VOL. 60 – NO. 25 FRIDAY, JUNE 7, 2013

District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Law 19-188, Anacostia River Clean Up and Protection Amendment Act of 2012
- DC Council schedules a public hearing on Bill 20-153, Omnibus Health Regulation Amendment Act of 2013
- District Department of the Environment proposes amendments to the stormwater management regulations
- District Department of Transportation proposes reserved on-street car-sharing company parking
- Department of Health announces funding availability for the School Based Health Centers Program
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for Case Management Services
- Executive Office of the Mayor publishes the 2013 Freedom of Information Act Appeals Decisions

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.

All documents published in the *D.C. Register* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *D.C. Register* include (1)) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the District of Columbia government (6) Notices, Opinions, and Orders of District of Columbia Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

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The deadline for receiving documents from the District of Columbia Agencies, Boards, Commissions, and Public Charter schools is TUESDAY, NOON of the week of publication. The deadline for receiving documents from the District of Columbia Council is WEDNESDAY, NOON of the week of publication. If an official District government holiday falls on Monday or Friday, the deadline for receiving documents remains the same as outlined above. If an official District government holiday falls on Tuesday, Wednesday or Thursday, the deadline for receiving documents is one day earlier from the deadlines outlined above.

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Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *D.C. Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act.* The Administrator of the Office of Documents hereby certifies that this issue of the *D.C. Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-186

"Compulsory/No Fault Motor Vehicle Insurance Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-194 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 6, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-439 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 1047). Act 19-439 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-439 is now D.C. Law 19-186, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-187

"Automated Traffic Enforcement Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-244 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 6, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-440 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10149). Act 19-440 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-440 is now D.C. Law 19-187, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-188

"Anacostia River Clean Up and Protection Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-515 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 6, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-441 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10151). Act 19-441 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-441 is now D.C. Law 19-188, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-189

"Access to Selective Service Registration Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-330 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-443 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 0000). Act 19-443 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-443 is now D.C. Law 19-189, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-190

"Block Party Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-527 on first and second readings June 26, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-445 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10163). Act 19-445 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-445 is now D.C. Law 19-190, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-191

"Pesticide Education and Control Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-643 on first and second readings June 26, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-446 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10166). Act 19-446 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-446 is now D.C. Law 19-191, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-192

"Anacostia Waterfront Environmental Standards Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-745 on first and second readings June 26, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-447 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10174). Act 19-447 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-447 is now D.C. Law 19-192, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-193

"Regulation of Body Artists and Body Art Establishments Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-221 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 7, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-448 and was published in the August 31, 2012 edition of the D.C. Register (Vol. 59, page 10388). Act 19-448 was transmitted to Congress on September 6, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-448 is now D.C. Law 19-193, effective October 23, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-194

"Immigration Detainer Compliance Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-585 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 8, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-442 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10153). Act 19-442 was transmitted to Congress on September 6, 2012 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 19-442 is now D.C. Law 19-194, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22,23,24,25,26,29,30,31

Nov. 1,2,3,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-195

"DOC Inmate Processing and Release Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-428 on first and second readings June 5, 2012 and July 10, 2012, respectively. Following the signature of the Mayor on August 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-444 and was published in the August 24, 2012 edition of the D.C. Register (Vol. 59, page 10159). Act 19-444 was transmitted to Congress on September 6, 2012 for a 60-day review, in accordance with Section 602(c)(2) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 60-day Congressional review period has ended, and Act 19-444 is now D.C. Law 19-195, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 60-day Congressional Review Period:

Sept. 10,11,12,13,14,17,18,19,20,21,24,25,26,27,28

Oct. 1,2,3,4,5,9,10,11,12,15,16,17,18,19,22,23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-196

"Meridian Public Charter School-Harrison Campus Property Tax Exemption Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-577 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 4, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-467 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12079). Act 19-467 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-467 is now D.C. Law 19-196, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-197

"Department of Health Functions Clarification Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-815 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 5, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-468 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12081). Act 19-468 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-468 is now D.C. Law 19-197, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-198

"District Department of Transportation Bicycle Sharing Fund Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-852 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 4, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-469 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12083). Act 19-469 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-469 is now D.C. Law 19-198, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-199

"Career and Technical Education Plan Establishment Temporary Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-863 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 4, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-470 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12085). Act 19-470 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-470 is now D.C. Law 19-199, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-200

"Health Benefits Plan Grievance Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-865 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 4, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-471 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12090). Act 19-471 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-471 is now D.C. Law 19-200, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-201

"Cogeneration Equipment Personal Property Tax Exemption Temporary Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-868 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 4, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-472 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12092). Act 19-472 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-472 is now D.C. Law 19-201, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-202

"District of Columbia School Reform Extension of Time Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-871 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-473 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12094). Act 19-473 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-473 is now D.C. Law 19-202, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-203

"District of Columbia Public Schools Partnership Temporary Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-875 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 9, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-474 and was published in the October 19, 2012 edition of the D.C. Register (Vol. 59, page 12096). Act 19-474 was transmitted to Congress on October 23, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-474 is now D.C. Law 19-203, effective December 12, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 23,24,25,26,29,30,31

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-204

"Verizon Center Graphics and Entertainment Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-517 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 10, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-478 and was published in the November 2, 2012 edition of the D.C. Register (Vol. 59, page 12462). Act 19-478 was transmitted to Congress on November 1, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-478 is now D.C. Law 19-204, effective December 21, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11,12,13,14,17,18,19,20

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-205

"Retention Incentives for Chief of Police Cathy L. Lanier Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-778 on first and second readings July 10, 2012 and September 19, 2012, respectively. Following the signature of the Mayor on October 10, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-480 and was published in the November 2, 2012 edition of the D.C. Register (Vol. 59, page 12472). Act 19-480 was transmitted to Congress on November 1, 2012 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-480 is now D.C. Law 19-205, effective December 21, 2012.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Nov. 1,2,3,5,6,7,8,9,13,14,15,16,26,27,28,29,30

Dec. 3,4,5,6,7,10,11,12,13,14,17,18,19,20

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-206

"Pedestrian and Bicyclist Protection Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-568 on first and second readings June 26 2012 and October 2, 2012, respectively. Following the signature of the Mayor on October 23, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-486 and was published in the November 2, 2012 edition of the D.C. Register (Vol. 59, page 12505). Act 19-486 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-486 is now D.C. Law 19-206, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-207

"Driver Privacy Protection Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-671 on first and second readings June 26 2012 and July 10, 2012, respectively. Following the signature of the Mayor on October 23, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-487 and was published in the November 2, 2012 edition of the D.C. Register (Vol. 59, page 12507). Act 19-487 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-487 is now D.C. Law 19-207, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-208

"District Department of Transportation Accessible Vehicles Fund Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-922 on first and second readings September 19, 2012 and October 16, 2012, respectively. Following the signature of the Mayor on October 26, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-490 and was published in the November 9, 2012 edition of the D.C. Register (Vol. 59, page 12715). Act 19-490 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-490 is now D.C. Law 19-208, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-209

"Classroom Animal for Educational Purposes Clarification Temporary Amendment Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-949 on first and second readings September 19, 2012 and October 16, 2012, respectively. Following the signature of the Mayor on October 26, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-491 and was published in the November 9, 2012 edition of the D.C. Register (Vol. 59, page 12718). Act 19-491 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-491 is now D.C. Law 19-209, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-210

"District of Columbia Official Code Title 29 Technical and Harmonizing Amendments Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-532 on first and second readings July 10, 2012 and October 2, 2012, respectively. Following the signature of the Mayor on October 31, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-512 and was published in the November 23, 2012 edition of the D.C. Register (Vol. 59, page 13171). Act 19-512 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-512 is now D.C. Law 19-210, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 19-211

"Technology Sector Enhancement Act of 2012"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 19-747 on first and second readings September 19, 2012 and October 16, 2012, respectively. Following the signature of the Mayor on November 1, 2012, pursuant to Section 404(e) of the Charter, the bill became Act 19-513 and was published in the November 23, 2012 edition of the D.C. Register (Vol. 59, page 13281). Act 19-513 was transmitted to Congress on January 10, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 19-513 is now D.C. Law 19-211, effective March 5, 2013.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 14,15,16,17,18,22,23,24,25,28,29,30,31

Feb. 1,4,5,6,7,8,11,12,13,14,15,25,26,27,28

Mar. 1,4

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-47

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize and honor the importance of bicycling to the health of our citizens and our environment and to declare May 17, 2013, as "Bike to Work Day" in the District of Columbia.

WHEREAS, bicycle commuting is an effective means to improve air quality, reduce traffic congestion, and conserve energy;

WHEREAS, bicycle commuting helps improve the quality of life of communities by reducing traffic noise;

WHEREAS, bicycle commuting benefits both employees and employers through improved employee health and fitness and reduced commuting and parking costs;

WHEREAS, increasing numbers of employers have installed bicycle parking and other commuter facilities to help encourage employees to commute by bicycle;

WHEREAS, Capital Bikeshare, the regional bike sharing system, has reached the milestone of 200 stations within the District of Columbia, Alexandria, and Arlington, and is poised for continued expansion into more jurisdictions; and

WHEREAS, the week of May 13th is National Bike to Work Week, which promotes bicycling as a viable means of transportation to and from work.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "May 17, 2013 Bike to Work Day Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the importance of bicycling to the health of our citizens and our environment, and declares May 17, 2013, as "Bike to Work Day" in the District of Columbia.

ENROLLED ORIGINAL

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-48

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To honor and recognize Kenneth E. Jackson on the occasion of his retirement.

WHEREAS, Kenneth E. Jackson is a native Washingtonian, born May 22, 1960, to Anna Mae and Lawrence Jackson Sr. as the fourth of 8 children;

WHEREAS, Kenneth E. Jackson grew up in the Hillcrest neighborhood in Ward 7;

WHEREAS, Kenneth E. Jackson started his public school education at Harris Elementary School, and continued at Stanton Elementary School;

WHEREAS, Kenneth E. Jackson went on to matriculate at Kramer Junior High School and graduated from Anacostia Senior High School as a member of the Class of 1979;

WHEREAS, Kenneth E. Jackson attended as a child and is currently a member of St. John Baptist Church, where Dr. Charles B. Jackson is the Officiating Pastor, also known to Mr. Jackson as "Uncle Buddy";

WHEREAS, Kenneth E. Jackson worked several summer jobs as a participant in the Summer Youth Employment Program, working for the Department of Parks and Recreation, St. Elizabeths Hospital, and D.C. Village Nursing Home;

WHEREAS, Kenneth E. Jackson, after graduating from Anacostia Senior High School, became an employee at the United States Department of State, Passport Office;

WHEREAS, Kenneth E. Jackson commenced his career with the District of Columbia Fire and Emergency Medical Services Department ("FEMS") on November 14, 1982;

WHEREAS, Kenneth E. Jackson ascended through the ranks of the FEMS, starting as Firefighter, and then serving as Firefighter Technician, Sergeant, Lieutenant, Captain, Battalion Fire Chief, Deputy Fire Chief, and Assistant Fire Chief of Services;

ENROLLED ORIGINAL

WHEREAS, Kenneth E. Jackson married his high school sweetheart, Rhonda, on September 1, 1984, and this year, the loving couple will celebrate 29 years of being happily married; and

WHEREAS, Kenneth E. Jackson, and his wife Rhonda, have 2 children, Kenneth E. Jackson, II and Tiara Jasmine Jackson, who also reside in the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Kenneth E. Jackson Retirement Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia thanks and congratulates Kenneth E. Jackson for his over 30 years of faithful public service with FEMS, and congratulates him on the occasion of his retirement and his commitment to community and family.

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

20-49

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize the need for asthma awareness and to declare May 7, 2013 as "World Asthma Day" in the District of Columbia.

WHEREAS, asthma is a serious chronic lung disease of growing public health concern that affects over 18,000 children and 52,000 adults in the District of Columbia;

WHEREAS, the childhood current asthma prevalence rate in the District has been increasing steadily over the past 3 years from 13% to 18%, while the national rate has remained steady at approximately 8%;

WHEREAS, the adult current asthma prevalence rate in the District is 20% higher than the rate for the United States;

WHEREAS, current asthma prevalence is highest in Wards 7, 8, and 6, which are the geographic areas of the city with high concentrations of poverty, poor health outcomes, and environmental risks;

WHEREAS, the total cost to the District, including productivity losses due to morbidity, mortality, and incremental number of days lost from work and school, is estimated to be more than $60 million;

WHEREAS, asthma episodes can be prevented and asthma can be managed with proper education and treatment;

WHEREAS, the DC Asthma Partnership is a public-private partnership with the mission to reduce asthma morbidity and mortality and to improve the quality of life for residents of the District of Columbia;

WHEREAS, on May 7, 2013, the DC Asthma Partnership will observe this day to raise awareness of the asthma epidemic and understanding of asthma in the community; and

ENROLLED ORIGINAL

WHEREAS, the Council of the District of Columbia recognizes asthma as a priority and is dedicated to promoting increased asthma awareness and improved asthma management in the community.

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

Sec. 2. The Council of the District of Columbia recognizes the need for asthma awareness and declares May 7, 2013 as "World Asthma 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

20-50

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize the service and sacrifice of all American veterans, as well as those still in active military service, residing in the District of Columbia and beyond, and to memorialize those individuals from the District who lost their lives in the United States conflicts in Iraq and Afghanistan.

WHEREAS, the service and dedication of members of the armed forces of the United States of America has been and continues to be of vital importance to the safety and prosperity of the United States of America, and the importance of the work done by the men and women in uniform can never be overestimated;

WHEREAS, numerous American citizens, including residents of the District of Columbia, have sacrificed their lives in service to their country;

WHEREAS, the District of Columbia proudly boasts a population of almost 20,000 individuals serving or ready to serve in the armed forces, and another 16,000 providing civilian support for the whole of the military;

WHEREAS, the District of Columbia has lost 10 men and women during the recent United States conflicts in Iraq and Afghanistan; and

WHEREAS, Memorial Day, May 27, 2013, gives the citizens of the United States an opportunity to honor, reflect upon, and remember the service of members of the armed forces.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the, “Armed Forces Recognition and Commemoration Resolution of 2013”.

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes the hard work and sacrifice of the armed forces of the United States of America, and dedicates a plaque in memory of those residents of the District of Columbia who gave their lives in service to their country in Iraq and Afghanistan.

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

20-51

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize the need for cancer awareness in the District of Columbia and to increase participation in cancer screening and events, including the DC Goes Pink campaign.

WHEREAS, the DC Cancer Consortium and the District of Columbia Department of Health Cancer Control Program seek to inaugurate an annual DC Goes Pink event to improve cancer awareness;

WHEREAS, the DC Cancer Consortium seeks to create an awareness campaign that will drive a call to action throughout the underserved communities to take proactive steps in the early detection and prevention of cancer;

WHEREAS, the DC Cancer Consortium will utilize a high-profile annual event to engage the community in a way that is organic, heart-felt, and vibrant;

WHEREAS, the DC Cancer Consortium will provide an evaluation component that will deliver an ongoing assessment of the program's successes and failures in regard to raising awareness and improving screening;

WHEREAS, the DC Cancer Consortium seeks to raise funds to provide free mammograms to uninsured women and to provide for improved navigation for patients with cancer;

WHEREAS, in 2008, more than 2,740 District of Columbia residents were diagnosed with cancer and 1,135 people died from the disease, including 700 deaths from smoking-related illnesses each year;

WHEREAS, cancer death rates are highest in Wards 5, 7, and 8, and there are significantly higher death rates among the African American population;

ENROLLED ORIGINAL

WHEREAS, the District's cancer incidence and death rates far exceed the national average and are particularly high for prostate, colorectal, and breast cancers;

WHEREAS, the American Cancer Society reports the District's death rates for the period 2004-2008 indicate a critical health crisis; and

WHEREAS, during that reporting period, the District ranked first in the nation in breast cancer deaths, first in prostate cancer deaths, and first in colorectal cancer deaths among women and fifth among men.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "DC Goes Pink Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the importance of cancer awareness and supports the DC Goes Pink campaign.

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

20-52

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize the importance of cardiopulmonary resuscitation and automated external defibrillator awareness, and to declare June 1, 2013 through June 7, 2013, as "National CPR and AED Awareness Week" in the District of Columbia.

WHEREAS, heart disease affects men, women, and children of every age and race in the United States and continues to be the leading cause of death;

WHEREAS, approximately 359,400 out-of-hospital cardiac arrests occur annually nationwide, and fewer than 10% of victims survive;

WHEREAS, sudden cardiac arrest occurs when a person's heart stops beating completely, or they enter ventricular fibrillation, when their heart quivers without effectively pumping blood;

WHEREAS, only 41% of out-of-hospital cardiac arrest victims nationally receive bystander cardiopulmonary resuscitation ("CPR");

WHEREAS, only 31 of the 215 victims of out-of-hospital sudden cardiac arrest in the District of Columbia in 2010 received CPR from a bystander, where only one of those bystanders used an automated external defibrillator ("AED"), and only 12 of the 31 victims survived (5.6%);

WHEREAS, prompt delivery of CPR more than doubles the victim's chance of survival by helping to maintain vital blood flow to the heart and brain, increasing the amount of time in which an electric shock from a defibrillator may be effective;

WHEREAS, an AED is safe, easy to operate, highly effective in returning a heart to its normal, effective rhythm when used by a bystander, and serves as our greatest resource to save lives when used in conjunction with Hands-Only CPR;

WHEREAS, for every minute without bystander CPR, survival from witnessed cardiac arrest decreases 7-10%, and with the typical longer than 5-minute interval between a 911 telephone call and the arrival of Fire and Emergency Medical Services Department personnel, a

ENROLLED ORIGINAL

cardiac arrest victim's survival is likely to depend on a public citizen trained in CPR and AED use and access to these lifesaving devices; and

WHEREAS, the American Heart Association, the American Red Cross, and the National Safety Council are preparing a public awareness and training campaign on CPR and AED use, to be held during the first week of June.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "CPR and AED Awareness Week Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia commends the efforts of the American Heart Association, the American Red Cross, and the National Safety Council, declares June 1, 2013 through June 7, 2013, as "National CPR and AED Awareness Week" in the District of Columbia, and encourages District residents to become properly trained in CPR and AED usage.

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

20-53

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize the 72nd anniversary of the Ethiopian/African Victory of Miazia 27.

WHEREAS, on May 5, 1936, Italian forces occupied Addis Ababa, the capital city of Ethiopia;

WHEREAS, in June of 1936, Emperor Hallie Selassie I of Ethiopia addressed the League of Nations and appealed for relief;

WHEREAS, after 5 years in exile in London, England, Emperor Selassie I returned to the capital city;

WHEREAS, on May 5, 1941, Addis Ababa was liberated by the Allied Army 5 years to the day from when it was first occupied by Italian forces;

WHEREAS, more than 20,000 African Americans volunteered to fight side-by-side with the Ethiopians;

WHEREAS, on May 25, 1963, Emperor Selassie I convened a meeting of 32 Heads of State and governments in Addis Ababa to establish the Organization of African Unity, which became the African Union on May 26, 2001;

WHEREAS, on May 5th of every year "Miazia 27" is celebrated to commemorate the liberation of Ethiopia;

WHEREAS, on May 5, 2013, Little Ethiopia DC, an organization established to create awareness about the significance of Ethiopia's history, culture, and heritage, along with the African Heritage Dancers and Drummers, hosted a wreath-laying ceremony to commemorate Miazia 27; and

WHEREAS, this observance celebrates the 72nd Ethiopian/African Victory of Miazia 27 and commemorates the historic struggle for freedom and justice.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNICL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "72nd Anniversary of the Ethiopian/African Victory of Miazia 27 Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes and honors the 72nd anniversary of the Ethiopian/African Victory of Miazia 27.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-54

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To recognize and honor the Federation of Citizens Associations of the District of Columbia and to declare May 27, 2013, as "Federation of Citizens Association Day" in the District of Columbia.

WHEREAS, the Federation of Citizens Associations of the District of Columbia was organized in 1910 and incorporated in 1940;

WHEREAS, the Federation of Citizens Associations of the District of Columbia is dedicated to working toward the strengthening of residential communities and neighborhoods while providing a forum for the expression and interchange of opinion, to further the interests and to ensure and effective and united action of the people of the District of Columbia;

WHEREAS, the Federation of Citizens Associations of the District of Columbia derives its influence and effectiveness from the many neighborhood and community associations that comprise its membership;

WHEREAS, the Federation of Citizens Associations of the District of Columbia is one of a select group of organizations that serves as a forum and voice for citizens of the District of Columbia; and

WHEREAS, the Federation of Citizens Associations of the District of Columbia is celebrating 103 years of organization with an Annual Awards Banquet on May 27, 2013.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "103rd Anniversary of the Federation of Citizens Association of the District of Columbia Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes and honors the Federation of Citizens Associations of the District of Columbia and declares May 27, 2013, as "Federation of Citizens Association 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.

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

BILLS

B20-289 Clinical Laboratory Practitioners Amendment Act of 2013

Intro. 05-29-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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B20-293 Metropolitan Police Department Command Staff Appointment Amendment Act of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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B20-294 St. Elizabeths East Redevelopment Support Act of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee Economic Development

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B20-295 Fiscal Year 2014 Tax Revenue Anticipation Notes Act of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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B20-298 Closing of a Public Alley in Square 5452, S.O. 12-03541, Act of 2013

Intro. 05-31-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PROPOSED RESOLUTIONS

PR20-297 Non-Commercial Driver License Test Waiver Resolution of 2013

Intro. 05-28-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR20-298 Housing Production Trust Fund Board Chairperson David Bowers Confirmation Resolution of 2013

Intro. 05-28-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Economic Development

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PR20-299 Revised ABRA Civil Penalty Schedule Approval Resolution of 2013

Intro. 05-28-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-300 Director of the Alcoholic Beverage Regulation Administration Frederick P. Moosally Confirmation Resolution of 2013

Intro. 05-28-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-302 Technical Amendment Approval Resolution of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-305 Full Service Grocery Store Definition Approval Resolution of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-306 3825-29 Georgia Avenue, N.W. Surplus Declaration and Approval Resolution of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-307 3825-29 Georgia Avenue, N.W. Disposition Approval Resolution of 2013

Intro. 05-30-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Economic Development

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PROPOSED RESOLUTIONS con't

PR20-310 Contract No. CFOPD-13C-011, Secondary Delinquent Tax Collection Approval Resolution of 2013

Intro. 05-31-13 by Chairman Mendelson at the request of the Chief Financial Officer and retained by the Council with comments from the Committee on Finance and Revenue

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Council of the District of Columbia
Committee on Health
Notice of Public Hearing
1350 Pennsylvania Ave., N.W., Washington, D.C. 20004

COUNCILMEMBER YVETTE M. ALEXANDER, CHAIRPERSON
COMMITTEE ON HEALTH ANNOUNCES A PUBLIC HEARING

on

Bill 20-153, the "Omnibus Health Regulation Amendment Act of 2013"
on

Wednesday, June 26, 2013
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public oversight roundtable on Bill 20-153, the "Omnibus Health Regulation Amendment Act of 2013." The public hearing will be held at 11:00 a.m. on Wednesday, June 26, 2013 in Room 412 of the John A. Wilson Building.

