 560.1: If any respondent fails to comply with the Board's decision within the time period specified in Rule 559.1, the prevailing party may petition the Board to enforce the order.
>
> **559.1 - Finality of Board Decision and Order**
>
> The Board's Decision and Order shall become final thirty (30) days after issuance unless the order specifies otherwise.
>
> **559.2 - Finality of Board Decision and Order (cont'd)**
>
> The Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the decision, or if the Board reopens the case on its own motion within ten (10) days after issuance of the decision, unless the order specifies otherwise.
>
> **559.3 - Finality of Board Decision and Order (cont'd)**
>
> Upon the issuance of an Opinion on any motion for reconsideration of a Decision and Order, the Board's Decision and Order shall become final.

Board Rule 560.1 for a petition for enforcement must be read in conjunction with Board Rules 559.1, 559.2, and 559.3. At a minimum, the Board's Decision and Order must be final in order to be enforceable. *See also, Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Carl B. Butler) v. District of Columbia Department of Corrections*, 59 D.C. Reg. 6175, Slip Op. No. 1022, PERB Case No. 10-E-03 (2012) (granting enforcement petition of an arbitration award upheld by the Board in a previous decision, when Agency failed to comply within a reasonable period of time after the Board's Decision and Order); *Fraternal Order of Police/Department of Corrections Labor Committee (on behalf of Carl B. Butler) v. District of Columbia Department of Corrections*, 59 D.C. Reg. 3919, Slip. Op. No. 920 PERB Case No. 07-E-02 (2012) (granting enforcement petition of an arbitration award affirmed by the Board, when Agency was found to have "no legitimate" reason for not complying with the Arbitration Award).

FOP, however, argues that Board Rule 559.2 should be read in conjunction with Board Rule 559.1 to toll the thirty (30) day period for finality, only when the Board has not exercised its discretion to provide a different finality timeline. (Opposition to Motion at 2-3). In the present case, FOP argues that the Board did order a different finality time period in Opinion No. 1326 by stating "this Decision and Order is final upon issuance." *Id.*

The Board finds that the plain language of Board Rule 559.2 tolls the finality of a Board Decision and Order when a Motion for Reconsideration is filed. *See District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Grievant, Angela Fisher)*, _ D.C. Reg. _, Slip Op. No. 755, PERB Case No. 02-A-07 (2004) (denying a Motion to Stay entry and enforcement of a Board Decision and Order, which affirmed an arbitration award, when no timely motion for reconsideration was filed and there was no "sufficient justification for granting a stay" of enforcement). Furthermore, the language of Board Rule 559.3, as stated above, makes clear that a Decision and Order is not final until a motion for reconsideration, made pursuant to Board Rule 559.2, is decided.

As DOC filed a timely Motion for Reconsideration, the Board's Decision and Order was not yet final to enforce. Therefore, FOP's Petition for Enforcement was premature, and must be denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Department of Corrections Labor Committee's Petition for Enforcement of Slip Opinion Number 1326 is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 30, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-E-08 was transmitted via LexisNexis File & Serve to the following parties on the 1st of May, 2013.

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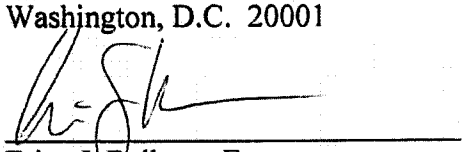

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Office of Chief Financial Officer	
Petitioner,	PERB Case No. 12-A-06
and	Opinion No. 1386
American Federation of State, County and Municipal Employees, District Council 20, Local 2776 (on behalf of Robert Gonzales)	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On April 4, 2012, the District of Columbia Office of the Chief Financial Officer ("OCFO" or "Agency") filed an Arbitration Review Request ("Request") of an Arbitration Award ("Award") by Arbitrator David Epstein ("Arbitrator"). On April 19, 2012, the American Federation of State, County and Municipal Employees, District Council 20, Local 2776 ("AFSCME" or "Union") filed an Opposition to OCFO's Arbitration Review Request ("Opposition").

OCFO seeks review of the Award, which reduced the termination of Robert Gonzales ("Grievant") to a one-year suspension. In its Request, OCFO challenges the Board's jurisdiction to review OCFO arbitration awards, and asserts that the Award is contrary to law and public policy. (Request at 1-2).