Bill 20-153 has been referred to the Committee on Health. The purpose of Bill 20-153 is to regulate several health professions that are currently unregulated and to strengthen the oversight of the practice of veterinary medicine by incorporating it as a health profession. It will permit the performance of general and sedation anesthesia by dentists and dental facilities. Further, the legislation adds dental hygiene teaching licensure and amends the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 to require home care agencies to provide skilled nursing and therapeutic services in order to be consistent with the federal Medicare laws.

Those who wish to testify should contact Mr. Ronald King, Senior Policy Advisor, at (202) 741-0909 or via e-mail at rking@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, June 24, 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 Monday, June 24, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four 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 Ms. Rayna Smith, Committee Director, Room 115 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, July 10, 2013.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Hearing
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC HEARING ON:

B20-238, the "Spring Place Real Property Limited Tax Abatement Assistance Act of 2013"
B20-295, the "Fiscal Year 2014 Tax Revenue Anticipation Notes Act of 2013"

Monday, June 24, 2013
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held Monday, June 24, 2013 at 10:00 a.m., in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

B20-238, the "Spring Place Real Property Limited Tax Abatement Assistance Act of 2013", would amend Chapter 46 of Title 47 of the District of Columbia Official Code to provide limited real property tax abatement and tax relief to the Spring Place development project, described as Lots 1 and 803, in Square 3186 and Lots 52 and 822 in Square 3185, in the Takoma Park neighborhood of Ward 4.

B20-295, the "Fiscal Year 2014 Tax Revenue Anticipation Notes Act of 2013" would authorize the issuance of up to $600 million of District of Columbia general obligation tax revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 2014.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Friday, June 21, 2013. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

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 20-233, UDC Board of Trustees George Vradenburg Confirmation Resolution of 2013

on

Friday, June 28, 2013
2:00 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 20-233, UDC Board of Trustees George Vradenburg Confirmation Resolution of 2013. The hearing will be held at 2:00 p.m. on Friday, June 28, 2013 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR 20-233 is to confirm for appointment the nominations of George Vradenburg to the Board of Trustees of the University of the District of Columbia. The purpose of this hearing is to receive testimony from government and public witnesses as to the fitness of this nominee for the Board.

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 Wednesday, June 26, 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 Wednesday, June 26, 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 PR 20-233 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 hearing, 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 5:00 p.m. on June 28, 2013.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Oversight Hearing
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC OVERSIGHT HEARING ON THE MATTER OF:

The Instant Ticket Contract for the DC Lottery

Thursday, June 27, 2013
10:00 a.m.
Room 123 - John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public oversight hearing on the matter of the forthcoming instant ticket contract for the D.C. Lottery to be held Thursday, June 27, 2013 at 10:00 a.m., in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The Committee invites the public to testify at the oversight hearing. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Wednesday, June 26, 2013. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

Council of the District of Columbia
Committee on Workforce and Community Affairs
Notice of Public Oversight Roundtable

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

COUNCILMEMBER MARION BARRY, CHAIRPERSON COMMITTEE ON WORKFORCE AND COMMUNITY AFFAIRS

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

THE

Fiscal Year 2013 Summer Youth Employment Program

Monday, June 10, 2013, 11:00 a.m.
Council Chamber - Room 500, John A. Wilson Building
1350 Pennsylvania Ave., NW
Washington, D.C. 20004

Councilmember Marion Barry, Chairperson of the Committee on Workforce and Community Affairs, announces a public oversight roundtable on the Fiscal Year 2013 Summer Youth Employment Program, to receive a preliminary update on the progress of the program. The public oversight roundtable will be held on Monday, June 10, 2013, at 11:00 a.m., in the Council Chamber, Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, D.C. 20004.

Those who wish to testify should contact Garret King at (202) 724-8107 or gking@dccouncil.us, and provide your name, organizational affiliation, and title of organization by 5:00 p.m. on Friday, June 7, 2013. Witnesses should bring 20 copies of their written testimony to the roundtable. The Committee allows each individual 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. The official record will close ten days following the conclusion of the roundtable.

Council of the District of Columbia
Committee on Human Services
PUBLIC OVERSIGHT HEARING
1350 Pennsylvania Avenue, N.W., Room 116, Washington, D.C. 20004

THE COMMITTEE ON HUMAN SERVICES
JIM GRAHAM, CHAIR

ANNOUNCES A PUBLIC OVERSIGHT HEARING ON

"PRESENT AND FUTURE SERVICES, FACILITY MANAGEMENT, AND GOVERNANCE OF THE COMMUNITY FOR THE CREATIVE NON-VIOLENCE (CCNV) SHELTER FOR THE HOMELESS"

THURSDAY, JUNE 27, 2013 -- 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, will convene a public oversight hearing on "Present and Future Services, Facility Management, and Governance of the Community for the Creative Non-Violence (CCNV) Shelter for the Homeless". The hearing will be held on Thursday, June 27, 2013, at 11:00 a.m., in Room 500, of the John A. Wilson Building.

CCNV is the largest homeless shelter in the Washington, DC area, and one of the largest in the United States, serving over 1,300 homeless residents. The purpose of this hearing is for the Council and the public to obtain information regarding the quality of services being provided to CCNV residents, maintenance issues, and the legal agreements governing utilization of the facility. This hearing will also give shelter residents the opportunity to discuss any additional shelter related issues.

Those who wish to testify or have questions regarding the hearing should contact Malcolm Cameron of the Committee on Human Services by e-mail at mcamerons@dccouncil.us or by telephone at (202) 724-8191. 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 testimony to the hearing. Representatives of organizations will be allowed a maximum of five (5) minutes for oral presentation and individuals will be allowed a maximum of three (3) minutes for oral presentation.

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 Committee on Human Services, 1350 Pennsylvania Avenue, N.W., Suite 116, Washington, D.C. 20004, no later than 6:00 p.m., Thursday, July 4, 2013.

Council of the District of Columbia
Committee on Small and Local Business Development
Notice of Public Oversight Roundtable

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite G-6 Washington, DC 20004

Councilmember Vincent B. Orange, Sr., Chairperson Committee on Business, Consumer, and Regulatory Affairs Announces a Public Oversight Roundtable

Review of Activities and Events Commemorating the 151st Anniversary Observance of Emancipation Day April 16, 2013

WEDNESDAY, July 10, 2013, 10 A.M. JOHN A. WILSON BUILDING, ROOM 412 1350 PENNSYLVANIA AVENUE, N.W. Washington, DC 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public oversight roundtable by the Committee on Business, Consumer, and Regulatory Affairs to review the District of Columbia's activities and events for commemorating the 151st Anniversary Observance of Emancipation Day held on April 16, 2013.

The public oversight roundtable is scheduled for Wednesday, July 10, 2013, at 10:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. The purpose of the public oversight roundtable is to review the activities and events that were planned and organized to showcase the 151st anniversary observance of the signing of the D.C. Compensated Emancipation Act on April 16, 1862.

Individuals and representatives of organizations who wish to testify at the public oversight roundtable are asked to contact Ms. Faye Caldwell, Administrative Assistant to the Committee on Business, Consumer, and Regulatory Affairs, at (202) 727-6683, or via e-mail at fcaldwell@dccouncil.us and furnish their names, addresses, telephone numbers, and organizational affiliation, if any, by the close of business Wednesday, July 3, 2013. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Monday, July 22, 2013. Copies of written statements should be submitted to the Committee on Small and Local Business Development, Council of the District of Columbia, Suite G-6 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Roundtable
John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR 20-228, the "See Forever/Maya Angelou Public Charter School Revenue Bonds Project Approval Resolution of 2013"
PR 20-295 the "D.C. Preparatory Academy Revenue Bonds Project Approval Resolution of 2013"
PR20-296, the "Washington International School Refunding Revenue Bonds Project Approval Resolution of 2013"

Wednesday, June 12, 2013
10:00 a.m.
Room 120 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, June 12, 2013 at 10:30 a.m., in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 20-228, the "See Forever Foundation/Maya Angelou Public Charter School Revenue Bonds Project Approval Resolution of 2013" will authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $10 million of the 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 See Forever and/or Maya Angelou Public Charter School in the financing, refinancing or reimbursing of cost associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 5600 East Capitol Street, NE, in Ward 7.

PR 20-295 the "D.C. Preparatory Academy Revenue Bonds Project Approval Resolution of 2013" will authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $32.5 million of the 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 D.C. Preparatory Academy in the financing, refinancing or reimbursing of cost associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The project is located at 100 41st Street, NE, in Ward 7.

PR20-296, the "Washington International School Refunding Revenue Bonds Project Approval Resolution of 2013" will authorize and provide for the issuance, sale and delivery in an aggregate principal amount not to exceed $32 million of the 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 the Washington International School in the financing, refinancing or reimbursing of cost associated with an authorized project pursuant to section 490 of the District of Columbia Home Rule Act. The issuance will finance and refinance costs incurred from previous issuances associated with their campuses located on Macomb Street, NW, in Ward 3, and Reservoir Road, NW, in Ward 2.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Tuesday, June 11, 2013. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia; 1350 Pennsylvania Ave., N.W.; Suite 114; Washington D.C. 20004.

Council of the District of Columbia
Committee on Education
Notice of Public Roundtable

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

COUNCILMEMBER DAVID A. CATANIA, CHAIRPERSON
COMMITTEE ON EDUCATION

Announces a Public Roundtable

On

PR20-292 "District of Columbia Board of Library Trustees Faith G. Hubbard Confirmation Resolution of 2013" and PR20-293 "District of Columbia Board of Library Trustees Neil Albert Confirmation Resolution of 2013"

On

Wednesday, June 12, 2013
3 p.m.
Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember David A. Catania, Chairperson of the Committee on Education, announces a Public Roundtable on PR20-292 "District of Columbia Board of Library Trustees Faith G. Hubbard Confirmation Resolution of 2013" and PR20-293 "District of Columbia Board of Library Trustees Neil Albert Confirmation Resolution of 2013"at 3 p.m. on Wednesday, June 12, 2013 in room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The purpose of this roundtable is to discuss the nomination of Faith G. Hubbard and Neil Albert for the District of Columbia Board of Library Trustees.

Members of the public wishing to testify should contact Jamaal Jordan at 202-724-8061 or jjordan@dccouncil.us no later than 5 p.m. on Monday June 10. Members of the public unable to testify in person may submit written testimony which will be made part of the official record. Copies of written statements should be submitted to the Committee on Education no later than 5 p.m. on Friday June 14, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B20-292, "Heat Wave Safety Temporary Amendment Act of 2013", **B20-305**, "YMCA Community Investment Initiative Real Property Tax Exemption Temporary Act of 2013", **B20-307**, "Vending Regulation Temporary Amendment Act of 2013" and **B20-302**,"Better Prices, Better Quality, Better Choices for Health Coverage Temporary Amendment Act of 2013" were adopted on first reading on June 4, 2013. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur on June 18, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on the following appointment resolutions in order to consider the proposed resolutions at the July 2, 2013 legislative meeting to ensure the prompt filling of vacancies and lapsed terms on the District of Columbia Board of Library Trustees: PR20-292 "District of Columbia Board of Library Trustees Faith G. Hubbard Confirmation Resolution of 2013" and PR20-293 "District of Columbia Board of Library Trustees Neil Albert Confirmation Resolution of 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. 20-58: Request to reprogram $686,696 of Fiscal Year 2013 Special Purposes Revenue funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on May 31, 2013. This reprogramming covers certain costs related to the District's payroll system and other operational needs.

RECEIVED: 14 day review begins June 3, 2013

Reprog. 20-59: Request to reprogram $1,694,700 of Fiscal Year 2013 Special Purpose Revenue budget authority within the University of the District of Columbia was filed in the Office of the Secretary on May 31, 2013. This reprogramming will support needed infrastructure repairs and system upgrades within UDC.

RECEIVED: 14 day review begins June 3, 2013

Reprog. 20-60: Request to reprogram $500,000 of Fiscal Year 2013 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on May 31, 2013. This reprogramming covers the reconfiguration of office space, temporary staff in the Customer Service Administration's call center to process taxpayer returns, and higher-than-anticipated postage related to mailing taxpayer refunds and other correspondence in the Returns Processing Unit.

RECEIVED: 14 day review begins June 3, 2013

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JUNE 12, 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 # 13-CMP-00166; SBI, LLC, t/a Touchdown, 1334 U Street NW, License #86233, Retailer CT, ANC 1B
Allowed the Establishment to Operate During Extended Hours Without a Permit

Show Cause Hearing (Status) **9:30 AM**
Case # 13-CMP-00012; Bee Hive, LLC, t/a Sticky Rice, 1224 H Street NE License #72783, Retailer CR, ANC 6A
Failed to Allow an ABRA Investigator to Enter or Inspect Without Delay or Otherwise Interfered with an Investigation

Show Cause Hearing (Status) **9:30 AM**
Case # 12-AUD-00068(a); Big Bear Café, LLC, t/a Big Bear Café, 1700 1st Street NW, License #84379, Retailer CR, ANC 5E
Failed to Obtain Importation Permits, Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 11-CMP-00477(a); The NMD Group, LLC, t/a Uniontown Bar & Grill 2200 Martin Luther King, Jr., Ave SE, License #84348, Retailer CR, ANC 8A
Felony Conviction

Fact Finding Hearing **10:00 AM**
Temporary License Application, Date of Events: June 22-23, 2013, Applicant: Allen M. Tubis, on behalf of Barbecue Battle, Inc., Neighborhood: Pennsylvania Ave NW, (between 9th & 14th Streets)

Fact Finding Hearing **10:30 AM**
Pub Crawl; Date of Event: June 22, 2013, Applicant(s):Daniel Kramer, on behalf of Beerathon, LLC, Event Name: Bourbon Bash
The names of the establishments participating in the Pub Crawl are available upon request.

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing **1:30 PM**
Case # 13-PRO-00008; Tas, LLC, t/a Libertine, 2435 18th Street NW, License #86298, Retailer CR, ANC 1C
Substantial Change (Change of Hours for Premise and Sidewalk Café)

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

Correction**

5/24/2013

Notice is hereby given that:

License Number: ABRA-091137 **License Class/Type: C Restaurant**

Applicant: We Are 4 Partners LLC

Trade Name: ARCURI

ANC: 3B02**

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

2400 WISCONSIN AVE NW, Washington, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

7/8/2013

HEARING WILL BE HELD ON

7/22/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS: Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am -2 am	11 am - 12 am
Monday:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
Tuesday:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
Wednesday:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
Thursday:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
Friday:	11:30 am - 3 am	11:30 am - 3 am	11:30 am - 1 am
Saturday:	11 am - 3 am	11 am - 3 am	11:30 am - 1 am

Days	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	11 am - 2 am	11 am - 2 am
Monday:	11:30 am - 2 am	11:30 am - 2 am
Tuesday:	11:30 am - 2 am	11:30 am - 2 am
Wednesday:	11:30 am - 2 am	11:30 am - 2 am
Thursday:	11:30 am - 2 am	11:30 am - 2 am
Friday:	11:30 am - 3 am	11:30 am - 3 am
Saturday:	11 am - 3 am	11 am - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 7, 2013
Petition Date:	July 22, 2013
Roll Call Hearing Date:	August 5, 2013
Protest Hearing Date:	September 25, 2013
License No.:	ABRA-092346
Licensee:	EL Atardecer LLC
Trade Name:	EL Atardecer Restaurant
License Class:	Retailer's Class "D" Restaurant
Address:	3475 14th Street, NW
Contact:	Jacquelin Acosta, 202-604-4449

WARD 1 ANC 1A SMD 1A04

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 25, 2013.

NATURE OF OPERATION
New restaurant serving Salvadorean and Mexican cuisine with seating for 60 patrons. Total occupancy is 60. Sidewalk Café with seating for approximately 29 patrons.

HOURS OF OPERATION
Sunday through Saturday 7am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday 10am-2am; Monday through Thursday 11am-2am; Friday and Saturday 10am-3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR THE SIDEWALK CAFE
Sunday through Saturday 10am-1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 5, 2013

License No.: ABRA-072654
Licensee: Jose A. and Maria R. Carcamo
Trade Name: El Sauce
License Class: Retailer's"D"Restaurant
Address: 1227 11th Street, NW
Contact Information: Jairo Carcamo 202 320-9258

WARD 2 ANC 2F SMD 2F07

Notice is hereby given that this licensee has applied for a substantial change to the 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, 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.

Licensee requests the following substantial changes to its nature of operation:

- Class change from a Retailer's D Restaurant to a Retailer's C Restaurant

  Current Hours of Alcoholic Beverage Operations, Sales and Consumption
  Sunday through Thursday 9 am to 2 am and Friday Saturday, 9 am-3 am

  Current Hours of Alcoholic Beverage Sales and Consumption
  Sunday 10 am to 2 am; Monday through Thursday 9 am to 2 am; Friday and Saturday, 9 am-3 am

  Current Hours of Entertainment
  Monday 9 pm to 1:30 am; Thursday 9 pm to 1:30; Friday and Saturday, 10 pm-2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 5, 2013

License No.: ABRA-076260
Licensee: Poyloung Group DC, LLC
Trade Name: Kruba
License Class: Retailer's"C"Restaurant
Address: 301 Tingey Street, SE
Contact Information: Chuchart Kanpirapang 202 484-0234

WARD 6 ANC 6D SMD 6D07

Notice is hereby given that this licensee has applied for a substantial change to the 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, 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.

Licensee requests the following substantial changes to its nature of operation:

- To add a Sidewalk Cafe

  Current Hours of Alcoholic Beverage Operations, Sales and Consumption
  Sunday through Thursday 11 am to 1 am; Friday and Saturday, 11 am-3 am

  Current Hours of Alcoholic Beverage Sales and Consumption
  Sunday through Thursday 11 am to 1 am; Friday and Saturday, 11 am-3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 5, 2013

License No.: ABRA-076260
Licensee: Langston Bar & Grille LLC
Trade Name: Langston Bar & Grille
License Class: Retailer's"C"Restaurant
Address: 1831 Benning Road, NE
Contact Information: Antonio Roberson 202 397-3637

WARD 6 ANC 6A SMD 6A07

Notice is hereby given that this licensee has applied for a substantial change to the 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, 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.

Licensee requests the following substantial changes to its nature of operation:

- Class change from a Retailer's "C" Restaurant to a Retailer's "C" Tavern

  Current Hours of Alcoholic Beverage Operations, Sales and Consumption
  Sunday 11 am to 12 am; Monday through Thursday 8 am to 2 am; Friday 8 am to 3 am; Saturday, 11 am-3 am

  Current Hours of Alcoholic Beverage Sales and Consumption
  Sunday 11 am to 12 am; Monday through Thursday 11 am to 2 am; Friday and Saturday, 11 am-3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 7, 2013
Petition Date:	July 22, 2013
Roll Call Hearing Date:	August 5, 2013
Protest Hearing Date:	September 25, 2013
License No.:	ABRA-088166
Licensee:	Masai Mara Restaurant and Lounge, LLC
Trade Name:	Masai Mara Restaurant and Lounge
License Class:	Retailer's Class "C" Restaurant
Address:	1200 Kennedy Street, NW
Contact:	Richard & Teresa Mgongo, 301-442-1007

WARD 4 ANC 4C SMD 4C01

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 10:30 am on September 25, 2013.

NATURE OF OPERATION

New restaurant with East African and American cuisine. Inside seating capacity is 49. DJ and Summer Garden with seating for 12 patrons.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN

Sunday through Thursday 11am-11pms and Friday & Saturday 11am-3am

HOURS OF ENTERTAINMENT

Friday and Saturday 9pm-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 05, 2013
Protest Date: September 25, 2013

License No.: ABRA-092156
Licensee: 1331 Connecticut, L.L.C.
Trade Name: NTH (National Tap House)
License Class: Retail Class "C" Tavern
Address: 1331 Connecticut Avenue, N.W.
Contact: Edward S. Grandis, 202-234-8950

WARD 2 ANC 2B SMD 2B07

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 4:30 pm on September 25, 2013.

NATURE OF OPERATION
New Tavern/Sports bar. Serving appetizers, full menu for lunch, dinner and late night fare. Flat screens, electronic music, live bands and DJ. Occupancy load is 267.

HOURS OF OPERATON
Sunday through Thursday 10 am – 3 am, Friday and Saturday 10 am – 4 am

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

HOURS OF OPERATON FOR SUMMER GARDEN
Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

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

HOURS OF OF ENTERTAINMENT INSIDE AND SUMMER GARDEN
Sunday through Thursday 6 pm – 2 am, Friday and Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 05, 2013
Protest Hearing Date: September 25, 2013

License No.: ABRA-092297
Licensee: Pei Wei Asian Diner, LLC
Trade Name: Pei Wei Asian Diner
License Class: Retailer's Class "D" Restaurant
Address: 1212 18th Street, N.W.
Contact: Michael Fonseca 202-625-7700

WARD 2 ANC 2B SMD 2B06

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 4:30 pm on September 25, 2013.

NATURE OF OPERATION
New restaurant serving casual Asian food. Background music. Occupancy load is 70 seats.

HOURS OF OPERATION
Sunday through Saturday 10:00 am – 11:30 pm

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Saturday 10:00 am – 11:30 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

6/7/2013

Notice is hereby given that:
License Number: ABRA-060510 **License Class/Type: C Restaurant**
Applicant: Amde Sofenias
Trade Name: Queen Makeda
ANC: 1B

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

1917 9TH ST NW, Washington, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

7/22/2013

HEARING WILL BE HELD ON

8/5/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am -2 am	7 pm - 2 am
Monday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am	7 pm - 2am
Wednesday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Thursday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Friday:	11 am - 3 am	11 am - 3 am	7 pm - 3 am
Saturday:	11 am - 3 am	11 am - 3 am	7 pm - 3 am

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

RESCIND

5/17/2013

Notice is hereby given that:

License Number: ABRA-060510 **License Class/Type: C Restaurant**

Applicant: Amde Sofenias

Trade Name: Queen Makeda

ANC: 1B

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

1917 9TH ST NW, Washington, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

7/1/2013

HEARING WILL BE HELD ON

7/15/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am -2 am	7 pm - 2 am
Monday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Tuesday:	11 am - 2 am	11 am - 2 am	7 pm - 2am
Wednesday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Thursday:	11 am - 2 am	11 am - 2 am	7 pm - 2 am
Friday:	11 am - 3 am	11 am - 3 am	7 pm - 3 am
Saturday:	11 am - 3 am	11 am - 3 am	7 pm - 3 am

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 7, 2013
Petition Date:	July 22, 2013
Roll Call Hearing Date:	August 5, 2013
Protest Hearing Date:	September 25, 2013
License No.:	ABRA-092192
Licensee:	Fernando Postigo
Trade Name:	Sol Mexican Grill
License Class:	Retailer's Class "C" Tavern
Address:	1251 H Street, NE
Contact:	Cheryl Webb, 202-277-7461

WARD 6A ANC 6A SMD 6A02

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 1:30pm on September 25, 2013.

NATURE OF OPERATION
New tavern serving Tex-Mex cuisine with a full bar. Entertainment will include a Dee Jay on Fridays and Saturdays. Seating capacity is 35. Total occupancy load is 49. Summer Garden with seating for 10 patrons.

HOURS OF OPERATION
Sunday through Thursday 11am-11pm and Friday & Saturday 11am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11am-10:45pm and Friday & Saturday 11am-2am

HOURS OF ENTERTAINMENT
Friday and Saturday 6pm-1am

HOURS OF OPERATION FOR SUMMER GARDEN
Sunday through Thursday 11am-11pm and Friday & Saturday 11am-12am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 11am-10:45pm and Friday & Saturday 11am-11:45pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 07, 2013
Petition Date: July 22, 2013
Roll Call Hearing Date: August 5, 2013
Protest Hearing Date: September 25, 2013

License No.: ABRA-092362
Licensee: MJA, LLC.
Trade Name: Stoney's on L
License Class: Retailer's Class "C" Restaurant
Address: 2101 L St., NW Suite 103
Contact: Rosemarie Salguero, Esquire 202-589-1836

WARD 2 ANC 2A SMD 2A06

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 25, 2013.

NATURE OF OPERATION
Stoney's is a community restaurant and bar, serving all American cuisine. It will serve breakfast/lunch/dinner. Entertainment will include trivia night and host private events.

Seating Capacity: 145
Total Occupancy load: 150
Sidewalk Café': 30 Seats

PROPOSED HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION FOR PREMISES AND SIDEWALK CAFÉ':
Sunday through Thursday 8:00 am – 2:00 am, Friday and Saturday 8:00 am – 3:00 am.

PROPOSED 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:	June 7, 2013
Petition Date:	July 22, 2013
Hearing Date:	August 5, 2013
Protest Hearing Date:	September 25, 2013

License No.:	ABRA-090850
Licensee:	The Sequoia Presidential Yacht Group, LLC
Trade Name:	The Sequoia Presidential Yacht Group
License Class:	Retailer's Class "CX" Common Carrier
Address:	600 Water Street, SW
Contact:	Gary Silversmith 202-333-0011

WARD 6 ANC 6D SMD 6D04

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 4:30 pm on September 25, 2013.

NATURE OF OPERATION
Upscale private yacht charter with a seating capacity of 41, featuring a pianist for occasional entertainment.

HOURS OF OPERATION
Sunday through Thursday 7:30 am – 12:00 am and Friday & Saturday 7:30 am – 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday 8:00 am – 12:00 am and Friday & Saturday 8:00 am – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 7, 2013
Petition Date: July 22, 2013
Hearing Date: August 5, 2013

License No.: ABRA-025781
Licensee: Tryst Incorporated
Trade Name: Tryst
License Class: Retailer's Class "C" Restaurant
Address: 2459 18th Street, NW
Contact: Michael D. Fonseca, 202-625-7700

WARD 1 ANC 1C SMD 1C07

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 add a Sidewalk Café with seats for 18 patrons.

CURRENT HOURS OF OPERATION
Sunday through Thursday 6:30am-2am; Friday and Saturday 6:30am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION
Sunday through Thursday 10am-1:40am; Friday and Saturday 10am-2:40am

HOURS OF ENTERTAINMENT
Monday through Thursday 6pm-11pm

PROPOSED HOURS OF OPERATION FOR THE SIDEWALK CAFÉ
Sunday through Thursday 6am-1am; Friday and Saturday

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR THE SIDEWALK CAFE
Sunday through Thursday 10am-1am; Friday and Saturday10am-2am

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD ON AIR QUALITY ISSUES

National Ambient Air Quality Standards

Notice is hereby given that a public hearing will be held on Monday, July 8, 2013, at 5:30 p.m. in Room 555 at 1200 First Street NE, 5th Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on the proposed revision to the District of Columbia's (District) State Implementation Plan (SIP), found at 40 C.F.R. Part 52 Subpart J, regarding certain federal Clean Air Act (CAA) requirements under Sections 110(a)(2)(A) to (M). The SIP revision was initially proposed in the *D.C. Register* on February 8, 2013 (60 DCR 001391; Notice ID 4176061). Comments received from the United States Environmental Protection Agency (EPA) are addressed in this re-proposal.

Once the District has completed its procedures, the proposed revision to the SIP will be submitted to the EPA for approval.

This SIP revision is a compilation of elements that describe how the District is implementing the "infrastructure" elements of the 2008 lead (Pb) national ambient air quality standards (NAAQS). Once approved by EPA, it will provide a federally enforceable written confirmation of how the District will continue to comply with the §110(a)(2) requirements of the CAA for Pb.

This SIP revision is being proposed simultaneously with a SIP revision to replace the District's conflict of interest provisions to meet the requirements of § 110(a)(2)(E)(ii) and § 128 of the CAA for all criteria pollutant NAAQS, not just the Pb NAAQS.

Copies of the proposed SIP revision are available for public review during normal business hours at the offices of the District Department of the Environment (DDOE), 1200 First Street NE, 5th Floor, Washington, DC 20002, and on-line at http://ddoe.dc.gov/.

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Mr. William Bolden at the DDOE address above or at william.bolden@dc.gov by 4:00 p.m. on July 8, 2013. Interested parties may also submit written comments to Ms. Jessica Daniels, Monitoring and Assessment Branch, Air Quality Division, DDOE, at the same address or by email at jessica.daniels@dc.gov. Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at 202-535-2989 or email at rama.tangirala@dc.gov, or Ms. Daniels at 202-741-0862 or jessica.daniels@dc.gov. No comments will be accepted after July 8, 2013.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD ON AIR QUALITY ISSUES

State Implementation Plan

Notice is hereby given that a public hearing will be held on Monday, July 8, 2013, at 5:00 p.m. in Room 555 at 1200 First Street NE, 5th Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on a revision to the District of Columbia's (District) State Implementation Plan (SIP). The District is proposing to revise the SIP to remove certain conflict of interest provisions at 40 C.F.R. Chapter 1, Subpart J, Section 52.470(e) called the "Revision for conflict of interest procedures [CAA Section 128 SIP]," which was approved by EPA on June 1, 1984 (49 Fed. Reg. 22810). The District will replace sections 1-1461, 1-1462, and 1-1471 of the D.C. Code, 1981 Edition; D.C. Law 4-23; sections 3(l) through (n) of D.C. Law 4-88; and Organization Order No. 112 in the SIP with D.C. Official Code §§ 1-1161.01, 1-1162.23, 1-1162.24, and 1-1162.25 (2012 Supp.). The SIP revision was initially proposed in the *D.C. Register* on February 8, 2013 (60 DCR 001392; Notice ID 4175964). Comments received from the United States Environmental Protection Agency (EPA) are addressed in this re-proposal.

Once the District has completed its procedures, the proposed revision to the SIP will be submitted to EPA for approval to meet the requirements of § 128 and § 110(a)(2)(E)(ii) of the federal Clean Air Act (CAA) for all criteria pollutants.

Copies of the proposed SIP revision are available for public review during normal business hours at the offices of the District Department of the Environment (DDOE), 1200 First Street NE, 5th Floor, Washington, DC 20002, and on-line at http://ddoe.dc.gov/.

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Mr. William Bolden at the DDOE address above or at william.bolden@dc.gov by 4:00 p.m. on July 8, 2013. Interested parties may also submit written comments to Ms. Jessica Daniels, Monitoring and Assessment Branch, Air Quality Division, DDOE, at the same address or by email at jessica.daniels@dc.gov. Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at 202-535-2989 or email at rama.tangirala@dc.gov, or Ms. Daniels at 202-741-0862 or jessica.daniels@dc.gov. No comments will be accepted after July 8, 2013.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF DISPOSITION OF TWO PROPERTIES BY DRAWING AT THE 5TH ANNUAL DC HOUSING EXPO

The Department of Housing and Community Development (DHCD, will dispose of two properties in its inventory of agency-owned properties at its Annual Housing Expo on June 1, 2013 at the Washington Convention Center. DHCD is required to hold a public hearing for the disposition of any agency-owned property and will do so at 6:00 P.M. on June 19, 2013 at DHCD headquarters located at 1800 Martin Luther King, Jr. Avenue, SE.

The two properties are located at 234 V Street, NE and 1854 L Street NE The disposition will be done in the form of a drawing for eligible households. Households had to register by April 30, 2013 through one of the approved Community Based Organizations in order to qualify for the lottery. The lottery winners will purchase the units for half of their appraised value in exchange for a commitment to live in the units for not less than 10 years.

The Department has scheduled a public hearing on Thursday, June 3, 2010 at 6 p.m., at our headquarters located at 1800 MLK Jr., Ave. SE, inside the first floor conference room.

Telecommunications Device for the Deaf (TDD) relay service will be provided by calling (800) 201-7165. Sign language interpretation and language translation services will be available upon request by calling Ms. Pamela Hillsman, seven days prior to the hearing on (202) 442-7251. Persons, who require interpretation or language translation, must specify the language of preference (i.e. Spanish, Vietnamese, Chinese-Mandarin/Cantonese, Amharic, or French). Language interpretation service will be provided to pre-registered persons only. Department of Housing and Community Development staff who are bilingual in English and Spanish will be available to provide interpreter service on an availability basis to walk-ins without registration.

If you wish to provide oral testimony, call (202) 442-7251 or email pamela.hillsman@dc.gov by Tuesday, June 18, 2013. If you wish to provide comments for the record, please do so by mail or email by close of business Friday, June 21, 2013. Written statements should be mailed to: Michael P. Kelly, Director, DHCD, Attention: Housing Expo House Drawing. Emailed comments should be submitted to DHCDEVENTS@DC.GOV with a subject line "Housing Lottery House Drawing."

Vincent C. Gray Mayor
Victor Hoskins, Deputy Mayor for Planning and Economic Development
Michael P. Kelly, Director, Department of Housing and Community Development
www.dhcd.dc.gov

MAYOR'S AGENT
FOR THE HISTORIC LANDMARK AND HISTORIC DISTRICT PROTECTION ACT

NOTICE OF PUBLIC HEARINGS

Public notice is hereby given that the Mayor's Agent will hold a public hearing on applications affecting properties subject to the Historic Landmark and Historic District Protection Act of 1978. Interested parties may appear and testify on behalf of, or in opposition to, the applications. The hearing will be held at the Office of Planning, 1100 4th Street, SW, Suite E650.

1) Hearing Date: **Friday, July 12, 2013 at 1:30 p.m.**
Case Number: H.P.A. 13-308
Address: 2112 Georgia Avenue, NW (Square 2877, Lot 933)
Type of Work: Raze

Affected Historic Property: Washington Railway and Electric Company Garage
Affected ANC: 1B

2) Hearing Date: **Friday, July 12, 2013 at 1:30 p.m.**
Case Number: H.P.A. 13-309
Address: 2146 Georgia Avenue, NW (Square 2877, Lot 930)
Type of Work: Raze

Affected Historic Property: Bond Bread Factory (General Baking Company Bakery)
Affected ANC: 1B

The Applicant's claim is that issuance of the permits to raze are necessary for the construction of a project of special merit.

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapter 4), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations." The office is located at the Office of Planning, 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at (202) 442-8800.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupation 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 the adoption of the following amendments to Chapter 70 (Social Work) of Title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments is to clarify that in 17 DCMR § 7004.2, an "accredited program" means a Council on Social Work Education accredited program; to provide applicants that are already working toward licensure, but do not meet the requirement set forth in 17 DCMR § 7004.2 with two (2) limited exceptions by which to qualify to take the Advanced (Independent clinical social worker) exam; to properly identify the "Independent social worker" level of the national examination as the "Advanced Generalist" exam; and to properly identify the "Independent clinical social worker" level of the national examination as the "Advanced Clinical" exam; to rescind the Mandatory DC Social Work Laws and Regulations Review Course; to clarify that licensees who have been selected in the Board's random continuing education audit to submit proof of completing the required continuing education credits within thirty (30) days after being deemed served notice of being audited; to clarify that the Board will approve continuing education credits developed and taught by individual with demonstrated qualifications in the topic; and to clarify that an applicant or social worker must first be licensed in the District of Columbia before he or she can engage in the supervised practice of social work.

These rules were published in the *D.C. Register* as proposed rulemaking on March 8, 2013 at 60 DCR 2951. One written comment was received from the public in connection with this publication during the 30-day comment period. The comment, however, only addressed an objection to the requirement set forth in Subsection 7008.4 to complete a minimum of three (3) hours of continuing education credits in Human Immunodeficiency Virus (HIV) training each renewal period. That requirement, however, was not a proposed amendment to the regulations. That requirement was implemented by final rulemaking published on May 4, 2012 at 59 DCR 4209. Therefore, no changes have been made from the proposed rulemaking. These final rules will be effective upon publication of this notice in the *D.C. Register.*

Chapter 70, SOCIAL WORK, of Title 17, BUSINESS, OCCUPATIONS, AND PROFESSIONS, is amended as follows:

Section 7004, NATIONAL EXAMINATION, is amended as follows:

Subsections 7004.2 through 7004.4 are amended to read as follows:

7004.2 Beginning January 1, 2013, an applicant seeking to take the Advanced Clinical (Independent clinical social worker) level of the national examination clinical examination shall have completed twelve (12) academic credits of clinical course

work from a Council on Social Work Education accredited program with a minimum of six (6) of the twelve (12) academic credits having been obtained in a Master's of Social Work program.

7004.3 Notwithstanding Subsection 7004.2, effective from the date of publication of this regulation until January 1, 2015, an applicant that does not meet the requirements set forth in Subsection 7004.2, may apply to take the Advanced Clinical (Independent clinical social worker) level of the national examination clinical examination if the applicant:

(a) Has completed six (6) or more academic credits of clinical course work from a Council on Social Work Education accredited program;

(b) Has completed a Board-approved post-graduate clinical training program; and

(c) Has completed an additional five hundred (500) hours of supervised practice hours in a clinical setting beyond the required three thousand (3000) hours of post-master's or postdoctoral experience. For purposes of this section only, the additional five hundred (500) hours may have been obtained over a period of more than four (4) consecutive years but shall not exceed five (5) consecutive years.

7004.4 Notwithstanding Subsection 7004.2, effective from the date of publication of this regulation until January 1, 2015, an applicant that has completed less than six (6) academic credits of clinical course work from a Council on Social Work Education accredited program, may apply to take the Advanced Clinical (Independent clinical social worker) level of the national examination clinical examination if the applicant:

(a) Has completed a Board-approved post-graduate clinical training program; and

(b) Has completed an additional one thousand (1000) hours of supervised practice hours in a clinical setting beyond the required three thousand (3000) hours of post-master's or postdoctoral experience. For purposes of this section only, the additional one thousand (1000) hours may have been obtained over a period of more than four (4) consecutive years but shall not exceed six (6) consecutive years.

The current Sections 7004.3-7004.4 are renumbered as 7004.5-7004.6.

Subsections 7004.7 through 7004.8 are amended to read as follows:

7004.7 The passing score on the Advanced Generalist (Independent social worker) level of the national examination shall be seventy-five (75).

7004.8 The passing score on the Advanced Clinical (Independent clinical social worker) level of the national examination shall be seventy-five (75).

The current Sections 7004.7-7004.10 are renumbered as 7004.9-7004.12.

A new Subsection 7004.13 is added to read as follows:

7004.13 The Board shall not accept any review courses or supervised practice hours completed prior to the date of the last failed examination in satisfaction of the requirements set forth in § 7004.11 and 7004.12.

Section 7008, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:

Subsection 7008.4 is amended to read as follows:

7008.4 Except as provided in Subsection 7008.2, beginning with the renewal period ending July 2015, all applicants for renewal of a license shall have completed forty (40) hours of approved continuing education credit during the two (2)-year period preceding the date the license expires, which shall include:

(a) A minimum of six (6) hours of continuing education credits in live, in-person face-to-face ethics course(s) in which the participant and presenter are physically present in the same room;

(b) A minimum of three (3) hours of continuing education credits in Human Immunodeficiency Virus (HIV) training or other Board-mandated topic as specified by the Board, which the Board shall give notice of at least twelve (12) months in advance of the renewal date; and

(c) A maximum of twelve (12) continuing education hours in independent home studies, distance learning continuing education activities, or internet courses.

Subsection 7008.6 is amended to read as follows:

7008.6 A licensee who is selected to participate in the Board's continuing education audit shall, within thirty (30) days after being deemed served notice of the selection, submit proof pursuant to § 7008.13 of having completed the required approved continuing education credits during the two (2)-year period immediately preceding the date the license expires.

Section 7009, APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES, is amended as follows:

Subsection 7009.6(b) is amended to read as follows:

7009.6(b) Be developed and taught by individuals with demonstrated qualifications in the topic in consultation with a licensed social worker; and

Section 7012, SUPERVISION OF PRACTICE, is amended as follows:

Subsections 7012.4 through 7012.13 are amended to read as follows:

7012.4 An applicant or social worker must first obtain licensure under the Act at the level of licensure for which he or she is qualified, in order to engage in supervised practice within the District.

The current Subsections 7012.4-7012.13 are renumbered as 7012.5-7012.14.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Stormwater Management, and Soil Erosion and Sediment Control

The Director of the District Department of the Environment (Department or DDOE), under the authority identified below, hereby gives notice of the intent to amend Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), comprehensively amending the stormwater regulations and the soil erosion and sediment control regulations. Specifically, these amendments would repeal and replace §§ 500 to 545 and 599, and add §§ 546, 547, and 552. This notice refers to this rulemaking as the "second proposed rule."

DDOE also gives notice of its intent to adopt a revised Stormwater Management Guidebook (SWMG). The SWMG provides guidance on compliance with the rule. This includes design specifications for stormwater management practices that can be used to achieve compliance. The revised SWMG is approximately six hundred (600) pages long and, therefore, is not published in this *D.C. Register*. It is available at ddoe.dc.gov/proposedstormwaterrule. This notice refers to the current version of the SWMG as the "second proposed SWMG."

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. DDOE will accept comments from the public on both the rulemaking and the SWMG throughout the thirty (30) day period.

The second proposed rule and second proposed SWMG reflect comments received during comment periods on earlier versions of the rule. DDOE conducted a first formal public comment period, which lasted ninety (90) days, beginning with the publication of the proposed rule in the August 10, 2012 issue of the *D.C. Register* (59 DCR 009486). This document refers to the August 10, 2012 version of the rule as "the proposed rule" and the accompanying version of the SWMG as "the proposed SWMG." Based on comments received during the first formal public comment period and its internal deliberations, DDOE revised the proposed rule and proposed SWMG and released the "revised rule" and the "revised SWMG" for a thirty (30) day informal comment period that ended on April 30, 2013. DDOE maintains an email notification list of members of the public who are interested in this rulemaking. As noted at ddoe.dc.gov/proposedstormwaterrule, members of the public will be added to this email list upon request. DDOE distributed the revised rule to that email list and also posted the revised rule and revised SWMG at ddoe.dc.gov/proposedstormwaterrule. To facilitate public review, DDOE posted a version of each document in tracked changes and another with changes accepted.

DDOE greatly appreciates the many comments that the public submitted during both the first formal comment period and the informal comment period. DDOE has thoroughly considered these comments and made changes accordingly. DDOE will post a document responding to comments on the proposed rule and a separate document responding to comments on the proposed SWMG at ddoe.dc.gov/proposedstormwaterrule. DDOE does not plan to post a response document for each of the comments received during the informal comment period.

However, this preamble to the second proposed rule will summarize key changes that have been made based on public comments received during the informal comment period, and the second proposed SWMG will be accompanied by a similar summary.

DDOE has gone to great lengths to engage stakeholders and get their input during the rulemaking process. This input has improved the effectiveness and practicality of the rule. However, the federal deadline in the Municipal Separate Storm Sewer System (MS4) Permit issued to the District by Region III of the United States Environmental Protection Agency (available at www.epa.gov/reg3wapd/npdes/dcpermits.htm) imposes some constraints on the extent to which DDOE can address stakeholder concerns while still meeting the July 22, 2013 MS4 permit deadline. For example, while DDOE recognizes the advantages of providing a comprehensive document responding to each of the comments received during the informal comment period, it is not doing so, as mentioned above. Also, many stakeholders have asked about aspects of DDOE's planned implementation of the new regulatory framework and associated programs, especially the Stormwater Retention Credit (SRC) trading program. Though DDOE has carefully considered all of the comments it has received and is actively preparing for implementation, this preamble only summarizes these efforts.

For additional background, DDOE suggests that members of the public also review the preamble to the proposed rule, the preamble to the revised rule, and DDOE responses to clarifying questions (all available via ddoe.dc.gov/proposedstormwaterrule). In reviewing stakeholder comments, DDOE noted that some of the questions posed have been answered previously. DDOE will keep these questions, especially those being asked on a recurring basis, in mind as it develops outreach materials, such as Frequently Asked Questions (FAQs), to assist with program implementation. In the meantime, stakeholders may find that the documents listed above, as well as related resources such as training presentations, are helpful.

To make this preamble easier to read, the Department has organized it into sections with headings, as follows:

- **Authority**
- **Background**
- **Summary**
- **Proposed Transition to Full Effectiveness of Stormwater Management Performance Requirements**
- **Key Steps toward Implementation**
- **Basis for Administrative Fees**
- **Stormwater Retention Credit Trading Program**
- **Stormwater Retention Credit Trading: Ongoing Maintenance of Retrofits**
- **Stormwater Retention Credit Trading: Hybrid of Exchange and Over the Counter Models**
- **Stormwater Retention Credit Trading: SRCs for Existing Retention Capacity**
- **Stormwater Retention Credit Trading: Potential Initial Demand for SRCs**
- **Stormwater Retention Credit Trading: Potential Initial Supply of SRCs**
- **Stormwater Retention Credit Trading: SRC Price Required to Recoup Costs**
- **Stormwater Retention Credit Trading: Financial Return from SRCs and Discount**

- **Clarification of Anacostia Waterfront Development Zone Provisions**
- **Major Substantial Improvement: Structural and Space Limitations**
- **Clarification of Provisions Related to Contamination**
- **MEP in Public Right of Way for Parcel-Based Projects**
- **Submitting Comments on the Revised Rule and Stormwater Management Guidebook**

Authority

The authority for the proposed adoption of final rules is set forth below:

- Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq*. (2007 Repl. & 2012 Supp.));

- District Department of the Environment Establishment Act of 2005, §§ 101 *et seq.*, effective February 15, 2006, as amended (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2008 Repl. & 2012 Supp.));

- National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; 55 DCR 1689), as amended by the Anacostia Waterfront Environmental Standards Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-192; D.C. Official Code §§ 2-1226.31 *et seq*.) (2012 Supp.));

- The Soil Erosion and Sedimentation Control Act of 1977, effective Sept. 28, 1977 (D.C. Law 2-23; 24 DCR 792), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective August 26, 1994, (D.C. Law 10-166; 41 DCR 4892; 21 DCMR §§ 500-15);

- Uniform Environmental Covenants Act of 2005, effective May 12, 2006, as amended (D.C. Law 16-95; D.C. Official Code §§ 8-671.01 *et seq.* (2008 Repl.));

- Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2008 Repl. & 2012 Supp.)); and

- Mayor's Order 2006-61, dated June 14, 2006, and its delegations of authority.