II. The Award

The Union filed a grievance against OCFO, challenging the Grievant's termination for assaulting "a member of the public while engaged in a property tax appeal hearing and for making false and misleading statements during the course of an investigation that followed." (Award at 7). After failing to resolve the grievance through the negotiated grievance procedure,

the Union invoked arbitration. *Id.* Two days of hearing were held before Arbitrator David Epstein. *Id.* The parties each submitted post-hearing briefs. *Id.*

The Parties did not agree on the issue for resolution. *Id.* The issues presented by the Employer were: "(1) Does the evidence establish that Robert Gonzales was terminated for just cause?[; and] (2) Does the evidence establish that the termination of Robert Gonzales was appropriate, reasonable and proportionate to the offense committed?" *Id.* The issue presented to the Arbitrator by the Union was: "Did the Employer violate Article 7 of the parties' collective bargaining agreement when it terminated [Grievant] Robert Gonzales and, if so, what shall be the remedy?" *Id.*

In the Award, the Arbitrator found that "[t]he facts are largely in agreement." (Award at 11). During a recess at a Board of Real Property and Appeals hearing, a member of the public, Mr. McIntosh, who represents private property owners, and who was challenging a valuation of property before the Board, made vulgar statements to the Grievant, which may have included an ethnic slur. (Award at 8, 11). According to the Arbitrator, the two had "a testy and tangled professional relationship." (Award at 8). Mr. McIntosh admitted making the vulgar statements towards the Grievant, but denied the ethnic slur. (Award at 11). After Mr. McIntosh made the statements, the Grievant rose from his chair and went to the other side of the conference table to confront Mr. McIntosh. *Id.* The Grievant stated that "there may have been a physical touching but it was inadvertent, caused when Mr. McIntosh arose and his chair fell back caught in a coat that he says was the back of the chair." (Award at 12). Mr. McIntosh, corroborated by another witness, testified that there was a physical touching. *Id.* Further, the Arbitrator found that "Mr. McIntosh was concerned about his personal safety as he could reasonably assume that he was under a threat of physical harm, whether or not there was a physical touching." *Id.* At some point after the confrontation, the Grievant reported the occurrence to his supervisor. (Award at 13).

In his Award, the Arbitrator found that the Master Agreement's use of the term "cause" was the same as the use of the term "just cause" in other collective bargaining agreements. *Id.* The Arbitrator determined "[b]y a preponderance of the evidence, cause for disciplinary sanction was established on an evaluation of the undisputed evidence." *Id.* The Arbitrator found that the Grievant violated the District Personnel Manual (DPM) under Section 1603.3, regarding several charges. (Award at 13-14). The Arbitrator, however, did not find that the Grievant violated the DPM provision requiring honesty, and dismissed the dishonesty charge against the Grievant. (Award at 14-15).

As for the appropriate sanction for the Grievant's conduct, the Arbitrator reviewed the Master Agreement and the underlying conduct guide, as well as the Agency's Handbook. (Award at 15). The Arbitrator found that the appropriate penalty for the Grievant's conduct was "close to the intersection of a suspension and termination." *Id.* The Arbitrator considered several mitigating factors, including that the Grievant had not cooled down when he approached Mr. McIntosh, and that the Grievant realized the import of his conduct by reporting the occurrence to his supervisor. (Award at 16). In addition, the Arbitrator stated, "An intended forceful blow with physical damage to Mr. McIntosh is not what occurred." *Id.*

In determining the appropriateness of the penalty, the Arbitrator considered OCFO's argument that DPM, 1619.1, Section 5(c) supported termination of the Grievant. *Id.* In addition, the Arbitrator considered Section 7 of DPM, 1619.1, which contained recommended penalties for a variety of activities. *Id.* The Arbitrator found that the Grievant's conduct fell short of removal but was more than the activities described in Section 7. *Id.* Therefore, the Arbitrator determined that the appropriate sanction was a one-year suspension, commencing on the effective date of Grievant's termination, May 27, 2011, and ending with his return to work on May 28, 2012. *Id.*

III. Discussion

OCFO has filed its Request, pursuant to D.C. Code § 1-605.02(6). (2001 ed.). In its Request, OCFO asserts that PERB lacks jurisdiction to review the Award and that the Award violates law and public policy. (Request at 1-2). AFSCME argues that PERB has jurisdiction over the Request, and that OCFO's Request is merely a disagreement with the Arbitrator's conclusions. (Opposition at 1-2, 6).

A. Jurisdiction of PERB

The Comprehensive Merit Personnel Act ("CMPA") is the statutory authority for the Board. Consequently, the Board is only empowered to hear and decide legal matters that are covered by the CMPA. Furthermore, the courts defer to the Board's interpretation of the CMPA, unless the interpretation is "unreasonable in light of the prevailing law or inconsistent with the statute" or is "plainly erroneous." *Doctors Council of the Dist. of Columbia Gen. Hosp. v. District of Columbia Pub. Employee Relations Bd.*, 914 A.2d 682, 695 (D.C.2007) (citation omitted); *Public Employee Relations Bd. v. Washington Teachers Union Local 6, AFT*, 556 A.2d 206, 207 (D.C.1989). Unless "rationally indefensible," a PERB decision must stand. *Drivers, Chauffeurs, & Helpers Local Union No. 639 v. District of Columbia, 631 A.2d 1205, 1216* (D.C.1993).