Background

These amendments update Chapter 5 of Title 21 of the District of Columbia Municipal Regulations (DCMR) to reflect the current scientific, engineering, and practical understanding in the fields of stormwater management and soil erosion and sediment control. Knowledge and technology in these fields have changed considerably since 1977, when the majority of the soil erosion and sediment control requirements were put into place, and since 1988, when the District's existing stormwater management requirements were established.

In several decades of implementing the stormwater management and soil erosion and sediment control regulations of the District and undertaking numerous restoration projects, the Department has acquired substantial firsthand knowledge and experience of the damage to District waterbodies from impervious development and inadequately managed stormwater. Stormwater impacts District waterbodies with its powerfully erosive volume and the pollution it contains. *See* ddoe.dc.gov/proposedstormwaterrule for a presentation with photographs that illustrate these impacts.

These amendments satisfy the requirements of the District's Municipal Separate Storm Sewer System (MS4) Permit, issued by the United States Environmental Protection Agency under the Clean Water Act (Permit No. DC0000221, available at www.epa.gov/reg3wapd/npdes/dcpermits.htm). The MS4 permit requires the District to implement a 1.2 inch stormwater retention standard for land-disturbing activities, a lesser retention standard for substantial improvement projects, and provisions for regulated sites to satisfy these standards off site.

DDOE has also designed these amendments to work in concert with other sustainability initiatives in the District, including the Office of Planning's development of Green Area Ratio requirements under the zoning code and Mayor Gray's Sustainable DC Plan (sustainable.dc.gov/).

In developing these amendments, DDOE drew on various sources of information. This included a review of the science, engineering, and practice of stormwater management and soil erosion and sediment control, as well as its own firsthand knowledge of the impact of stormwater on District waterbodies. DDOE evaluated its experience managing the installation, operation, and maintenance of the various types of Best Management Practices (BMPs) that can satisfy the requirements in these amendments. DDOE also considered the regulatory approaches taken in other urban jurisdictions.

Finally, DDOE appreciates the valuable input it has received from residents, engineers, scientists, land developers, environmentalists, and other governmental entities regarding the impacts of these amendments. This includes feedback from approximately two dozen training sessions and clarifying meetings with stakeholders during the first formal comment period, as well as the comments submitted on the proposed rule and Stormwater Management Guidebook (SWMG) and comments received on the revised rule and SWMG. (Training presentations, DDOE responses to clarifying questions, and public comments submitted during the first formal comment period are available at ddoe.dc.gov/proposedstormwaterrule). DDOE recognizes that these amendments are significant for the regulated community, for environmental stakeholders, and for the public to whom the District's waterbodies ultimately belong. Accordingly, DDOE gave careful consideration to this input, which is reflected in the second proposed rule SWMG.

Summary

These amendments will provide greater protection for the Anacostia and Potomac Rivers, Rock Creek, and their tributaries. They will improve equity in the allocation of the burden of stormwater management, and they will promote sustainable development within the District.

The amendments will significantly improve protection for District waterbodies by effectuating a fundamental shift in the management of stormwater runoff within the District. Unlike the existing approach in which the fundamental goal of stormwater management is simply to manage the timing and quality of stormwater conveyed into the public sewer infrastructure, these amendments require the retention of stormwater volume on site with a menu of stormwater management practices through which stormwater is absorbed by the soil, infiltrated into the ground, evapotranspired by plants, or stored ("harvested") for use on site. This more closely approximates the "sponginess" of the natural environment, where rainwater is captured by foliage, absorbed into the soil, and infiltrated into groundwater reserves.

These amendments improve equity in how the impacts of stormwater runoff and the burden of stormwater management are distributed in the District. Over the years, inadequate stormwater management has become a leading cause of the severe degradation of District waterbodies such as the Anacostia and Potomac Rivers and Rock Creek. This degradation diminishes the value of these public resources for residents, visitors, and businesses in the District of Columbia and necessitates the use of public resources to pay the costs of managing stormwater and remedying its impacts. These amendments would more equitably allocate the costs of stormwater management by requiring properties undergoing major development or redevelopment to do more to reduce the stormwater runoff from their property. The idea that these costs should be reflected in the costs of developing properties is in keeping with the established principle of environmental policy and economics that external environmental costs should be internalized into the costs of a transaction. By making the shift to the retention-based approach in these amendments, regulated development will become a major driver behind the long-term effort to retrofit impervious surfaces in the District and, ultimately, to restore health to the District's waterbodies.

Enhancing sustainability in the District is another important objective, and Mayor Vincent C. Gray has released a sustainability plan that will help the District achieve this vision (sustainable.dc.gov/). These amendments are designed to support that vision not only by improving protection for District waterbodies, but also by providing that protection while maximizing flexibility and cost-savings for regulated sites. Notably, these amendments allow regulated sites the option of achieving a portion of their stormwater retention requirement off site, but still within the District, without having to first prove that on-site retention is infeasible. Such sites would have two (2) off-site options: use of Stormwater Retention Credits (SRCs), which can be purchased from the private market, or payment of an in-lieu fee to DDOE.

In addition to the flexibility and cost-savings that these off-site provisions allow, they also enhance sustainability's triple bottom line of social, economic, and environmental impacts via the installation of more retention BMPs in more parts of the District than would otherwise be achieved under a strict on-site retention approach. The preamble to the proposed rule provided

an overview of the benefits to District waterbodies that may result from the increase in retention BMPs (available at ddoe.dc.gov/proposedstormwaterrule). To summarize, this increase has the potential to significantly reduce the volume of stormwater runoff into District waterbodies and to capture a greater share of the dirtiest "first flush" volume carrying pollutants to our waterbodies. By shifting the installation of retention BMPs from areas draining into the tidal Anacostia and Potomac Rivers to areas draining into the District's relatively vulnerable tributary waterbodies, these off-site retention provisions are also likely to result in more protection for the District's most vulnerable waterbodies. Socioeconomically, an increase in retention BMPs should increase the number of green jobs in the District, including low-skill and moderately skilled installation, operation, and maintenance jobs, as well as relatively high-skilled design and engineering jobs. The increase in retention BMPs also provides aesthetic, health, and ancillary environmental benefits to the District. Finally, it is worth pointing out that DDOE sees the off-site provisions in these regulations as having the potential to result in a relatively large amount of retention BMPs being installed in less affluent parts of the District, meaning that they also have the potential to improve environmental justice outcomes in the District.

These amendments also contain other provisions to provide flexibility to regulated sites and promote sustainable development in the District. To facilitate retention on site, the amendments allow a regulated site to exceed the retention requirement in one area ("over-control") in order to compensate for retention that falls short in another area on the site. Additionally, on-site retention can also be achieved via direct drainage to a Shared Best Management Practice (S-BMP) that may serve multiple sites. Finally, though sites draining into the combined sewer system must retain a minimum volume of stormwater from the entire site, they have the flexibility to over-control without having to meet minimum requirements for retention or treatment in individual drainage areas on the site.

Proposed Transition to Full Effectiveness of Stormwater Management Performance Requirements

Numerous stakeholders have commented on the importance of when the new stormwater management performance requirements take effect. On the one hand, the new requirements are essential for the restoration of the District's waterbodies, and without these new requirements, or something very similar, it is difficult to envision how the full use of District waterbodies can be restored to its residents, visitors, and businesses. On the other hand, requiring regulated projects to meet the new requirements immediately or very soon after finalizing the rule may impose significant costs and time delays on these projects. As noted above, the new regulations represent a significant shift from the existing regulations. The types of projects that trigger the District's stormwater management regulations may go through months or even years of design work prior to beginning the permitting process that triggers the regulations, and it is difficult for those projects to design to the new requirements in advance of finalizing the rulemaking, since the regulatory requirements and technical guidance supporting them in the SWMG have not yet been finalized.

In developing a proposed transition plan, included in the preamble to the revised rule, DDOE carefully considered these issues, as well as the requirements of the Municipal Separate Storm Sewer System (MS4) permit. Based on comments received on the revised rule, DDOE has

further refined the proposed transition period (detailed in Figure 1 and below) and inserted the corresponding regulatory language in Section 552 of the second proposed rule, with related language added to Section 526. Refinements include the following:

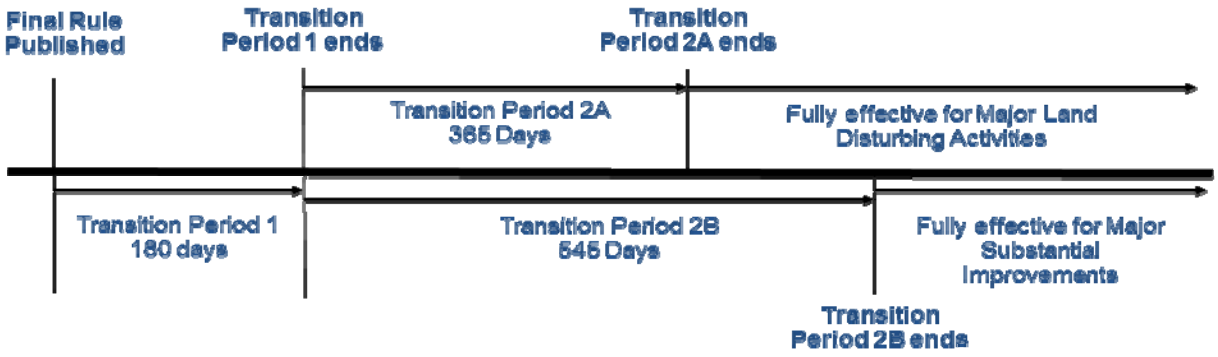
- The second proposed rule extends Transition Period 2 for major substantial improvement activities. Transition Period Two A (TP2A) refers to the one (1) year time period during which the minimum on-site retention requirement is waived for a major land-disturbing activity. Transition Period Two B (TP2B) refers to the eighteen (18) month time period during which the minimum on-site retention requirement is waived for a major substantial improvement activity. DDOE has provided a longer time period for major substantial improvement activities to transition to achieving the minimum amount of retention on site in recognition of the fact that this category of projects has not triggered the District's stormwater management regulations in the past and faces additional constraints in achieving retention on site, relative to major land-disturbing activities.

- The second proposed rule uses the term Advanced Design (AD) to refer to detailed design for an area that has been submitted in an application for approval to the appropriate reviewing body and adds two categories of projects to be treated the same way as the revised rule treated Stage Two (2) Planned Unit Development (PUD) applications to the Zoning Commission. DDOE expects that these ADs, once approved, are likely to constrain opportunities to achieve the new stormwater management performance requirements. Accordingly, DDOE expects the project areas covered under these ADs to comply with the stormwater management requirements that are in place at the time the application for review is submitted to the appropriate reviewing body. In addition to a Stage Two (2) PUD application to the Zoning Commission, the second proposed rule identifies as an AD an application for design review under the Capitol Gateway Overlay District to the Zoning Commission and a final design submission to the National Capital Planning Commission (NCPC). Though not referred to as an AD per se, the second proposed rule includes the same exception described in the revised rule for an area of a multi-phased project for which all stormwater infrastructure and Best Management Practices (BMPs) required in a DDOE-approved Stormwater Management Plan (SWMP) were approved during an earlier phase of construction.

- The second proposed rule recognizes that some approvals by certain other reviewing bodies may limit the ability of a major regulated project to comply with the full on-site retention requirement on site. Accordingly, the second proposed rule specifies that, in an application for relief from the minimum on-site retention requirement, the applicant can use evidence that certain unexpired approvals limit the opportunity to install a BMP on site. These approvals must be applied for before the end of TP2A for a major land-disturbing activity or before the end of TP2B for a major substantial improvement activity. Specifically, these approvals are of the following: concept review by the Historic Preservation Review Board; concept review by the Commission on Fine Arts; preliminary or final design submission by the NCPC; or a variance or special exception by the Board of Zoning Adjustment (BZA).

Please note that DDOE's transition plan only applies to the stormwater management performance requirements, while provisions related to erosion and sediment control, Stormwater Retention Credit certification and trading, and the new administrative fee structure would take effect immediately upon finalization of the rule.

In reviewing Figure 1, it is important to understand that, with a few exceptions, the timing of each phase is relative to a major regulated project's submittal of a first SWMP as part of the building permit application process. If a major regulated project must re-start the building permit application process because the permit has expired (see Section 105.5 of DCMR 12A) or the permit application has been abandoned (see Section 105.3.2 of DCMR 12A), then the major regulated project would have to meet the stormwater management requirements that are in place at the time it submits its SWMP as part of the re-started permit application process. For example, a major land-disturbing activity submitting a SWMP prior to the end of Transition Period One (TP1) would meet the requirements that are now in place in the District's existing stormwater management regulations; however, if the building permit expires, the project applies anew for a building permit, and it submits its SWMP for the new building permit application after TP2A, then it would be subject to the new requirements.



Transition Period One (TP1)

- Major regulated projects comply with existing regulations.

Transition Period Two A (TP2A) for Major Land-Disturbing Activities and
Transition Period Two B (TP2B) for Major Substantial Improvement Activities

- Minimum on-site retention requirement waived. Entire retention volume may be achieved off site.
- Minimum on-site treatment required per the new regulations, as applicable.

Exceptions:

- Areas of projects for which an Advanced Design (AD) has been submitted and for which approval has not expired shall comply with the stormwater management requirements in place at the time of submittal.
- Areas of multi-phased projects for which all stormwater infrastructure and BMPs are installed in compliance with a DDOE-approved SWMP during an earlier phase of construction shall be deemed to have met the stormwater management requirements.
- Projects for which an unexpired approval listed below conflicts with the installation of a retention BMP can use evidence of that conflict in applying for relief from the minimum on-site retention requirement, provided that the project applied for the unexpired approval before the end of TP2A for a major regulated project or the end of TP2B for a major substantial improvement activity:
  - Concept review by the Historic Preservation Review Board;
  - Concept review by the Commission on Fine Arts;
  - Preliminary or final design submission by the National Capital Planning Commission; or
  - Variance or special exception from the Board of Zoning Adjustment.

Figure 1: DDOE Transition Plan for Stormwater Management Performance Requirements

DDOE recognizes the need for some exceptions to the general rule that the timing of each phase is relative to a major regulated project's submittal of a SWMP. Specifically, Figure 1 indicates three (3) exceptions, which are meant to avoid imposing significant re-design costs, delays, the need to re-apply for approval, or the need to go through the construction of stormwater infrastructure multiple times for the same site or portion of a site.

The first exception is for projects that have submitted the detailed design work required for an AD. For example, if a major land-disturbing activity submits a Stage 2 PUD application before the end of TP1, it would be required to meet the requirements that are now in place. If that project instead submits its PUD application after the end of TP2A, then it would be subject to the fully effective stormwater management performance requirements. If the Zoning Commission's approval of a PUD application expires and the project must re-apply, then it would have to meet the stormwater management requirements that are in place when it submits its new application. If a Consolidated PUD application includes Stage 2 requirements for an initial phase of the site and Stage 1 requirements for a subsequent phase(s), then the exception would apply only to the Stage 2 area of the site.

The second exception is for a multi-phased project that achieves the stormwater management requirements for the remaining areas of a site during an initial phase of construction. In other words, if, during an initial phase of construction, a multi-phased project installs all the stormwater infrastructure and BMPs required by a DDOE-approved SWMP for areas that will be developed in later phases, then those areas will have satisfied the stormwater management requirements, even though they will not be fully developed until a subsequent phase of construction. For example, if a multi-phased project installed a stormwater detention pond and related infrastructure during the first phase of the project in compliance with a DDOE-approved SWMP satisfying the existing requirements for the entire area that will be part of the multi-phased project, then subsequent phases would not be required to meet new stormwater management requirements that are in place when those subsequent phases go through construction. By contrast, if a multi-phased project simply installed the stormwater infrastructure and BMPs for the area being developed under the first phase but was not simultaneously going through permitting for remaining phases, it would not be eligible for the exception, even if it had an overall conceptual SWMP for areas being developed in subsequent phases. In that case, each area being developed in a subsequent phase would comply with the requirements in place at the time it is going through the permitting process.

The third exception recognizes that some approvals by certain other reviewing bodies may limit the ability of a major regulated project to comply with the full on-site retention requirement on site. Accordingly, the second proposed rule specifies that, in an application for relief from the minimum on-site retention requirement, the applicant can use evidence that certain unexpired approvals limit the opportunity to install a BMP on site. For example, a major land-disturbing activity project applies to the BZA for a variance before the end of TP2A, and that variance, which the BZA approves, conflicts with the installation of retention capacity on site. The project applies for a building permit and submits its SWMP to DDOE after the end of TP2A. At that point, the project can use evidence that the unexpired approved variance conflicts with the installation of retention capacity in requesting to achieve less than fifty percent (50%) of its

required retention volume one site via an application for relief from extraordinarily difficult site conditions.

Key Steps toward Implementation

DDOE understands that a smooth transition to the new regulatory framework depends in large part on its own preparation. This is critical both to avoid unnecessary delays of regulated projects and to ensure that waterbodies receive the protection that comes with regulated projects' achieving the new stormwater management performance requirements. Recognizing this, DDOE is taking numerous steps to prepare for implementation. This includes increasing its own capacity as an agency, planning compliance assistance training for the regulated community and other stakeholders, and developing related programmatic materials and initiatives.

DDOE is increasing its internal capacity by hiring staff, establishing other mechanisms to achieve staff functions, conducting internal training, and developing other implementation tools. First, over the last year, DDOE has hired an additional inspector and has announced an opening for a plan review engineer. DDOE has also hired staff to implement the Stormwater Retention Credit (SRC) trading program and its Stormwater Fee discount program. The Stormwater Fee discount program is related in that it provides an additional incentive for property owners to voluntarily retrofit their property with stormwater BMPs. Currently, DDOE is working to announce two additional positions for stormwater inspectors and plans to announce an additional position for a plan review engineer in the first quarter of Fiscal Year (FY) 2014. DDOE plans to continue assessing the need to hire additional staff and take necessary steps to support the implementation of the new regulatory framework. Second, to provide additional capacity if necessary, especially for certification of SRCs, DDOE is finalizing a grant agreement with the Center for Watershed Protection (CWP) to provide plan review, inspection, and related services on an as-needed basis. CWP did much of the work to revise the District's Stormwater Management Guidebook (SWMG) and train stakeholders, has done similar work in the Chesapeake Bay watershed, and is well-suited to provide the additional plan review and inspection services that may be required. If this is not adequate to meet the need for additional plan reviews and inspections, DDOE will consider other alternatives, including contracting with a private company for these services. Third, over the past year, DDOE has been conducting training for its engineers and inspectors and plans to continue these trainings over the coming months and on an ongoing basis as necessary. Fourth, DDOE has been working over the last several months to revamp its plan review and Best Management Practice (BMP) database, through a grant provided by the Environmental Protection Agency. In addition to being structured to reflect the new regulatory framework, the revamped database will provide greater functionality, including integration with Geographic Information Systems (GIS) and the ability to provide a public interface for selected data. As a second phase, which DDOE expects to get underway in the beginning of June, this project will integrate SRC tracking and registry functions, as well as tracking for the Stormwater Fee discount, into this database. Since that version of the database may not be ready by the expected finalization date for these regulations (July 22, 2013), DDOE has also been developing an in-house database that it expects to be ready for the finalization of these regulations.

Before these regulations are final, DDOE plans to announce an initial schedule for another round of trainings tailored to the regulated community and other stakeholders, such as those who may be interested in generating or trading SRCs. These trainings will take place after finalization of the regulations and reflect the final requirements in the regulations. DDOE already has a grant agreement in place with CWP to assist DDOE with these trainings and expects to offer sessions on the following topics:

- General site and BMP design to achieve regulatory compliance;
- Maximum Extent Practicable (MEP) process for reconstruction of existing Public Right of Way (PROW);
- MEP process for land disturbance in PROW by parcel-based projects;
- Use of off-site retention by regulated sites; and
- Generation and certification of SRCs.

After an initial post-finalization round of trainings, DDOE plans to conduct periodic trainings as necessary to assist with compliance. DDOE will distribute the schedule for these trainings through its email notification list and also post it on line at ddoe.dc.gov/proposedstormwaterrule.

In addition to the database and registry projects that are underway, DDOE is also developing programmatic materials and planning other initiatives to support the implementation of the new regulatory framework, especially the SRC trading program and the related Stormwater Fee discount program. Though much of what DDOE is working on in this regard does not belong in the regulations themselves or the SWMG, DDOE understands that many stakeholders are very interested and provides a brief summary below. DDOE plans to provide additional information in the coming months.

- DDOE is developing webpages and other outreach materials to convey eligibility requirements and other key information on both programs to potential participants. The final rulemaking for the Stormwater Fee discount program is currently being reviewed by the Council of the District of Columbia. DDOE expects that the discount program rule, like the stormwater management and soil erosion and sediment control rule, will be published as final in the *D.C. Register* in July of 2013. DDOE is planning to launch these programs' webpages, which will include many resources for potential participants, upon or soon before final publication. Recognizing that DDOE has received numerous questions from stakeholders that were previously answered in other materials, including the regulations themselves or the SWMG, the SRC trading webpages will include a consolidated list of Frequently Asked Questions, which will provide a more user-friendly alternative to the regulations and the SWMG.
- The SRC database that DDOE is developing will include the ability to select information for a public-facing SRC registry on DDOE's website. The registry will include updated

information on available SRCs, contact information for SRC owners, requested price, and the final sale price. DDOE's SRC webpages will also show:

- Retention capacity for which DDOE has approved a Stormwater Management Plan and expects to certify SRCs once construction is complete and inspected;

- Off-Site Retention Volume (Offv) for regulated projects that have completed construction and are currently required to use off-site retention;

- Expected Offv for regulated projects, as identified in a DDOE-approved SWMP for which construction has not yet been completed; and

- Average SRC price for multiple transactions over a given time period, which may include a monthly, quarterly, or yearly average.

- DDOE has compiled a list of properties with existing retention BMPs installed that may be eligible for SRC certification and plans to conduct outreach to these property owners to provide them with information and encourage them to apply for certification of SRCs and Stormwater Fee discounts once the regulations are finalized. In conveying the potential for SRC demand to these property owners, it would be helpful for DDOE to be able to provide them with a list of members of the regulated community who are interested in buying SRCs, including the number of SRCs they are interested in purchasing and contact information. Though this list would not be binding in any way, it, and subsequent conversations between property owners and interested buyers, may be very compelling for the owner of a property with existing eligible retention capacity who is considering whether or not to go to the effort of applying for certification of SRCs. DDOE requests that members of the regulated community who are interested in being on this list contact Evan Branosky at Evan.Branosky@dc.gov.

- DDOE plans to convene a legal working group of stakeholders to draft template SRC trading contracts. These would only be optional templates, and SRC buyers and sellers would be free to develop their own contracts. Also, DDOE recognizes that there are potentially many different scenarios under which SRCs could be traded. DDOE does not expect to develop a template for each possible scenario. In addition, though DDOE expects to convene this working group before the regulations are published as final, this will be an ongoing effort to develop a portfolio of potential templates. Initially, DDOE expects this effort to result in a template for the relatively simple scenario in which a buyer purchases SRCs that have already been certified. Early on, DDOE would also like to explore the possibility of a template contract(s) for more complicated scenarios involving the purchase of prospective SRCs. For example, this could include, for eligible retention capacity that has already been constructed and already been inspected by DDOE, a contract with terms for purchase of an initial batch of SRCs certified for the first three (3) year time period and terms for purchase of the SRCs that are expected to be generated by that retention capacity in the future.

- DDOE is planning to host an informal meeting of potential SRC buyers and sellers, who are considering participating in the SRC market and are interested in discussing challenges and related issues with others. If these meetings are helpful to participants, DDOE may hold a series of them.

- Once SRCs have been certified, DDOE is planning to host periodic meetings to bring together interested SRC buyers and sellers to discuss potential trades. This meeting would begin with each participant being introduced and identified as an interested buyer or an interested seller. DDOE would use color-coded nametags or similar means to help SRC buyers and SRC sellers identify each other. This meeting could also include time during which DDOE collects offers to buy and offers to sell and arranges them in a table or on a graph to facilitate price discovery and determine if there is any intersection between offers to buy and offers to sell. For any resulting transactions that occur, DDOE would be able to approve transfers of ownership at the conclusion of the meeting.

- DDOE plans to identify a portfolio of potential SRC-generating retrofit projects on public property, which would be available for private developers to carry out through a public-private partnership. DDOE would work with other District agencies to identify potential projects, and some could be prioritized to support other important objectives, such as restoration efforts in a specific watershed or improved environmental justice outcomes in a particular part of the District. DDOE may further incentivize some of these projects by undertaking preliminary design to ensure that the project is viable.

- DDOE is exploring purchasing and retiring SRCs for newly installed retention capacity to help establish demand certainty and meet various water quality objectives, including the MS4 permit requirement to retrofit impervious surface through the installation of retention BMPs. DDOE already works through its grant-making process to install stormwater retrofits on private property in the District, and DDOE's purchase of SRCs would be very similar, with two beneficial distinctions: 1) purchasing SRCs allows DDOE to pay the significant capital costs for stormwater retrofits over time, rather than entirely up front and 2) DDOE may be able to take advantage of private market efficiencies and leverage its limited funding by installing retrofits more cost-effectively. If DDOE proceeds with this, it expects to do so through a grant to a nonprofit intermediary, and DDOE will announce additional details through a public Request For Applications (RFA) via its grant-making process. Though it would be a positive outcome and good use of stormwater funding to incentivize new retrofit installations by actually purchasing SRCs, DDOE does not intend to compete with regulated sites who are interested in buying SRCs, especially before it is clear that there will be sufficient SRC supply. Instead, DDOE's primary objective would be to help establish some demand certainty for property owners considering installing new retention capacity to generate SRCs. By setting its maximum price on the low end of the range of SRC prices that might be required to cover the cost to generate an SRC with newly installed retention capacity, DDOE would establish a minimum price for these property owners to include in their analysis of whether it is worth their investment to install retention capacity; however, they would be free to sell those SRCs to a higher bidder if DDOE's price is less than the market price. DDOE's RFA would identify the period of time and total dollar

amount of SRCs that DDOE will purchase under that RFA, effectively creating a price floor for SRCs for that time period and funding level. After the initial RFA, DDOE may decide to issue an additional RFA(s).

- After the SRC market is established, DDOE plans to explore the adaptation of the Property Assessed Clean Energy (PACE) program to the installation of stormwater retrofits in the District. The District's PACE legislation also addresses stormwater retrofits. In the meantime, DDOE is exploring other ways that it can help connect private property owners and SRC aggregators with financing to pay for stormwater retrofits.

Basis for Administrative Fees

Some stakeholders inquired in their comments about the basis for the various administrative fees listed in Section 501 of the rule. Generally, these fees are based on DDOE's analysis of the costs to DDOE to provide these services, though two exceptions to that are the policy decision by DDOE to incentivize Stormwater Retention Credit (SRC) retrofit projects and Stormwater Fee discount projects by charging a lower fee for Stormwater Management Plan (SWMP) review for SRC-generating retrofit projects and no fee for SWMP review for a project conducted solely to earn a Stormwater Fee discount. DDOE also reviewed fees charged by other agencies and jurisdictions to determine whether they are comparable to DDOE's proposed fees.

Taking plan review fees as an example, DDOE calculated the staff time it devoted to plan review and inspection in recent years for the number of plans that it reviewed. DDOE identified broad project categories and the percentage of time devoted to each of those project categories, based on the experience of DDOE engineers and inspectors, to reflect how staff time is typically spent, including large, relatively complicated projects, which tend to require a relatively large proportion of time for review and inspection, and small, relatively straightforward projects, which tend to require less staff time. DDOE calculated its costs for this staff time, including salary, fringe (benefits), and indirect costs, and allocated those costs to the project categories. For Stormwater Management Plan Review, DDOE categorized projects with greater than ten thousand square feet (10,000 ft^2) of land disturbance separately from projects with less land disturbance, as shown in Section 501. For Soil Erosion and Sediment Control Plan reviews, the distinctions among categories are slightly different and there is some nuance to capture the variable staff time associated with different types of site work and the amount of that work being conducted (also see Section 501).

As noted in a DDOE response to a clarifying question from a stakeholder (response dated October 26, 2012 and available via ddoe.dc.gov/proposedstormwaterrule), DDOE's fees for review of a stormwater management plan are similar to those for many other urban jurisdictions. For example, a hypothetical project with an 8,000 square foot area of disturbance would pay $4,800 in the District. In Montgomery County, the same project would pay somewhat higher fees (roughly $5,500, see permittingservices.montgomerycountymd.gov/DPS/pdf/FY2012ExecutiveRegulation6-11.pdf). In Philadelphia and Seattle, the fees would be approximately the same ($4,525 for Philadelphia and $4,648 in Seattle), while they would be lower in Chicago ($1,000) (see report by Industrial Economics, Inc., available at

ddoe.dc.gov/proposedstormwaterrule). To provide additional context, DC Water charges $7,500 for large project permit basic review (www.dcwater.com/business/permits/ fees_charges.cfm).

Stormwater Retention Credit Trading Program

DDOE received numerous questions on the provisions and administration of the Stormwater Retention Credit (SRC) trading program. Many of those questions are answered in the response document for comments received during the first formal comment period. DDOE also noted that it had previously answered many questions that were posed during the informal comment period (including in the documents mentioned in the next paragraph), which is understandable, both because of the length and complexity of the regulatory framework and the novelty of the SRC trading program. This further underscores the importance, noted by stakeholders, of a major outreach, communication, and training effort related to the generation and certification of SRCs, and DDOE plans to redouble its efforts as it implements the SRC trading program.

DDOE is currently ramping up its outreach, communication, and training related to the SRC trading program. This will build on the significant groundwork DDOE has laid throughout the process of developing the new regulatory framework, including developing focused sections of the Stormwater Management Guidebook that address the use of off-site retention (Chapter 6) and the Certification of SRCs (Chapter 7), conducting training sessions on these topics, and responding to clarifying questions submitted during the first formal comment period (related materials available via ddoe.dc.gov/proposedstormwaterrule), as well as repeatedly briefing stakeholders. In addition to the actions described under "Key Steps toward Implementation," DDOE presents information below that is intended to respond to some of the key comments and concerns that have been raised.

Stormwater Retention Credit Trading: Ongoing Maintenance of Retrofits

Stakeholders expressed several concerns about ongoing maintenance of SRC-generating Best Management Practices (BMPs) and land covers.

One of these concerns is about ongoing maintenance for a BMP or land cover on property that is sold during the period of time for which DDOE has certified SRCs. DDOE has incorporated the language that was suggested. Specifically, in Sections 531.9 and 534.3, DDOE added language requiring a person applying for certification of Stormwater Retention Credits (SRCs) to include in the application a signed promise from the land owner to notify the Department if the person sells or otherwise transfers ownership of the property. This notification to DDOE will help the agency to ensure maintenance is occurring and, if not, to follow up with the original SRC owner accordingly.

Stakeholders have also raised general concerns about ensuring that maintenance occurs for SRC-generating BMPs and land covers. The second proposed rule keeps previous provisions by which DDOE will not certify additional SRCs for BMPs and land covers that are not maintained and by which DDOE can take enforcement action against such an SRC owner to compensate for the volume of retention failure that has occurred. In addition, Section 532 clarifies how an original SRC owner can free him or herself from the maintenance obligation for a period of time

for which DDOE has certified an SRC by compensating with a replacement SRC or in-lieu fee for the retention that is not maintained. Section 531 also allows the Department not to certify an SRC for retention capacity on a particular property if that person is either 1) an original SRC owner for other retention capacity that is not being maintained as he/she promised or 2) a person with an Off-Site Retention Volume obligation who is currently not meeting that obligation.

Stormwater Retention Credit Trading: Hybrid of Exchange and Over-the-Counter Models

Regarding the stakeholder question about whether the market will be structured as an exchange or Over-the-Counter (OTC) model, DDOE views its approach as a hybrid of the two. As an OTC market, potential Stormwater Retention Credit (SRC) buyers will be able to identify SRC sellers through DDOE's SRC registry and negotiate the terms of a trade themselves. The details of their negotiation will not be public, but the final sales price will be. Indeed, the SRC buyer and seller will presumably draw on public information from the SRC registry about the price at which other SRCs have been sold.

Though DDOE does not plan to host a formal exchange, DDOE plans to host a recurring meeting of SRC buyers and sellers that can be thought of as an informal exchange (also see comments under "Key Steps toward Implementation") that will provide another alternative to OTC transactions. The meeting would include an opportunity for SRC buyers and sellers to submit bids that DDOE will organize and present in a simple table or graph to help facilitate price discovery and determine if there is a mutually agreeable market equilibrium price at which buyers and sellers wish to trade. This process could be repeated multiple times during a meeting if the participants would like to submit new bids. DDOE does not plan to pre-qualify participants, and whether or not SRC buyers and sellers wish to execute transactions at that point will be up to them. For those who choose to execute transactions at the meeting, DDOE can approve transfers of ownership at the conclusion of the meeting. DDOE believes that these informal auctions will more effectively aid price discovery if numerous buyers and sellers are participating. Holding these meetings too frequently could result in only one or two participants attending. DDOE's current thinking is that bi-monthly or quarterly meetings would be an appropriate frequency, but DDOE would appreciate input on this from stakeholders who are considering either buying or selling SRCs.

Stormwater Retention Credit Trading: SRCs for Existing Retention Capacity

Some stakeholders mistakenly asserted that DDOE will certify Stormwater Retention Credits (SRCs) retroactively for existing retention capacity. As stated in Section 531, though DDOE will not certify SRCs retroactively for existing retention capacity, it will certify SRCs for existing eligible retention capacity going forward, as of the date, after final publication of these regulations, that a complete application for certification of SRCs is submitted to DDOE. Section 532 specifies that this existing retention capacity must have been installed after May 1, 2009.

The only SRC certification that might be considered retroactive will be the certification of SRCs back to the date, after final publication of these regulations, that a complete application for certification of SRCs is submitted to DDOE, which provides a safeguard against an applicant's being penalized by a delay by DDOE in certifying SRCs.

Though some stakeholders have objected to DDOE's certification of SRCs for existing retention capacity, DDOE believes this provides an important incentive for property owners to properly maintain BMPs and land covers, which is critical for maintaining performance.

Though DDOE will not certify SRCs retroactively, DDOE notes that, for the separate Stormwater Fee discount program, DDOE does plan to provide retroactive discounts back to May 1, 2009.

Stormwater Retention Credit Trading: Potential Initial Demand for SRCs

DDOE has not conducted a comprehensive analysis of supply, demand, and pricing for Stormwater Retention Credits (SRCs). Given the many assumptions that would go into such an analysis and the inherent uncertainty and limitations to its accuracy, DDOE is not convinced that it would be worth the effort and resources required. However, DDOE presents analysis below to help establish some parameters around what supply, demand, and SRC price might be.

In the context of assessing potential initial demand, it is important to point out, as stated in Section 527 of the proposed rule (and the revised rule), that the obligation to use off-site retention to achieve an Off-Site Retention Volume (Offv) begins on the date of successful completion of the Department's final construction inspection. The rule specifies that four (4) weeks before the proposed date for using off-site retention, a regulated property should identify the SRCs that it will use (through an application to use SRCs) or submit a check or other proof of payment of the In-Lieu Fee (ILF). Initially the proposed usage date for a regulated property will correspond to the planned date of the final construction inspection, and subsequently the proposed usage date would correspond to the date when there would otherwise be a lapse in the obligation to achieve an Offv obligation. The requirement for use of off-site retention to begin as of DDOE's final construction inspection is parallel to the requirement that the site have its on-site retention capacity fully operational at the time of the same inspection.

In addition to the fact that a major regulated project does not need to identify exactly how it will meet its Offv until four (4) weeks before DDOE's final construction inspection, it is also true that a major regulated project does not need to identify this information, or even specify whether it will use SRCs, as opposed to ILF, in the Stormwater Management Plan (SWMP) submitted to DDOE for approval as part of the permitting process.

Because there may be a year or more of construction time between DDOE's approval of a SWMP and DDOE's final construction inspection, there is a corresponding lag between when the Offv is initially determined and when there is a demand for either SRCs or ILF, though DDOE expects that some members of the regulated community will be interested in purchasing SRCs well in advance of their final construction inspection.

DDOE's estimates of potential initial demand start with the year 2015, based on the idea that, under DDOE's proposed transition plan, the earliest a regulated project that is going through permitting would have to comply with the new regulations is January of 2014, but that project

would not have to actually own the SRCs (or pay the ILF) it would use to achieve an Offv until construction is nearly complete, which could be a year or more later.

Based on a range of possible assumptions about the amount of retention that regulated sites will actually choose to achieve off site, as compared to the maximum amount of retention that they theoretically could choose to achieve off site (without applying for relief from extraordinarily difficult site conditions), DDOE estimates a potential demand for SRCs of between 0.5 million and 10.4 million in 2015, 1million and 15.6 million in 2016, and 1.5 million and 21 million in 2017, as shown in Table 1.

Stormwater Retention Credit Trading: Potential Initial Supply of SRCs

DDOE estimates that there is roughly 1.35 million gallons of existing eligible retention capacity in the District, as shown in Table 2. If all the owners of that retention capacity apply for certification of three (3) years' worth of Stormwater Retention Credits (SRCs) in the summer of 2013 after these regulations are finalized, approximately 4 million SRCs would be available. Three (3) years later, assuming all eligibility requirements are still being met, those property owners could request the certification of three (3) more years of SRCs, for a rough total of 8 million SRCs in 2016. If the owners of fifty percent (50%) of the eligible retention capacity participate, then approximately 2 million SRCs would be available in 2013, and a total of 4 million would be available in 2016.

Although DDOE does not expect full participation by property owners, DDOE does expect significant participation. For these property owners, the capital investment in the stormwater retrofit is a sunk cost. Though they may incur some costs for an as-built Stormwater Management Plan (for those who do not already have one) and costs to improve maintenance to pass DDOE inspection, these are relatively small costs compared to the capital cost that has already been incurred. If these property owners are confident that there will be demand for SRCs from the regulated community, it is likely that many will be interested in having SRCs certified (please see the bullet under "Key Steps toward Implementation" about contacting DDOE to be on a list of interested SRC buyers).

Table 1: Potential Demand (Offv)[1] Under a 1.2" Retention Standard[*]

Year of Offv Obligation[2]	Demand Scenario (million gallons)							
	Full Use[4]		Half Use[4]		Quarter Use[4]		Ward-Specific[5]	
	Annual increase	Running total	Annual increase	Running total	Annual increase	Running total	Annual increase	Running total
2015[3]	10.37	10.37	5.18	5.18	2.59	2.59	0.50	0.50
2016	5.18	15.55	2.60	7.77	1.30	3.89	0.50	1.00
2017	5.18	20.73	2.60	10.37	1.30	5.18	0.50	1.50

*Note: Totals may not sum due to rounding.

[1]Demand estimates are based on assumptions (explained in footnotes 4 and 5) about the amount of required retention volume that major land-disturbing activities would choose to achieve offsite. In other words, the demand estimates are the estimates of Off-Site Retention Volume (Offv) for those regulated sites as would be recorded on their DDOE-approved Stormwater Management Plans. Offv is calculated as a volume based on the average land disturbance of projects that exceeded 5,000 ft^2 between FY2007 and FY2011. Because the FY2007 to FY2011 data is only based on the existing regulatory trigger of 5,000 ft^2 of land disturbance, the demand estimates only represent major land-disturbing activities.

[2]Year of Offv obligation, when the regulated site would have to be actually using SRCs or In-Lieu Fee to achieve the Offv, is assumed to be one year after the major regulated project went through permitting.

[3]2015 is assumed to be the year of Offv obligation for a regulated site that went through permitting in 2014, when DDOE's proposed transition period 2A for major land-disturbing activities allows regulated sites to achieve 100% of their required retention volume offsite.

[4]Scenarios vary based on the assumed use of the maximum offsite retention that is allowable (without requesting relief for extraordinarily difficult site conditions). Under full use, sites that went through permitting in 2014 seek 100% of their required retention volume offsite in 2015 and 50% in both 2016 and 2017. Each additional year of demand adds to demand from the prior year. Under half use, regulated sites choose to use 50% of the maximum. Under quarter use, regulated sites choose to use 25% of the maximum.

[5]Assumes that 25% of eligible regulated sites in Wards 2 and 5, and 10% in Wards 1, 3, and 6, seek 50% of their necessary retention volume offsite. Regulated sites in Wards 4, 7, and 8 do not participate in the program. Each additional year of demand adds to demand from the prior year.

It is also important to point out that Table 2 does not include an estimate of SRCs being generated by installation of new retention capacity in 2013 and thereafter. This could include retention capacity installed by major regulated projects that are complying with Transition Period 1 of DDOE's transition plan and that install retention capacity in excess of the water quality treatment requirements.

Stormwater Retention Credit Trading: SRC Price Required to Recoup Costs

As mentioned above, DDOE has not conducted a comprehensive market analysis to predict the price of an SRC; however, DDOE has projected the Stormwater Retention Credit (SRC) price that would be required to recoup the cost to a property owner of installing a stormwater retrofit to generate SRCs. DDOE made variable assumptions about payback period, capital costs, and the Return on Investment (ROI) that motivates investment. In conducting this analysis, DDOE assumed that the private SRC market would seek out the lowest cost opportunities to generate SRCs, so based its projections on cost data from some of its most cost-effective bioretention installations. In addition, DDOE assumed that the bioretention would be installed in Ward 7 of the District where, given the relatively low land value and the availability of open space, the

opportunity cost of using land for installation of bioretention is presumed to be relatively low. The results, as shown in Table 3, indicate a range of SRC prices of between $0.94 and $2.42 that, based on the data and assumptions used, would be adequate to cover costs.

Table 2: Potential Stormwater Retention Credit (SRC) Supply[1]

Year	Supply Scenario (million gallons)[2]	
	Full Participation[3]	Half Participation[3]
Existing retention	1.35	0.68
2013	4.06	2.03
2014	4.06	2.03
2015	4.06	2.03
2016	8.12	4.06

[1]Supply is based on the excess retention from projects implemented between May 1, 2009 and January 1, 2012. Sources include submitted stormwater management plans and DDOE capital cost data. Note that DDOE will begin to certify SRCs upon final publication of the final rule in the *DC Register*, so this estimate refers to the first year of SRC certification as 2013, referring to the one year period starting from finalization of the rule in July of 2013. DDOE will not certify SRCs retroactively for the period of time prior to final publication.

[2]Since DDOE certifies three years of SRCs at a time, three times the existing eligible retention capacity is potentially certified as SRCs in 2013. The number of SRCs based on this existing retention capacity remains constant in 2014 and 2015. Though DDOE expects other eligible property owners to install eligible retention capacity in that time, those SRCs are not included here. This estimate assumes that the available SRCs are not retired or used to satisfy an Offv requirement. If DDOE receives an application for recertification in 2016, assuming all eligibility requirements are still met, it will certify an additional three years of SRCs. Those SRCs would add to the cumulative total.

[3]The full participation scenario assumes 100% participation from all owners of eligible existing retention capacity. Though DDOE will be doing targeted outreach to these property owners to encourage them to apply for SRC certification, DDOE does not expect 100% participation. The half participation scenario assumes 50% participation from all owners of eligible existing retention capacity.

This analysis does not reflect other variables that will affect the price at which SRCs will sell, including the amount of SRCs that are demanded (which will reflect additional factors such as the opportunity costs for regulated sites to achieve retention on site) and the amount of SRCs that are certified (which will reflect additional factors such as the ancillary benefits that property owners recognize for installing retention capacity and which may offset some of the costs reflected in Table 3.

Table 3: Estimate of SRC Price Required to Cover Cost to Generate (SRC = 1 gallon of retention capacity for 1 year)							
					Cost-Covering SRC Price		
	Capital cost per gallon of retention (Pv)[1]	Land cost per gallon (PV)[2]	Maint. Cost over Payback Period (Pv)[3]	Sum of Pv Costs (cap. cost + land value + maint. cost)	5% ROI[4]	7.16% ROI[4]	12.61 % ROI[4]
10-year payback	$4.00	$4.85	$1.67	$10.52	**$1.36**	**$1.51**	**$1.91**
20-year payback	$4.00	$4.85	$2.87	$11.72	**$0.94**	**$1.12**	**$1.63**
10-year payback	$6.00	$4.85	$2.51	$13.36	**$1.73**	**$1.92**	**$2.42**
20-year payback	$6.00	$4.85	$4.31	$15.16	**$1.22**	**$1.45**	**$2.11**

[1]Based on DDOE cost data from the most cost-effective of its bioretention installations.