The CMPA prescribes the Board's subject-matter jurisdiction for review of arbitration awards. The Board may:

> Consider appeals from arbitration awards pursuant to a grievance procedure; provided, however, that such awards may be modified or set aside or remanded, in whole or in part, only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means....

D.C. Code § 1-605.02(6).

OCFO argues that the Board does not have jurisdiction over OCFO, because "OCFO is expressly exempt from the Comprehensive Merit Personnel Act." (Request at 4). In its Request, OCFO quotes D.C. Code § 1-204.25(a) as stating "employees of the Office of the Chief Financial Officer of the District of Columbia shall be considered at-will employees not covered

by the District of Columbia Comprehensive Merit Personnel Act of 1978." (Request at 4). OCFO construes the statute to exempt OCFO from the CMPA and from PERB's jurisdiction to review OCFO arbitration awards.

OCFO's Request misquotes the statute. In actuality, the statute states:

> (a) *In general* – Notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia, including personnel described in subsection (b) of this section, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by Chapter 6 of this title, *except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.*

D.C. Code § 1-204.25(a) (emphasis added). The above legislative language was an amendment to Section 424 of the District of Columbia Home Rule Act, D.C. Code § 1-204.24a, et seq., by the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, 120 Stat. 2019 (2006) (West 2012). The plain language of the statute clearly creates an exception that permits the Chief Financial Officer to enter into a collective bargaining agreement.

It is undisputed that OCFO and AFSCME have entered into a collective bargaining agreement, and that the present arbitration award arises from the Parties' grievance procedure, pursuant to their collective bargaining agreement. Moreover, no jurisdictional issue, concerning the Arbitrator's jurisdiction over the arbitration proceedings, was presented by OCFO to the Arbitrator for determination.

The CMPA on its face states that the Board has the power to "[c]onsider appeals from arbitration awards pursuant to a grievance procedure." *Id.* The CMPA does not provide an exception to PERB's jurisdiction to consider the present Request.

OCFO argues that case law supports its interpretation of D.C. Code § 1-204.25(a). (Request at 4-5). In *Bartee v. District of Columbia Office of Tax and Revenue*, the D.C. Office of Employee Appeals ("OEA") determined that it lacked jurisdiction over employees in the Office of Tax and Revenue ("OTR"), based on D.C. Code § 1-204.25(a). Case No. 2009 CA 8105 (D.C. Sup. Ct. 2010). OEA's determination was upheld by the D.C. Superior Court and affirmed by the D.C. Court of Appeals. *Id., aff'd*, Case No. 11-CV-19 (D.C. 2011). The Superior Court reviewed OEA's determination in light of OEA's interpretation of D.C. Code § 1-204.25(a) and OEA's statutory authority under the CMPA. *Bartee*, Case No. 2009 CA 8105 at 4. The Superior Court emphasized the language of "shall be considered at-will employees not covered by Chapter 6 of this title," as applicable in determination of OEA's appellate jurisdiction

over adverse actions for OTR employees. *Id.* The Superior Court further stated that the employees were at-will employees and not covered by Chapter 6, Title 1. *Id.* at 7. OCFO argues that this interpretation bars the Board's jurisdiction over the current Award before it for disposition.

OCFO's assertion is without merit. The *Bartee* decision concerned OEA's interpretation of OEA's jurisdiction. OEA is a separate and independent agency from PERB with different statutory authority. The court above reviewed OEA's determination of its jurisdictional authority, not PERB's jurisdiction. In addition, the language of D.C. Code § 1-204.25(a) that the court above relied upon in its decision differs from the language that is applicable to the present Request. D.C. Code § 1-204.25(a) creates a specific exemption for collective bargaining agreements, which states, "*except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.*" (emphasis added). No case law prevents PERB from having subject-matter jurisdiction over the Request at bar.

In addition, OCFO filed an appeal to the Superior Court, regarding the Arbitration Award. *District of Columbia v. American Federation of State, County, and Municipal Employees, District Council 20, Local 2776*, Case No. 2012 CA 004715 B (D.C. Super. Ct. October 15, 2012). The Superior Court concluded that PERB had jurisdiction over the Arbitration Award, because the exemption in D.C. Code § 1-204.25(a) for the OCFO to enter into a collective bargaining agreement permitted "the OCFO to subject itself to the CMPA under the aegis of a collective bargaining agreement." *Id* at 4.

After reviewing the relevant statutes, case law, and OCFO's arguments, the Board determines that it has subject-matter jurisdiction to review the present arbitration award, pursuant to the CMPA.