[2]Based on bioretention requiring 0.15 ft^2 of land per gallon of retention at 25th percentile residential and vacant land value for Ward 7 for 2011 ($32.35).

[3]Based on annual maintenance cost equal to 5% of capital cost, calculated as a present value over the payback period with an inflation rate of 3.38% based on the 80-year average through 2010 of the urban CPI.

[4]5% Return on Investment (ROI) is used as relatively low rate of return. 7.16% is the inflation-adjusted, compound annual growth rate for the S&P 500 from 1920-2010, which is used as a more moderate ROI. 12.61% is the one-year, inflation-adjusted return on the S&P 500 in 2010.

Stormwater Retention Credit Trading: Financial Return from SRCs and Discount

Some stakeholders have asked about the potential financial returns from voluntarily installing stormwater retention capacity that is eligible for certification of SRCs and for a discount on the two stormwater impervious fees that are charged to property owners in the District through the water bill from DC Water. One of the stormwater impervious fees is the Impervious Area Charge (IAC) that DC Water uses to fund the implementation of the Long Term Control Plan to address Combined Sewer Overflows (CSOs) in the District. The other is the DDOE Stormwater Fee that is used to support the administration and implementation of the Municipal Separate Storm Sewer System (MS4) permit. Both fees are assessed on the basis of the number of Equivalent Residential Units (ERUs) on a property. An ERU is equal to one thousand square feet (1,000 ft^2) of impervious surface.

As noted above, in July of 2013 DDOE expects to publish as final in the *D.C. Register* the DDOE Stormwater Fee discount rule, with a maximum discount of fifty-five percent (55%). DC Water is conducting a separate rulemaking for the IAC discount program. DC Water's proposed rule was published in the May 3, 2013 issue of the *D.C. Register* (60 DCR 00651), and it specified a maximum discount of four percent (4%). Under both discount programs, the maximum discount corresponds to the installation of retention capacity that can hold the 1.2" storm. For less retention capacity, the discount is reduced proportionally.

Table 4 shows the maximum discount that can be earned for the installation of 1.2" of retention capacity for one (1) ERU over the next ten (10) years. Based on an SRC value of $1.25 per

SRC, Table 4 also shows the potential return from sale of SRCs over that time. As noted above, DDOE has not conducted a comprehensive market analysis to predict what the price of an SRC will be, and DDOE is not predicting that the price of an SRC will be $1.25. Table 4 is only included to provide a simple illustration of how one might conceive of the potential financial benefits of a stormwater retrofit.

Table 4: Projection of Potential 10-Year Financial Return on Retention BMP from SRC Revenue and Discount on Impervious Fees

Assuming installation of BMP to retain 1.2" of stormwater from 1 Equivalent Residential Unit (1,000 ft^2 of impervious surface)

	Rate	2013	2014	2015[1]	2016	2017	2018	2019[1]	2020	2021	2022[2]	**10-Year Total**
DC Water Impervious Area Charge (IAC) (Annualized)		$115	$153	$201	$248	$277	$294	$313	$340	$368	$368	
Maximum Discount - IAC	4%	$5	$6	$8	$10	$11	$12	$13	$14	$15	$15	**$107**
DDOE Stormwater Fee (Annualized)		$32	$32	$48	$48	$48	$48	$60	$60	$60	$60	
Maximum Discount - SW Fee	55%	$18	$18	$26	$26	$26	$26	$33	$33	$33	$33	**$273**
Projected Value of SRCs (inflation-adjusted)[3]	$1.25	$888	$917	$949	$981	$1,014	$1,048	$1,083	$1,120	$1,158	$1,197	**$10,354**
Annual Total		$910	$941	$983	$1,017	$1,051	$1,086	$1,129	$1,167	$1,206	$1,245	**$10,734**

[1]Though DDOE has not proposed an increase to its Stormwater Fee, this analysis assume some increase will be necessary to comply with the requirments of the current 5-year MS4 permit and the next permit. This analysis assumes an increase from $2.67 per ERU per month to $4.00 per ERU per month in 2015 and an increase from $4.00 per ERU per month to $5.00 per ERU per month in 2019.

[2]Assuming IAC increase does not increase past 2021, the IAC for 2022 is given as the same as in 2021.

[3]A voluntary retention BMP capturing 1.2" of storm runoff from 1,000 ft^2 of impervious surface would have 710 gallons of SRC-eligible retention capacity. If the property owner voluntarily installed a BMP capturing the 1.7" storm volume (i.e. the SRC ceiling), that would equate to 1,007 gallons of SRC-eligible retention capacity. 1,007 SRCs per year, sold at $1.25 per SRC, inflation-adjusted, would result in $14,685. Inflation rate used is 3.38%, the 80-year average through 2010 of the urban CPI. Note that the IAC and SW Fee discounts are maxed out at the 1.2" storm, so no additional discount would be earned from the retention of the 1.7" storm.

Clarification of Anacostia Waterfront Development Zone Provisions

The revised rule included, in Section 524, the stormwater management requirements specified in the Anacostia Waterfront Environmental Standards Amendment Act of 2012 (A19-0447), which became effective on October 23, 2012. These provisions only apply to publicly owned or publicly financed projects in the Anacostia Waterfront Development Zone (AWDZ). Some stakeholders expressed concern that some of the provisions of Section 524 are unclear. In response, DDOE has made some clarifying changes, although, given the provisions of the statute, there were some changes DDOE was not able to make.

One stakeholder commented that it would be easier to understand exactly which projects are covered under the term AWDZ site if the definition were included in the body of Section 524. DDOE made this change. Whereas the revised rule only includes the definition of an AWDZ site in Section 599 (Definitions), the second proposed rule also includes that definition in Section 524. In addition, as one stakeholder pointed out, the SWMG should include a map of the AWDZ, which was DDOE's intention. DDOE will add a map delineating the AWDZ to the Stormwater Management Guidebook.

Another stakeholder commented that it would be clearer if Section 524 explicitly stated that a major land-disturbing activity must achieve the 1.2 inch retention standard, in addition to providing treatment (80% removal of Total Suspended Solids) for the difference between the 1.7 inch storm volume and the 1.2 inch storm volume. Though DDOE's intent is for a major land-disturbing activity to comply with the 1.2 inch retention standard, DDOE does not believe it is necessary to restate that requirement from Section 520 (Stormwater Management: Performance Requirements for Major Land-Disturbing Activity) in Section 524. This is because Section 524 includes language specifying that "…if a provision of this section conflicts with any other provision of this Chapter, an AWDZ site shall be subject to the more stringent provision."

Regarding the stakeholder comment that the rule should specify that an AWDZ site, like other major regulated projects, is free to use off-site retention after achieving fifty percent (50%) of the required Stormwater Retention Volume (SWRv) on site, DDOE is limited by the statute. On the one hand, DDOE's understanding of the statute is that DDOE is required to consider the individual site conditions for a project before allowing the use of off-site retention, so it cannot allow an AWDZ site the same flexibility to use off-site retention without applying for relief (see D.C. Official Code §§ 2-1226.36(c)(1)). On the other hand, the statute directs DDOE to consider additional factors as evidence that an AWDZ site's on-site options are limited. In addition to considering technical infeasibility and environmental harm, the statute directs DDOE to consider limited "appropriateness." Though the statute does not elaborate on the definition of appropriateness, DDOE views this as reasonably including the overall benefit to District waterbodies and impact on surrounding landowners. As DDOE has presented previously, DDOE's evaluation has concluded that achieving stormwater management requirements off site can provide improved benefits for District waterbodies, as compared to strictly requiring compliance on site. Consequently, though DDOE will review specific site conditions prior to allowing the use of off-site retention for AWDZ sites, DDOE expects that the evidence will very often demonstrate the feasibility or appropriateness of on-site stormwater management is limited.

Major Substantial Improvement: Structural and Space Limitations

A stakeholder commented during the informal comment period that a major substantial improvement activity may, in some cases, have particular difficulty complying with its performance requirements on site without undertaking significant additional alterations beyond the intended scope of the project, because of limited structural capacity or a lack of available interior or exterior space. This could include that the structural strength of an existing roof, not otherwise needing to be replaced, is not great enough to support the additional weight of a green roof. It could also include a museum, hospital, or laboratory with specialized equipment that limits available space for a retention BMP or a lot-line-to-lot-line structure with a historic designation or zoning requirement that limits available space for a retention BMP.

Though DDOE has already limited the stormwater retention requirement for major substantial improvement activities to a 0.8 inch retention standard, DDOE has concluded that it is reasonable to incorporate the recommended change. Specifically, a major substantial improvement activity, when applying for relief from extraordinarily difficult site conditions, may provide evidence of structural or space limitations to demonstrate technical infeasibility.

Clarification of Provisions Related to Contamination

A stakeholder commented on a few instances in which the revised rule refers to contamination without defining contamination or the standard by which contamination would be determined. The stakeholder noted this in Section 523.3 and Sections 542.11 and 542.12.

Section 523.3 of the revised rule states that the Department may require pollution control measures for "contaminated runoff" from a stormwater hotspot designated in the Stormwater Management Guidebook (SWMG). This allows DDOE to require an additional pollution control measure such as an oil separator for stormwater flowing from a stormwater hotspot area such as a gas station. However, since these hotspot areas are already listed in the SWMG, DDOE has determined that it is not necessary to refer to "contaminated runoff" in order to ensure that DDOE has the ability to require a pollution control measure when necessary. DDOE has revised this section accordingly in the second proposed rule.

Sections 542.11 and Section 542.12 of the revised rule, which DDOE has combined into one subsection 542.13 in the second proposed rule, refer to encountering "contaminated groundwater or soil" during land-disturbing activity. The stakeholder suggested that "contamination" be defined with reference to the existing Underground Storage Tank (UST) risk-based remediation standards. Though DDOE agrees that it is useful to refer to the UST standards, they only pertain to petroleum products, and there are other pollutants that could be contaminating groundwater or soil on the site. DDOE determined that the remaining pollutants are adequately addressed in the standards associated with the District of Columbia Brownfield Revitalization Act (DCBRA) of 2000, as amended. Consequently, DDOE refers to contamination as defined by DCBRA or the UST regulations. To clarify, these provisions do not require samples from the entire site to be submitted for laboratory analysis. Instead, if the laboratory analysis that is already being done for the project shows that there is contamination by either the UST or DCBRA standards or a person working on the project sees or smells contamination (which DDOE expects the project would follow up on with laboratory analysis), then the requirements of this subsection must be met.

As DDOE has stated previously, DDOE expects that these provisions in Section 542.13 will be superseded if the Department finalizes separate groundwater regulations. The stakeholder suggested that this be made explicit in the regulations, which DDOE has done in the second proposed rule.

MEP in PROW for Parcel-Based Projects

The proposed rule includes provisions intended for major regulated projects undertaking reconstruction of the existing Public Right of Way (PROW) whereby those projects could achieve the 1.2 inch stormwater retention requirement to the Maximum Extent Practicable (MEP). After achieving the 1.2 inch stormwater retention volume to the MEP, these projects are not required to use off-site retention.

During the first formal comment period, stakeholders inquired whether parcel-based projects that are disturbing the PROW adjacent to the parcel could also install BMPs in the PROW to manage stormwater from the PROW under a similar MEP process. DDOE concluded that this was the appropriate approach, and the revised rule includes those provisions. Though DDOE's intention is that these projects should prioritize retention for stormwater from the roadway, DDOE realized during the comment period for the revised rule that this is not clear in the revised rule. Consequently, the second proposed rule includes that clarification. Though the 1.2 inch stormwater retention volume for the portion of land-disturbance in the PROW will strictly be based on the area of land disturbance in the PROW, DDOE's intention is that these projects should prioritize, to the MEP, the use of that retention capacity to manage stormwater from the roadway. This does not require the installation by a regulated project of more retention capacity than would otherwise be required, and it provides a greater benefit to District waterbodies, since the stormwater from the roadway is typically dirtier than the stormwater from the sidewalk area.

Submitting Comments on the Revised Rule and Stormwater Management Guidebook

A person may obtain an electronic copy of the second proposed rule or second proposed Stormwater Management Guidebook (SWMG) via ddoe.dc.gov/proposedstormwaterrule. For a paper copy of the second proposed rule, contact Brian Van Wye at Brian.VanWye@dc.gov or 202-741-2121. To arrange to review a paper copy of the second proposed SWMG, contact Rebecca Stack at Rebecca.Stack@dc.gov or 202-727-5160.

To submit comments on the second proposed rule, please ensure that the comments identify the commenter and that they are clearly marked "Second Proposed Stormwater Rule Comments." Comments may be (1) mailed or hand-delivered to Attn: Brian Van Wye, Natural Resources Administration, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, Attention: Revised Stormwater Rule or (2) e-mailed to Brian.VanWye@dc.gov, with the subject indicated as "Second Proposed Stormwater Rule Comments".

Written comments on the second proposed SWMG should clearly identify the commenter and be marked "Second Proposed Stormwater Guidebook Comments." Comments may be (1) mailed or hand-delivered to Attn: Rebecca Stack, Natural Resources Administration, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, Attention: Second Proposed Stormwater Guidebook Comments or (2) e-mailed to Rebecca.Stack@dc.gov, with the subject indicated as "Second Proposed Stormwater Guidebook Comments."

The Department is committed to considering the public's comments in a rulemaking process that is open and observes the privacy rights of commenters. A person desiring to comment on the

second proposed rule or second proposed SWMG must file comments, in writing, not later than Monday, July 8, 2013 at midnight.

Ordinarily, the Department will look for the commenter's name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification, and may not be able to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.

If a commenter considers information to be NON-PUBLIC, the commenter must advise the Department, in writing, when the comment is submitted. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. When the Department identifies information that has been correctly described as non-public it will either (i) return the entire comment and decline to consider it; (ii) redact or otherwise conceal the non-public information and consider the rest of the comment; or (iii) communicate with the commenter to determine what part, if any, of the comment it might consider as part of the public record.

Chapter 5, Water Quality and Pollution, of Title 21 of the District of Columbia Municipal Regulations is amended by repealing and replacing Sections 500 to 545 and 599 and adding Sections 546, 547 and 552 as follows:

The Table of Contents is amended as follows:

CHAPTER 5 WATER QUALITY AND POLLUTION

500 GENERAL PROVISIONS

500.1 The provisions of this chapter shall be applicable to all sources of pollution affecting the Potomac River and its tributaries within the District of Columbia (the District) including pollution carried by stormwater runoff, discharges from barges and other vessels, and domestic and industrial waste.

500.2 An activity which this chapter regulates shall be consistent with the purposes of this Chapter.

500.3 The purposes of this chapter are:

(a) To prevent and control the pollution of the Potomac River and its tributaries, and the waters of the District;

(b) To regulate land-disturbing activities for the protection of District waterbodies;

(c) To regulate major substantial improvement activities for the protection of District waterbodies;

(d) To prevent accelerated soil erosion and sedimentation;

(e) To prevent sediment deposit in the Potomac River and its tributaries, including the District sewer system; and

(f) To control health hazards due to pollution of the Potomac River and its tributaries.

500.4 No person may commence an activity that this chapter regulates without obtaining an approval that this chapter requires.

500.5 A person's compliance with this chapter shall not relieve a person of responsibility for damage to a person or property.

500.6 No Department action under this chapter shall impose liability upon the District of Columbia for damage to a person or property.

500.7 A person who is regulated under this chapter may authorize an agent to act for that person; however, authorizing an agent does not change or eliminate that person's duty, responsibility, or liability.

500.8 The Department may approve alternative media, including electronic media, for a document that this chapter requires to be submitted in Mylar, paper, or other specific media:

(a) If the alternative method will likely be as reliable for the Department's use and less expensive for an applicant; or

(b) Upon good cause shown.

500.9 An infiltration test does not require Departmental approval for groundwater quality protection provided that:

(a) No test shall go to a depth of greater than fifteen (15) feet below the ground surface;

(b) If a person conducting the testing smells or sees soil or groundwater contamination in the area of a test during or after the test, the boring or other hole made for the test shall be filled in accordance with best practices for wellhead protection, unless it is determined as a result of laboratory analysis that the groundwater or soil is not contaminated, as defined in the District of Columbia Brownfield Revitalization Amendment

Act of 2000, effective June 13, 2001, as amended (D.C. Law 13-312; D.C. Official Code §§ 8-631 *et seq*); and

(c) A Professional Engineer licensed in the District of Columbia shall certify the infiltration rate and that the test was carried out in compliance with this section and accepted professional standards.

501 FEES

501.1 The District Department of the Environment (Department) shall adjust the fees in this section for inflation annually, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics.

501.2 An applicant shall pay a supplemental review fee for each Department review after the review for the first resubmission of a plan, and the fee shall be paid before a building permit may be issued, except that a project or portion of a project entirely in the existing public right of way shall not be required to pay a supplemental review fee for a review specified for a design phase under the Maximum Extent Practicable (MEP) process described in the Department's Stormwater Management Guidebook.

501.3 An applicant for Department approval of a soil erosion and sediment control plan shall pay the fees in Table 1 for Department services at the indicated time, as applicable:

Table 1. Fees for Soil Erosion and Sediment Control Plan Review

<table>
<tr><th rowspan="3">Payment Type</th><th rowspan="3">Payment Requirement</th><th colspan="3">Fees by Land Disturbance Type</th></tr>
<tr><th>Residential</th><th colspan="2">All Other</th></tr>
<tr><th>≥ 50 ft^2 and < 500 ft^2</th><th>≥ 50ft^2 and < 5,000 ft^2</th><th>≥ 5,000 ft^2</th></tr>
<tr><td>Initial</td><td>Due upon filing for building permit</td><td>$50.00</td><td>$435.00</td><td>$1,070.00</td></tr>
<tr><td rowspan="4">Final
• Clearing and grading > 5,000 ft^2
• Excavation base fee
• Excavation > 66 yd^3
• Filling > 66 yd^3</td><td rowspan="4">Due before building permit is issued</td><td colspan="2">n/a</td><td>$0.15 per 100 ft^2</td></tr>
<tr><td>n/a</td><td colspan="2">$435.00</td></tr>
<tr><td colspan="3">$0.10 per yd^3</td></tr>
<tr><td colspan="3">$0.10 per yd^3</td></tr>
<tr><td>Supplemental</td><td>Due before building permit is issued</td><td>$100.00</td><td>$100.00</td><td>$1,000.00</td></tr>
</table>

501.4 An applicant for Department approval of a Stormwater Management Plan (SWMP) shall pay the fees in Table 2 for Department services at the indicated time, as applicable:

Table 2. Fees for Stormwater Management Plan Review

Payment Type	Payment Requirement	Fees by Land Disturbance Type	
		≥ 5,000 ft^2 and ≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$3,300.00	$6,100.00
Final	Due before building permit is issued	$1,500.00	$2,400.00
Supplemental	Due before building permit is issued	$1,000.00	$2,000.00

501.5 An applicant for Department approval of a plan and any other person requesting the services in Table 3 shall pay the additional fees in Table 3 for Department services before issuance of a building permit, except:

(a) If a person is applying for relief from extraordinarily difficult site conditions, the person shall pay the fee upon applying for relief; and

(b) If a person is not applying for a building permit, the person shall pay before receipt of a service.

501.6 An applicant shall be required to pay the fee for review of a Stormwater Pollution Prevention Plan only if the site is regulated under the Construction General Permit issued by Region III of the Environmental Protection Agency.

Table 3. Additional Fees

Review or Inspection Type	Fees by Land Disturbance Type	
	≤ 10,000 ft^2	> 10,000 ft^2
Soil characteristics inquiry	$150.00	
Geotechnical report review	$70.00 per hour	
Pre-development review meeting	No charge for first hour $70.00 per additional hour	
After-hours inspection fee	$50 per hour	
Stormwater pollution plan review	$1,100.00	
Dewatering pollution reduction plan review	$1,100.00	$2,100.00
Application for relief from extraordinarily difficult site conditions	$500.00	$1,000.00

501.7 An applicant for Department approval of a SWMP for a project being conducted solely to install a Best Management Practice (BMP) or land cover for Department certification of a Stormwater Retention Credit (SRC) shall pay the fees in Table 4 for Department services at the indicated time, as applicable, except that:

(a) A person who is paying a review fee in Table 2 for a major regulated project shall not be required to pay a review fee in Table 4 for the same project; and

(b) A person who has paid each applicable fee to the Department for its review of a SWMP shall not be required to pay a review fee in Table 4 for the same project:

Table 4. Fees for Review of Stormwater Management Plan to Certify Stormwater Retention Credits

Payment Type	Payment Requirement	Fees by Land Disturbance Type	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$575.00	$850.00
Final	Due before building permit is issued	$125.00	$200.00
Supplemental	Due before building permit is issued	$500.00	

501.8 A person who requires Departmental approval of an as-built SWMP for SRC certification for a BMP or land cover for which a plan review fee has not been paid to the Department shall pay each applicable fee for initial and final SWMP review in Table 4.

501.9 A person who requires the Department's review of a proposed or as-built SWMP solely for the purpose of applying for a stormwater fee discount under this Chapter shall not be required to pay a plan review fee to the Department for that project, except that a person who subsequently applies for SRC certification for the same project shall pay each applicable fee for initial and final plan review before the Department will consider the application for SRC certification.

501.10 An applicant for Department approval of a Green Area Ratio plan shall pay the fees in Table 5 for Department services at the indicated time:

Table 5. Fees for Review of Green Area Ratio Plan

Payment Type	Payment Requirement	Fees by Land Disturbance Type	
		≤ 10,000 ft^2	> 10,000 ft^2
Initial	Due upon filing for building permit	$575.00	$850.00
Final	Due before building permit is issued	$125.00	$200.00
Supplemental	For reviews after first resubmission	$500.00	

501.11 The in lieu fee shall be three dollars and fifty cents ($3.50) per year for each gallon of Off-Site Retention Volume (Offv).

501.12 The administrative late fee for an in-lieu fee payment shall be ten percent (10%) of the late payment.

501.13 A person shall pay the fees in Table 6 for the indicated resource before receipt of the resource:

Table 6. Fees for Resources

Paper Copies of Documents	Cost
District Standards and Specifications for Soil Erosion and Sediment Control	$50.00
District Stormwater Management Guidebook	$50.00
District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in)	$25.00

502 DUTY TO COMPLY

502.1 A person who engages in an activity that this chapter regulates shall comply with the provisions of this chapter.

502.2 A person shall conduct all work in accordance with each submittal approved by the Department, including each plan and approved change.

502.3 Each provision of an approved plan shall be complied with as a distinct provision of this chapter.

502.4 A person shall promptly notify the Department of an actual or likely material change in the performance provided for in an approved SWMP, including a material change in the volume of stormwater flowing into a Best Management Practice (BMP), a shared BMP, or a land cover.

502.5 A person shall undertake a reasonable inquiry to confirm that the facts stated and calculations made are true and correct for each communication with the Department under this chapter.

502.6 No person shall negligently, recklessly, or knowingly make a false statement in a communication with the Department.

503 INSPECTIONS, NOTICES OF WORK, AND APPROVALS OF CHANGES

503.1 The Department may conduct an inspection of an activity regulated under this chapter, including emergency work that may otherwise be exempt, to ensure compliance with this chapter.

503.2 The Department may require a change to an approved plan if the Department determines that a discrepancy between site conditions and the approved plan makes the plan inadequate to comply with the requirements of this chapter.

503.3 A person may not change an approved plan or its implementation without Department approval, as follows:

(a) If the change is substantial, the person shall resubmit the revised plan to the Department for approval in accordance with this chapter; and

(b) If the change is not substantial, the person may secure written approval from the Department in the field or at the Department's office.

503.4 For the purposes of this chapter, a substantial change in an approved plan is a change in design, specification, construction, operation, or maintenance that the Department determines:

(a) May result in a failure to comply with a requirement of this chapter; or

(b) Has a significant effect on the discharge of pollutants to the District's waters.

503.5 The Department may require an additional inspection at a particular stage of construction by specifying that requirement in:

(a) The approved plan;

(b) The preconstruction inspection report; or

(c) The Department's report of the preconstruction meeting.

503.6 No person may proceed with work past a stage of construction that the Department has identified as requiring an inspection unless:

(a) The Department's inspector has issued an "approved" or "passed" report;

(b) The Department has approved a plan modification that eliminates the inspection requirement; or

(c) The Department otherwise eliminates or modifies the inspection requirement in writing.

503.7 A person shall communicate with the Department:

(a) In order to schedule a preconstruction meeting or field visit before commencement of a land-disturbing activity, contact the Department at least three (3) business days before the start of the land-disturbing activity;

(b) In order to schedule a preconstruction inspection before beginning construction of a Best Management Practice (BMP), contact the Department at least three (3) business days before the start of the construction;

(c) In order to schedule an inspection required for a stage of construction or other construction event, contact the Department at least three (3) business days before the anticipated inspection;

(d) For the completion of a land-disturbing activity, give notice to the Department within two (2) weeks of completion of the activity; and

(e) For the completion of a BMP, and to request a final construction inspection, give the Department one (1) week's notice.

503.8 The Department shall make reasonable efforts to accommodate a request for inspection outside of the Department's normal business hours if the request:

(a) Is made during the Department's normal business hours;

(b) Includes the information the Department requires, including the matters to be inspected, the location of the site work to be inspected, and details for site access; and

(c) Includes payment or proof of payment of the after-hours inspection fee.

503.9 The Department shall determine whether work, construction, and maintenance complies with each approved plan, including conducting a final construction inspection and ongoing maintenance inspections of each BMP, land cover, and the site.

503.10 The Department may require inspections, on a periodic or as-needed basis, of a BMP, land cover, and the site to ensure that maintenance is sufficient to achieve performance or eligibility requirements and to avoid harm to the environment or public health.

503.11 A person shall allow the Department, upon presentation of Department credentials, to:

(a) Enter premises where a practice, measure, or activity subject to this chapter is located or conducted, or where required records are kept, including locations where a retention BMP or land cover is voluntarily installed to generate a Stormwater Retention Credit or receive a stormwater fee discount;

(b) Access and copy a required record;

(c) Inspect a site, practice, measure, or activity subject to this chapter, including to verify sufficient maintenance; and

(d) Conduct sampling, testing, monitoring, or analysis.

503.12 The Department may require as a precondition to its approval of an inspection that the applicant:

(a) Make available to the Department for the purposes of the inspection on site, or at the Department's offices, the professional engineer responsible for certifying the "as-built" plans; and

(b) Secure the seal and signature of this professional engineer certifying that the as-built plans comply with this chapter.

503.13 Upon notice, a person shall promptly correct work which the Department has found fails to comply with an approved plan.

503.14 The Department shall not approve the issuance of a certificate of occupancy for a building until the Department has determined that the approved stormwater management plan for the building site has been implemented for:

(a) On-site stormwater management; and

(b) Required off-site retention.

504 STOP WORK ORDERS

504.1 Upon notice from the Department that it has determined that one (1) or more of the following conditions exists, a person shall stop identified work immediately until the situation is corrected:

(a) Noncompliance with a notice that requires corrective action;

(b) Material false statement or misrepresentation of fact in an application that the Department approved for the project;

(c) During the project, the license of a contractor or subcontractor is void, has expired, or has been suspended or revoked;

(d) Work involving an activity regulated under this chapter is being conducted:

(1) In violation of a provision of this chapter;

(2) In an unsafe manner; or

(3) In a manner that poses a threat to the public health or the environment.

504.2 A stop work order shall:

(a) Have immediate effect;

(b) Be issued in writing; and

(c) Be provided to:

(1) The person who has received an approval under this chapter;

(2) The person doing the work; or

(3) The person on site who is responsible for the work.

504.3 The stop work order shall identify the:

(a) Address and location of the work;

(b) Corrective action or cessation required;

(c) Time period required to complete corrective action;

(d) Reason for the order;

(e) Person issuing the order, including telephone contact, and, if available, email or other electronic means of address; and

(f) Steps to be taken to challenge or appeal the order.

504.4 The Department shall:

(a) Post the stop work order at the property; and

(b) Send the stop work order in a manner likely to insure receipt, including first class mail, fax with return receipt, email with return read receipt, or hand-delivery with certification of service.

504.5 No person shall remove a stop work order posted at a site without the Department's written approval.

504.6 A person who continues work stopped by an order shall be in violation of this chapter for each day on which work is conducted, except for work:

(a) Required immediately to stabilize the activity and place the property in a safe and secure condition;

(b) That the Department orders; or

(c) Required immediately to eliminate an unsafe condition or threat to the public health or the environment.

505 VIOLATIONS AND ENFORCEMENT PROCEDURES

505.1 Each instance or day of a violation of each provision of this chapter shall be a separate violation.

505.2 Each separate violation of each provision may be subject to:

(a) A criminal fine and penalty, including imprisonment, and costs; and

(b) Either:

(1) A judicial civil penalty, order for corrective action, and order for damages and related costs, expenses, and fees; or

(2) An administrative civil fine, penalty, suspension of an approval, suspension of a permit, corrective action, order to comply with this chapter, and order for related costs, expenses, and fees.

505.3 The District may seek criminal prosecution if a person violates a provision of this chapter pursuant to:

(a) The Water Pollution Control Act of 1984 (WPCA), effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.16 (2008 Repl. & 2012 Supp.)); and

(b) The Soil Erosion and Sedimentation Control Act of 1977, effective Sept. 28, 1977 (D.C. Law 2-23; 24 DCR 792), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective August 26, 1994, as amended (D.C. Law 10-166; 41 DCR 4892; 21 DCMR §§ 500-15).

505.4 The District may bring a civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction, for civil penalties, damages, and injunctive or other appropriate relief pursuant to D.C. Official Code §§ 8-103.17(d) and 8-103.18.

505.5 As an alternative to a civil action, the Department may impose an administrative civil fine, penalty, fee, and order for costs and expenses by following the procedures of Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq*. (2007 Repl. & 2012 Supp.)) (Civil

Infractions Act), except that each reference in the Civil Infractions Act to an administrative law judge (ALJ) shall mean an ALJ of the Office of Administrative Hearings (OAH) established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002, as amended (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (2007 Repl. & 2012 Supp.)).

505.6 Except when otherwise required by statute, an administrative civil fine shall be calculated according to the schedule of fines for violations of this chapter that has been approved pursuant to the Civil Infractions Act, D.C. Official Code § 2-1801.04.

505.7 Administrative adjudication of a civil violation of a provision of this Chapter shall be conducted by OAH, pursuant to its rules and procedures.

505.8 An administrative adjudicator of a civil violation of a provision of this Chapter shall have the same power, authority, and jurisdiction with respect to the matter before it as does the Department.

505.9 Neither a criminal prosecution nor the imposition of a civil fine or penalty shall preclude an administrative or judicial civil action for injunctive relief or damages, including an action to prevent unlawful construction or to restrain, correct, or abate a violation on or about any premises, or to recover costs, fees, or money damages, except that a person shall not, for the same violation of the WPCA, be assessed a civil fine and penalty through both the judicial and the administrative processes.

505.10 With respect to a violation of a provision of this chapter, the Department may also pursue and obtain an internal remedy by:

(a) Advising a person of a violation through the use of a DDOE internal Notice of Violation; and

(b) Issuing and addressing a violation through the use of a DDOE internal Notice of Infraction.

505.11 If a term in a provision of this section conflicts with a provision in another section of this chapter, the term in the provision of this section controls.

506 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

506.1 With respect to a matter governed by this chapter, a person adversely affected or aggrieved by an action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002,

as amended (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (2007 Repl. & 2012 Supp.)), or OAH's successor.

506.2 For the purposes of this chapter, an action of the Department taken with respect to a person shall include:

(a) Signed settlement of an internal Notice of Infraction (NOI);

(b) Approval;

(c) Denial;

(d) Compliance order;

(e) NOI;

(f) Determination;

(g) Cease and desist order;

(h) Stop work order;

(i) Order to show cause; or

(j) Other action of the Department which constitutes the consummation of the Department's decision-making process and is determinative of a person's rights or obligations.

506.3 For the purposes of this chapter, a DDOE internal Notice of Violation or NOI:

(a) Shall not be an action of the Department that a person may appeal to OAH;

(b) Shall be responded to within fifteen (15) calendar days of service of the notice, including a written statement containing the grounds, if any, for opposition; and

(c) Shall not constitute a waiver of compliance or tolling of a period for a fine or penalty.

506.4 If a person fails to agree to or settle an internal NOI or otherwise denies a claim stated in an internal NOI:

(a) The Department may cancel the internal NOI and file an NOI for adjudication with OAH; or

(b) The person may request adjudication by OAH.

506.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

(a) Within fifteen (15) calendar days of service of the notice of the action; or

(b) Another period of time stated specifically in the section for an identified Department action.

506.6 Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

506.7 OAH shall:

(a) Resolve an appeal or an NOI by:

(1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;

(2) Remanding for Department action or further proceedings, consistent with OAH's order; or

(3) Providing such other relief as the governing statutes, regulations and rules support;

(b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and

(c) By its final decision render a final agency action which will be subject to judicial review.

506.8 The filing of an administrative appeal shall not in itself stay enforcement of an action; except that a person may request a stay according to the rules of OAH.

506.9 The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof when it denies a right.

506.10 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

(a) To the Department when a party challenges the Department's suspension, revocation, or termination of a:

(1) License;

(2) Permit;

(3) Continuation of an approval; or

(4) Other right;

(b) To the party who asserts an affirmative defense; and

(c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

506.11 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

506.12 An action for judicial review of a final OAH decision shall not be a de novo review, but shall be a review of the administrative record alone and not duplicate agency proceedings or hear additional evidence.

506.13 Nothing in this chapter shall be interpreted to:

(a) Provide that a filing of a petition for judicial review stays enforcement of an action; or

(b) Prohibit a person from requesting a stay according to the rules of the court.

506.14 If a term in a provision of this section conflicts with a provision in another section of this chapter, the term in the provision of this section controls.

507 PUBLIC HEALTH HAZARDS

507.1 The Mayor may post notice on the shores of a District waterbody of a related hazard to public health or safety.

507.2 Upon determination that a direct or indirect contact with a waterbody of the District, including immersion, fishing, or boating, poses a hazard to the public health or safety, the Department may take action deemed necessary to protect the public health until the hazard has ended, including a prohibition of all recreational activities on the affected waters of the District.

507.3 If the Department takes action to protect the public health from a hazard, the Department shall:

(a) Notify the Council of the District of Columbia immediately of the action; and

(b) Notify the public through media most likely to effectively advise of the hazard, including:

(1) Newspapers of general circulation in the District;

(2) Radio stations serving the District; and

(3) Electronic media.

507.4 An action taken by the Department to protect public health from a hazard shall remain in effect until rescinded, or for a period of two (2) weeks, whichever is shorter.

507.5 The Department may extend the life of an action taken to protect public health from a hazard beyond a two (2) week period, only if the Council of the District of Columbia, by resolution, so approves.

507.6 From District waters designated as a public health hazard, no person shall operate any pumping device or water vessel so as to generate a spray which falls upon the adjacent shore, except as authorized by the Mayor for good cause shown.

508 PREVENTION OF POLLUTION BY WATERCRAFT

508.1 The discharge into the Potomac River or its tributaries of any waste, whether liquid or solid, treated or untreated, from any vessel berthed at a marina, dock, or basin, is prohibited.

508.2 Each marina, dock, or basin where a vessel or other watercraft is berthed, except for facilities that are owned by the United States Department of Defense and not generally open to the public, shall be provided with water closets, urinals, and lavatories which are separate for each sex, readily available, and in sufficient numbers to meet the needs of persons using the marina facilities.

508.3 Each marina, dock, or basin where vessels or other watercraft suitable for overnight accommodations are berthed shall be equipped with suitable bathing facilities.

508.4 The Department shall approve the facilities required under this section to be acceptable for the purposes set forth.

508.5 New or existing marinas within the Anacostia Waterfront Development Zone shall comply with the program elements outlined in the current version of the Clean Marina Guidebook issued by the National Park Service, and the owner of

the marina shall submit a copy of its Clean Marina Checklist and any supporting documentation to the Department.

509 CORRECTION OF CURRENT EROSION PROBLEMS

509.1 In instances where erosion is occurring as the result of natural forces or past land-disturbing activities, but in the absence of current land-disturbing activities, the Department shall have the authority to inspect the site and to order the property owner to correct the erosion problem.

509.2 Each order to correct existing problems shall specify the general corrective measures to be applied.

509.3 The Department shall maintain and provide to homeowners who are required to correct erosion problems information relating to possible sources of financial assistance for the project.

510-515 [RESERVED]

516 STORMWATER MANAGEMENT: APPLICABILITY

516.1 No person shall engage in a major regulated project unless the Department has issued an approved stormwater management plan (SWMP) for the project.

516.2 Application for Department approval of a SWMP for a major regulated project shall be made by at least one (1) of the following persons:

(a) The owner of a property on which a major regulated project is planned;

(b) The lessee who undertakes a major regulated project, with the owner's permission, on a property that the lessee has leased; or

(c) The agent of the owner or lessee.

516.3 In preparing and implementing a SWMP, or a part of a SWMP, a person must comply with:

(a) This chapter;

(b) The terms and conditions of the SWMP once approved; and

(c) The Department's orders and directions to achieve compliance with the approved SWMP.

516.4 A major regulated project shall comply with the requirements and procedures of this chapter unless a provision exempts compliance.

516.5 The owner of a site on which a major regulated project occurs and each person to whom the owner has designated responsibility for management of the site shall ensure that the site complies with the approved SWMP for the site until site redevelopment that follows a Department-approved SWMP occurs.

516.6 Responsibility for compliance with an approved SWMP for a site shall pass to a subsequent owner of the site and each person to whom that owner designates responsibility for the management of the site until site redevelopment that follows a Department-approved SWMP occurs.

516.7 No person shall engage in a project for the generation of a Stormwater Retention Credit unless the Department has issued an approved SWMP for the project, except as otherwise provided in this chapter.

517 STORMWATER MANAGEMENT: EXEMPTIONS

517.1 If a major substantial improvement activity demonstrates that it is not part of a common plan of development with a major land-disturbing activity, then it is exempt from § 520 (Stormwater Management: Performance Requirements For Major Land-Disturbing Activity).

517.2 A land-disturbing activity shall be exempt from the requirements of Section 520 (Stormwater Management: Performance Requirements For Major Land-Disturbing Activity), Section 522 (Stormwater Management: Performance Requirements For Major Substantial Improvement Activity) and Section 529 (Stormwater Management: Covenants and Easements) if the Department determines that it is:

(a) Conducted solely to install a best management practice or land cover that retains stormwater for one or more of the following purposes:

(1) To generate a Stormwater Retention Credit;

(2) To earn a stormwater fee discount under the provisions of this chapter;

(3) To provide for off-site retention through in-lieu fee payments;

(4) To comply with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay;

(5) To reduce Combined Sewer Overflows (CSOs) in compliance with a court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, or in compliance with a National Pollutant Discharge Elimination System permit; or

(6) A utility project that is being conducted solely to protect or restore surface water quality, including projects for improving wastewater treatment and reducing CSOs.

517.3 A land-disturbing activity that consists solely of cutting a trench for utility work and related replacement of sidewalks and ramps is exempt from the stormwater management requirements of this chapter if it does not involve the reconstruction of a roadway from curb to curb or curb to centerline of roadway.

517.4 Land disturbance conducted solely to respond to an emergency need to protect life, limb, or property or conduct emergency repairs shall be exempt from the requirement to comply with the stormwater management provisions of this chapter, §§ 516-34.

517.5 For the purposes of calculating the cost of a major substantial improvement to a building or structure, an applicant may exclude the cost of replacing manufacturing and industrial equipment, including pumps, valve chambers, and wastewater treatment facilities, but may not exclude the cost of replacing boilers, furnaces, and other equipment that is part of the heating and cooling system or other infrastructure commonly found in a building or structure.

517.6 A land-disturbing activity in the existing Public Right of Way is exempt from the requirements in Section 520 (Performance Requirements for Major Land-Disturbing Activity) for maintaining post-development peak discharge rates.

518 STORMWATER MANAGEMENT: PLAN REVIEW PROCESS

518.1 In order for the Department to approve a person's proposed stormwater management plan (SWMP), the person and the Department shall undertake the process described in this section.

518.2 The Department shall notify an applicant of each determination in the plan review process.

518.3 The owner of a site shall submit an initial application for the Department's approval of a major regulated project, including:

(a) Two (2) sets of the SWMP, certified by a professional engineer licensed in the District of Columbia; and

(b) Each supporting document specified in the Department's Stormwater Management Guidebook (SWMG).

518.4 The Department shall make an initial determination if an application is complete and:

(a) Accept the application for review;

(b) Accept the application for review, with conditions; or

(c) Reject the application for review, without prejudice to re-submission.

518.5 Upon accepting an application for review, the Department shall determine if:

(a) The application requires additional information to determine whether or not it meets the requirements for approval;

(b) The application meets the requirements for approval;

(c) The application meets the requirements for approval, with conditions; or

(d) The application does not meet the requirements for approval and shall be disapproved, without prejudice to re-submission.

518.6 If the applicant resubmits a SWMP after making changes, the re-submission shall contain a list of the changes made.

518.7 The Department may conduct one (1) or more supplemental reviews of a re-submitted application.

518.8 After receiving notification that an application meets the requirements for the Department's approval, the applicant shall submit a final preconstruction application including:

(a) One (1) Mylar copy of the SWMP, certified by a professional engineer licensed in the District of Columbia;

(b) Seven (7) paper copies of the SWMP, certified by a professional engineer licensed in the District of Columbia; and

(c) Each supporting document specified in the Department's SWMG.

518.9 After the applicant submits a final preconstruction application that meets the requirements for the Department's approval, the Department shall approve the plan, and provide the applicant with one (1) approved copy of the SWMP for the

applicant to file at the Recorder of Deeds with the declaration of covenants and, if applicable, to record an easement.

518.10 The Department shall issue the remaining approved paper copies of the approved SWMP to the applicant after the applicant submits proof to the Department:

(a) That the declaration of covenants and each applicable easement has been filed at the Recorder of Deeds; and

(b) That each applicable fee for Department services has been paid.

518.11 The Department may issue the remaining approved paper copies of the approved SWMP to the applicant before the declaration of covenants is filed if:

(a) The Government of the District of Columbia has conditioned transfer of the property upon the successful acquisition of an approved SWMP or building permit; and

(b) The declaration is to be filed at closing.

518.12 Within twenty-one (21) days of the Department's final construction inspection, the applicant shall submit an as-built package, including:

(a) One (1) Mylar copy of the as-built SWMP certified by a professional engineer licensed in the District of Columbia; and

(b) Each supporting document specified in the Department's SWMG.

518.13 For a project consisting entirely of work in the public right of way, the requirement to submit an as-built SWMP can be met by the submission of a Record Drawing that:

(a) Documents the as-built construction of best management practices and related stormwater infrastructure; and

(b) Is certified by an officer of the contracting company for the project.

519 STORMWATER MANAGEMENT: PLAN

519.1 A Department-approved stormwater management plan (SWMP) shall:

(a) Govern all construction for which stormwater management is required;

(b) Govern all applicable maintenance activities; and

(c) Demonstrate compliance with this chapter.

519.2 A submitted SWMP and supporting documentation shall contain information sufficient for the Department to determine whether the SWMP complies with this chapter including:

(a) Existing site conditions, including the identification and location of each existing Best Management Practice (BMP) and whether it will remain on the site and in use or will be removed;

(b) Proposed site design;

(c) Each land use proposed for the site;

(d) Identification and location of each proposed BMP, including geographic coordinates;

(e) Design and performance of each BMP for stormwater retention, detention, and treatment;

(f) Conveyance capacity of stormwater infrastructure;

(g) Environmental characteristics of the site;

(h) Pre- and post-development hydrologic computations, including:

(1) Calculation of required stormwater management volume for:

(A) The entire site; and

(B) Each individual drainage area; and

(2) On-site and off-site retention volumes;

(i) Maintenance plan and schedule for each proposed BMP;

(j) Monitoring plan for each BMP that captures stormwater for use;

(k) For each proposed BMP not included in the Department's Stormwater Management Guidebook (SWMG):

(1) Separate identification and description; and

(2) Documentation of performance and effectiveness;

(l) Construction sequence for:

(1) Each BMP; and

(2) The related development or improvement project, if any.

(m) A list of the construction and waste material to be stored on site and a description of the material and each pollution control measure that will be implemented to minimize exposure to stormwater discharge, including:

(1) Each storage practice;

(2) A spill prevention response;

(3) The United States Environmental Protection Agency (EPA) identification number, or copy of application to EPA for identification number, for each hazardous waste that will be stored on site; and

(4) Proof of payment of each applicable fee.

519.3 The retention capacity of each BMP in a SWMP shall be calculated using the applicable equations for calculating retention value in Chapter three (3) of the Department's Stormwater Management Guidebook.

519.4 The pollutant removal efficiency of each BMP in a SWMP shall be calculated using the applicable equation in Chapter three (3) of the Department's SWMG.