B. Contrary to Law and Public Policy Exception

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if an arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6).

OCFO argues that "the arbitration award is on its face contrary to law and public policy." (Request at 5). The Board's review of an arbitration award on the basis of public policy *is an* "extremely narrow" exception to the rule that reviewing bodies must defer to an arbitrator's ruling. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 3959, Slip Op. No. 925. PERB Case No. 08-A-01 (2012) (quoting *American Postal Workers Union, AFL-CIO v. United States Postal Service*, 789 F. 2d 1, 8 (D.C. Cir. 1986)). A petitioner must demonstrate that an arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworks Int'l Union, AFL-*

CIO v. Misco, Inc., 484 U.S. 29 (1987). The violation must be so significant that the law or public policy "mandates that the Arbitrator arrive at a different result." *Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee,* 47 D.C. Reg. 717, Slip Op. No. 633, PERB Case No. 00-A-04 (2000). The petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Id. See, e.g., D.C. Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 59 D.C. Reg. 6124, Slip Op. No. 1015, PERB Case No. 09-A-06 (2012) (denying Exceptions that an arbitrator's interpretation of the DPM and MPD's General Orders were contrary to law and public policy).

OCFO argues that the Arbitrator "disregarded policies provided in the Table of Appropriate Penalties (DPM § 1619)," which "explicitly provides and ... compels that following the first offence of assault or fighting on duty, an employee is to be removed or terminated." (Request at 5). OCFO asserts that D.C. Code §§ 1-606.04 and 1-616.51 is the regulatory authority for the DPM, and that Section 5(c) of the DPM compels termination after a first offence of assault or fighting on duty. *Id.* Therefore, OCFO argues that the Award "violates dominant and explicit public policy," because "the Award conflicts with clear personnel policies as set forth in the District Personnel Manual." *Id.*

OCFO's reliance on D.C. Code § 1-606.04 is misguided, as the statute sets forth the hearing procedures for OEA. As stated above, PERB is a different Agency than OEA, and does not share the same statutory authority. Further, OCFO's argument that the Award compels a different outcome pursuant to the DPM read in conjunction with D.C. Code § 1-616.51 is incorrect. D.C. Code § 1-616.51 discusses in general discipline and grievances. Nothing in the plain reading of the statute compels removal, as is OCFO's assertion.

Furthermore, OCFO submitted to the Arbitrator the issue of penalty determination. (Award at 7). The Arbitrator found: "The Master Agreement and the underlying conduct guide promote the use of progressive discipline. The Handbook does much the same." (Award at 15). The Arbitrator considered the Agency's argument that removal was required under the DPM (Table of Appropriate Penalties) at Section 5(c). (Award at 16). The Arbitrator found that Section 5(c) only "recommends" removal. *Id.* Moreover, the Arbitrator found that the DPM (Table of Appropriate Penalties) at Section 7 "provides for a reprimand of suspension up to 15 days for "arguing," "use of abusive or offensive language," and "rude or boisterous playing. *Id.* The Arbitrator found that the Grievant's conduct fell "short of 'removal' or termination, but [was] more than the 'catchall' activities described in Section 7." *Id.* Based on the Arbitrator's interpretation of the Parties' collective bargaining agreement and the record before him, the Arbitrator determined that the appropriate penalty was a one-year suspension. (Award at 16).

The Board has long held that by agreeing to submit the settlement of a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, for which the parties have bargained. *See University of the District of Columbia and University of the District of Columbia Faculty Association*, 39 D.C. Reg. 9628, Slip Op. No. 320, PERB Case No. 92-A-04 (1992). The Board has found that by submitting a matter to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based." *District of Columbia Metro. Police Dep't v.*

Fraternal Order of Police/Metro. Police Dep't Labor Comm., 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. No. 738 PERB Case No. 02-A-07 (2004). The "Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator." *District of Columbia Department of Corrections and International Brotherhood of Teamsters, Local Union 246*, 34 D.C. Reg. 3616, Slip Op. No. 157, PERB Case No. 87-A-02 (1987).

OCFO has not provided a particular law or legal precedent that would compel the Arbitrator to have arrived at a different conclusion. The Board finds that OCFO merely disagrees with the Arbitrator's conclusion. This disagreement does not meet any one of the three narrow bases, on which the Board can overturn an arbitrator's decision.

IV. Conclusion

The Board finds that it has jurisdiction over OCFO's Arbitration Review Request. After reviewing the Parties' pleadings and the submitted record, the Board finds that the Award is not contrary to law and public policy, and therefore it lacks the authority to grant the requested review.

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Office of the Chief Financial Officer's Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 30, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case 12-A-06 was transmitted via U.S. Mail to the following parties on this the 2nd day of May, 2013.

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