519.5 The Department may require for each area that a project proposes for use to meet the requirements of this chapter, including a contiguous area or an area with a shared BMP:

(a) Information listed in this section; or

(b) A SWMP.

519.6 A submitted SWMP shall use:

(a) A standard drawing size of twenty-four inches by thirty-six inches (24 in. x 36 in);

(b) One (1) of the following horizontal scales of profile, unless otherwise approved:

(1) One inch equals ten feet (1 in. = 10 ft.);

(2) One inch equals twenty feet (1 in. = 20 ft.);

(3) One inch equals thirty feet (1 in. = 30 ft.);

(4) One inch equals forty feet (1 in. = 40 ft.);

(5) One inch equals fifty feet (1 in. = 50 ft.); or

(6) One inch equals eighty feet (1 in. = 80 ft.);

(c) One (1) of the following vertical scales of profile, unless otherwise approved:

(1) One inch equals two feet (1 in. = 2 ft.);

(2) One inch equals four feet (1 in. = 4 ft.);

(3) One inch equals five feet (1 in. = 5 ft.); or

(4) One inch equals ten feet (1 in = 10 ft.); and

(d) Drafting media that yield first or second generation reproducible drawings with a minimum letter size of No. 4 (1/8 inch).

519.7 A SWMP shall not be approved without the signature and seal of the Director or the Director's designee on the plan.

519.8 For each as-built SWMP that an applicant submits to the Department, an applicant shall provide that a professional engineer licensed in the District of Columbia, certifies with seal and signature that:

(a) The design, and installation for an as-built plan:

(1) Conforms to engineering principles applicable to stormwater management; and

(2) Complies with the requirements of this chapter; and

(b) A set of instructions for operation and maintenance of each BMP has been provided to the applicant.

519.9 A SWMP for a project shall be consistent with each other project submittal, including:

(a) An erosion and sediment control plan; and

(b) A floodplain management plan.

519.10 The approved SWMP for a major regulated project shall be available on site for Department review for the entire period of construction during ordinary business hours.

520 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR LAND-DISTURBING ACTIVITY

520.1 A site that undergoes a major land-disturbing activity shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until site redevelopment that follows a Department-approved Stormwater Management Plan (SWMP) occurs.

520.2 A site that undergoes a major land-disturbing activity, except the area of a site that is in the existing Public Right of Way (PROW), shall maintain the following:

(a) Post-development peak discharge rate for a twenty-four (24) hour, two (2)-year frequency storm event at a level that is equal to or less than the storm event's pre-development peak discharge rate unless the site's discharge:

(1) Flows directly or through the separate sewer system to the main stem of the tidal Potomac or Anacostia Rivers, the Washington Channel, or the Chesapeake and Ohio Canal;

(2) Does not flow into or through a tributary to those waterbodies that runs above ground or that the Department expects to be daylighted to run above ground; and

(3) Will not cause erosion of land or transport of sediment.

(b) Post-development peak discharge rate for a twenty-four (24) hour, fifteen (15)-year frequency storm event at a level that is equal to or less than the storm event's pre-project peak discharge rate; and

(c) Post-development peak discharge rate from a twenty-four (24) hour, one hundred (100)-year storm event at a level that is equal to or less than the storm event's pre-project peak discharge rate if the site:

(1) Increases the size of Special Flood Hazard Area as delineated on the effective Flood Insurance Rate Map; or

(2) Meets the following two conditions:

(A) Does not discharge to the sewer system and

(B) Has a post-development peak discharge rate for a one hundred (100)-year storm event that will cause flooding to a building.

520.3 A site that undergoes a major land-disturbing activity shall achieve retention of the rainfall from the ninetieth (90^{th}) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period (1.2 inch rainfall event) by:

(a) Employing each BMP necessary to retain the 1.2 inch Stormwater Retention Volume (SWRv), calculated as follows:

$$SWRv = [P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48 /12$$

SWRv	=	volume, in gallons, required to be retained
P	=	90^{th} percentile rainfall event for the District (1.2 inches)
Rv_I	=	0.95 (runoff coefficient for impervious cover)
Rv_C	=	0.25 (runoff coefficient for compacted cover)
Rv_N	=	0.00 (runoff coefficient for natural cover)
%I	=	post-development percent of site in impervious cover
%C	=	post-development percent of site in compacted cover
%N	=	post-development percent of site in natural cover
SA	=	surface area, in square feet, of land-disturbing activity

where the surface area under a BMP shall be calculated as part of the impervious cover (%I);

(b) Employing each post-development land cover factored into the SWRv; and

(c) Calculating separately and achieving the SWRv, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing Public Right of Way (PROW), in compliance with the section of this Chapter pertaining to performance requirements in the existing PROW.

520.4 A site that undergoes a major land-disturbing activity may achieve the 1.2 inch SWRv on site or through a combination of on-site retention and off-site retention, under the following conditions:

(a) The site shall retain on site a minimum of fifty percent (50%) of the 1.2 inch SWRv, calculated for the entire site, unless the Department approves an application for relief from extraordinarily difficult site conditions; and

(b) The site shall use off-site retention for the portion of the SWRv that is not retained on site.

520.5 A site that undergoes a major land-disturbing activity may achieve on-site retention by retaining more than the 1.2 inch SWRv for an area of the site, subject to the following conditions:

(a) At least fifty percent (50%) of the 1.2 inch SWRv from each Site Drainage Area (SDA), unless it drains into the combined sewer system, shall be:

(1) Retained; or

(2) Treated to remove eighty percent (80%) of total suspended solids; and

(3) The entirety of an area intended for use or storage of motor vehicles shall drain to each necessary BMP so that at least fifty percent (50%) of the 1.2 inch SWRv flowing from that entire area is retained or treated;

(b) Retention in excess of a 1.2 inch SWRv for one area of the site may be applied to the volume required for another area of the site;

(c) The requirement for retention of a minimum of fifty percent (50%) of the 1.2 inch SWRv for the entire site shall be achieved, unless the Department approves an application for relief from extraordinarily difficult site conditions; and

(d) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWRv equation with a P equal to 1.7 inches, shall not be counted toward on-site retention.

520.6 A major land-disturbing activity may achieve on-site retention by directly conveying volume from the regulated site to a shared BMP with available retention capacity.

521 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR LAND-DISTURBING ACTIVITY CONSISTING OF BRIDGE, ROADWAY, AND STREETSCAPE PROJECTS IN THE EXISTING PUBLIC RIGHT OF WAY

521.1 This section applies only to the portion of a major regulated project that consists entirely of bridge, roadway, or streetscape work:

(a) In the existing Public Right of Way (PROW); or

(b) In the existing PROW and in the public space associated with the PROW.

521.2 A project in the existing PROW may comply with a requirement in this chapter to retain a Stormwater Retention Volume (SWRv) by:

(a) Retaining fifty percent (50%) of the SWRv on site and using off-site retention for the remaining volume;

(b) Achieving the SWRv; or

(c) Retaining on site the SWRv to the Maximum Extent Practicable (MEP), after proving that each opportunity for installing retention capacity has been exhausted in compliance with the MEP process for existing PROW detailed in the Department's Stormwater Management Guidebook (SWMG).

521.3 A project in the existing PROW shall:

(a) Prioritize, to the MEP, the management of stormwater from the roadway, including stormwater draining from roadway beyond the area of land-disturbing activity; and

(b) Not be required to install a Best Management Practice (BMP) or landcover:

(1) That provides retention capacity greater than that required to achieve the SWRv that is calculated for the area of land-disturbing activity; or

(2) That is outside the area of land-disturbing activity.

521.4 An existing PROW project on an Anacostia Waterfront Development Zone (AWDZ) site may comply with a requirement in this chapter to achieve a Water Quality Treatment Volume (WQTv) by:

(a) Achieving the WQTv; or

(b) Achieving the WQTv to the MEP, after proving that each opportunity for installing retention and treatment capacity has been exhausted in compliance with the MEP process for existing PROW detailed in the SWMG.

521.5 A project in the existing PROW that elects to comply with the SWMG's MEP process for maximizing retention or treatment shall provide the following information demonstrating technical infeasibility or environmental harm:

(a) Detailed explanation of each opportunity for on-site installation of a BMP that was considered and rejected, and the reasons for each rejection,

including each opportunity that could be created by reducing roadway width in order to create an expanded area for retention of the SWRv or treatment of the WQTv between the curb line and private property; and

(b) Evidence of site conditions limiting each opportunity for a BMP, including, as applicable:

(1) Data on soil and groundwater contamination;

(2) Data from percolation testing;

(3) Documentation of the presence of utilities requiring impermeable protection or a setback;

(4) Documentation of structural requirements that would not be satisfied by a BMP;

(5) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law; and

(6) Evidence of a District-approved use for the safe and effective transport of goods or people

521.6 A major regulated project in the existing PROW may achieve on-site retention by retaining more than the 1.2 inch SWRv for an area of the site or for an area that drains to the site, subject to the following conditions:

(a) At least fifty percent (50%) of the 1.2 inch SWRv from each Site Drainage Area (SDA), unless it drains into the combined sewer system, shall be:

(1) Retained; or

(2) Treated to remove eighty percent (80%) of total suspended solids to the MEP; and

(3) The entirety of an area intended for use or storage of motor vehicles shall drain to each necessary BMP so that at least fifty percent (50%) of the 1.2 inch SWRv flowing from that entire area is retained or treated;

(b) Retention in excess of a 1.2 inch SWRv for one area of the site or an area that drains to the site may be applied to the volume required for another area of the site;

(c) The requirement for retention of a minimum of fifty percent (50%) of the 1.2 inch SWRv for the entire site shall be achieved, unless the project achieves retention of the SWRv to the MEP; and

(d) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWRv equation with a P equal to 1.7 inches, shall not be counted toward on-site retention.

521.7 If a project in the existing PROW that is retaining the SWRv to the MEP is not able to achieve retention of fifty percent (50%) of the SWRv for the entirety of an area intended for use or storage of motor vehicles, the Department may waive a requirement to provide treatment for that volume if the Department:

(a) Determines that a treatment BMP would displace or reduce the size of retention capacity to be installed; and

(b) Concludes that the displaced or reduced retention capacity would be as protective or more protective for District waterbodies than the alternative treatment BMP.

521.8 An existing PROW project that is retaining the SWRv or the WQTv to the MEP shall not be required to use off-site retention for the difference between the required volume and the achieved volume.

522 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR SUBSTANTIAL IMPROVEMENT ACTIVITY

522.1 If a major substantial improvement activity demonstrates that it is not part of a common plan of development with a major land-disturbing activity, then it shall comply with the provisions of this section; otherwise, it shall comply with the requirements for a major land-disturbing activity.

522.2 For the purposes of calculating the cost of a major substantial improvement to a building or structure, an applicant may exclude the cost of replacing manufacturing and industrial equipment, including pumps, valve chambers, and wastewater treatment facilities, but may not exclude the cost of replacing boilers, furnaces, and other equipment that is part of the heating and cooling system or other infrastructure commonly found in a building or structure.

522.3 A site that undergoes a major substantial improvement activity shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until the property is redeveloped in compliance with these regulations.

522.4 A site that undergoes a major substantial improvement activity shall achieve retention of the rainfall from the eightieth (80^{th}) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour storm with a seventy-two (72)-hour antecedent dry period (0.8 inch rainfall event) by:

(a) Employing each BMP necessary to retain the 0.8 inch Stormwater Retention Volume (SWRv), calculated as follows:

$$SWRv = [P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48 /12$$

SWRv	=	volume, in gallons, required to be retained
P	=	80^{th} percentile rainfall event for the District (0.8 inches)
Rv_I	=	0.95 (runoff coefficient for impervious cover)
Rv_C	=	0.25 (runoff coefficient for compacted cover)
Rv_N	=	0.00 (runoff coefficient for natural cover)
%I	=	post-development percent of site in impervious cover
%C	=	post-development percent of site in compacted cover
%N	=	post-development percent of site in natural cover
SA	=	surface area, in square feet, of substantially improved building footprint plus land disturbance

where the surface area under a BMP shall be calculated as part of the impervious cover (%I); and

(b) Employing each post-development land cover factored into the SWRv.

(c) Calculating separately and achieving the SWRv, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing Public Right of Way (PROW), in compliance with the section of this Chapter pertaining to performance requirements in the existing PROW.

522.5 A site that undergoes a major substantial improvement activity may achieve the 0.8 inch SWRv on site or through a combination of on-site retention and off-site retention, under the following conditions:

(a) The site shall retain on site a minimum of fifty percent (50%) of the 0.8 inch SWRv, calculated for the entire site, unless the Department approves an application for relief from extraordinarily difficult site conditions; and

(b) The site shall use off-site retention for the portion of the SWRv that is not retained on site.

522.6 A site that undergoes a major substantial improvement activity may achieve on-site retention by retaining more than the 0.8 inch SWRv for an area of the site, subject to the following conditions:

(a) At least fifty percent (50%) of the 0.8 inch SWRv from each Site Drainage Area (SDA), unless it drains into the combined sewer system, shall be:

(1) Retained; or

(2) Treated to remove eighty percent (80%) of total suspended solids; and

(3) The entirety of an area intended for use or storage of motor vehicles shall drain to each necessary BMP so that at least fifty percent (50%) of the 0.8 inch SWRv flowing from that entire area is retained or treated;

(b) Retention in excess of a 0.8 inch SWRv for one area of the site may be applied to the volume required for another area of the site;

(c) The requirement for retention of a minimum of fifty percent (50%) of the 0.8 inch SWRv for the entire site shall be achieved, unless the Department approves an application for relief from extraordinarily difficult site conditions; and

(d) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWRv equation with a P equal to 1.7 inches, shall not be counted toward on-site retention.

522.7 A major substantial improvement activity may achieve on-site retention by directly conveying volume from the regulated site to a shared BMP with available retention capacity.

523 STORMWATER MANAGEMENT: RESTRICTIONS

523.1 The Department may restrict use of an infiltration Best Management Practice (BMP) to prevent contamination of soil or groundwater and require submittal of and compliance with a Stormwater Pollution Prevention Plan if:

(a) An applicant proposes to engage in a land use activity that has the potential to pollute stormwater runoff, as specified in the Department's Stormwater Management Guidebook (SWMG); or

(b) Surface contamination is present at the site.

523.2 To prevent stormwater migration in underlying soil or groundwater in an area determined to have sub-surface contamination of soil or groundwater, the Department may:

(a) Prohibit use of an infiltration BMP; or

(b) Limit use of an infiltration BMP, including by requiring that an impermeable liner be used.

523.3 The Department may require a BMP that receives runoff from a stormwater hotspot designated in the Department's SWMG to include pollution control measures, including, as applicable, a baffle, skimmer, oil separator, grease trap, or other mechanism which prevents release of oil and grease in concentrations exceeding ten milligrams per Liter (10 mg/L).

523.4 The Department may require a BMP that receives runoff from an animal confinement area to:

(a) Connect to a combined sewer, if DC Water approves the connection as not exceeding available capacity; or

(b) Include pollution control measures necessary to protect water quality standards of the receiving waterbody, if the runoff discharges directly to a waterbody or through the separate sewer system.

523.5 No person shall use a coal tar product, or other toxic material, to seal a BMP.

524 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR REGULATED PROJECTS IN THE ANACOSTIA WATERFRONT DEVELOPMENT ZONE

524.1 An Anacostia Waterfront Development Zone site (AWDZ site) is a site within the Anacostia Waterfront Development Zone (AWDZ) that undergoes a major regulated project that is publicly owned or publicly financed.

524.2 An AWDZ site shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until site redevelopment that follows a Department-approved Stormwater Management Plan occurs.

524.3 Except for activities exempted under this chapter, if a provision of this section conflicts with any other provision of this chapter, an AWDZ site shall be subject to the more stringent provision.

524.4 An AWDZ site that undergoes a major land-disturbing activity shall achieve treatment of the rainfall from the ninety-fifth (95^{th}) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period (1.7 inch rainfall event) by:

(a) Employing each BMP necessary to treat the 1.7 inch Water Quality Treatment Volume (WQTv) equal to the difference between:

(1) The post-development runoff from the 1.7 inch rainfall event; and

(2) The 1.2 inch Stormwater Retention Volume (SWRv);

(b) Calculating the WQTv in subsection (a) as follows:

$$WQTv = ([P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48/12) - SWRv$$

WQTv	=	volume, in gallons, required to be retained or treated, above and beyond the SWRv
SWRv	=	volume, in gallons, required to be retained
P	=	95th percentile rainfall event for the District (1.7 inches)
Rv_I	=	0.95 (runoff coefficient for impervious cover)
Rv_C	=	0.25 (runoff coefficient for compacted cover)
Rv_N	=	0.00 (runoff coefficient for natural cover)
%I	=	post-development percent of site in impervious cover
%C	=	post-development percent of site in compacted cover
%N	=	post-development percent of site in natural cover
SA	=	surface area in square feet, of land-disturbing activity

where the surface area under a BMP shall be calculated as part of the impervious cover (%I); and

(c) Employing each post-development land cover factored into the WQTv.

524.5 An AWDZ site that undergoes a major substantial improvement activity and does not undergo a major land-disturbing activity shall:

(a) Comply with the performance requirements for major substantial improvement activity, except that the Stormwater Retention Volume (SWRv) shall be equal to the post-development runoff from the eighty-fifth (85th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period (1.0 inch rainfall event);

(b) Achieve treatment of the rainfall from the ninety-fifth (95th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period (1.7 inch rainfall event) by:

(1) Employing each BMP necessary to treat the 1.7 inch Water Quality Treatment Volume (WQTv) equal to the difference between:

(A) The post-development runoff from the 1.7 inch rainfall event; and

(B) The 1.0 inch SWRv;

(2) Calculating the WQTv in subsection (b) as follows:

$$WQTv = ([P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48 /12)\text{-}SWRv$$

WQTv	=	volume, in gallons, required to be retained or treated, above and beyond the SWRv
SWRv	=	volume, in gallons, required to be retained
P	=	95^{th} percentile rainfall event for the District (1.7 inches)
Rv_I	=	0.95 (runoff coefficient for impervious cover)
Rv_C	=	0.25 (runoff coefficient for compacted cover)
Rv_N	=	0.00 (runoff coefficient for natural cover)
%I	=	post-development percent of site in impervious cover
%C	=	post-development percent of site in compacted cover
%N	=	post-development percent of site in natural cover
SA	=	surface area in square feet,

where, the surface area under a BMP shall be calculated as part of the impervious cover (%I); and

(3) Employing each post-development land cover factored into the WQTv.

524.6 A major regulated project in the AWDZ may achieve on-site treatment for WQTv with:

(a) On-site treatment designed to remove eighty percent (80%) of Total Suspended Solids;

(b) On-site retention; or

(c) Direct conveyance of stormwater from the site to an approved shared BMP with sufficient available treatment or retention capacity.

524.7 An AWDZ site may achieve part of the WQTv by using off-site retention if:

(a) Site conditions make compliance technically infeasible, environmentally harmful, or of limited appropriateness in terms of impact on surrounding landowners or overall benefit to District waterbodies; and

(b) The Department approves an application for relief from extraordinarily difficult site conditions.

524.8 An AWDZ site that achieves a gallon of Off-Site Retention Volume (Offv) by using Stormwater Retention Credits (SRCs) certified for retention capacity located outside of the Anacostia watershed shall use 1.25 SRCs for that gallon of Offv.

524.9 An AWDZ site shall obtain Department approval of an integrated pesticide management plan meeting the requirements of the Department's Stormwater Management Guidebook.

524.10 A major regulated project in the AWDZ shall achieve the required level of stormwater management using one or more of the following methods, in the following order of preference:

(a) Vegetated BMPs and land covers designed to retain and beneficially use stormwater;

(b) Where compatible with groundwater protection, non-vegetated infiltration BMPs;

(c) Other low impact development practices;

(d) Collection and use of stormwater for on-site irrigation and other purposes; and

(e) Other on-site BMPs or design methods approved by the Department.

525 STORMWATER MANAGEMENT: SHARED BEST MANAGEMENT PRACTICE

525.1 A Shared Best Management Practice (S-BMP) may, upon approval by the Department:

(a) Provide stormwater management for a major regulated project in satisfaction of an on-site stormwater management requirement of that project; and

(b) Be eligible for Department certification of a Stormwater Retention Credit (SRC).

525.2 A Department-approved S-BMP may provide stormwater management for a nearby property if:

(a) Stormwater flow from the nearby property is directly conveyed to the S-BMP; and

(b) The S-BMP has sufficient capacity.

525.3 To obtain Department approval of the use of an existing S-BMP, a major regulated project shall show how each requirement of the project will be met by the S-BMP, including:

(a) Submit an as-built Stormwater Management Plan (SWMP) for the S-BMP that is accurate as of the time of submittal;

(b) Prove sufficient capacity of the S-BMP;

(c) Demonstrate the adequacy of each stormwater conveyance from the major regulated project to the S-BMP; and

(d) Show each drainage area conveying stormwater into the S-BMP from the major regulated project.

525.4 To obtain Department approval of the use of a proposed S-BMP, a major regulated project shall show how each requirement of the project will be met by the S-BMP, including:

(a) Submit a Department-approved SWMP for the S-BMP;

(b) Prove sufficient capacity of the S-BMP;

(c) Demonstrate the adequacy of each stormwater conveyance from the major regulated project to the S-BMP; and

(d) Show each drainage area conveying stormwater into the S-BMP from the major regulated project.

525.5 A major regulated project that uses a S-BMP to meet a requirement shall not pass the Department's final inspection until the S-BMP passes the Department's final inspection and is operational.

525.6 After an alteration to a S-BMP to provide stormwater management for another site, the site with the S-BMP shall:

(a) Pass the Department's inspection; and

(b) Submit an as-built SWMP, showing each area draining into the S-BMP and the means of conveyance.

525.7 The Department may certify a SRC for a S-BMP if the S-BMP meets each requirement for certification.

525.8 A site with a S-BMP that provides a volume of stormwater management to satisfy an on-site requirement of a major regulated project shall be responsible for maintenance of the S-BMP capacity to manage that volume and shall record that responsibility in a declaration of covenants.

525.9 If the Department determines that a S-BMP has ceased satisfying an on-site retention requirement for a site that underwent a major regulated project, the site shall be responsible for retaining the required volume on site or via use of off-site retention.

526 STORMWATER MANAGEMENT: RELIEF FROM EXTRAORDINARILY DIFFICULT SITE CONDITIONS

526.1 The applicant may apply for relief from extraordinarily difficult site conditions if it is technically infeasible or environmentally harmful:

(a) For a site to comply with the minimum on-site retention requirement (50% of Stormwater Retention Volume (SWRv); or

(b) For an Anacostia Waterfront Development Zone (AWDZ) site to comply with any portion of its Water Quality Treatment Volume or SWRv on site, except that AWDZ sites may also apply based on the limited appropriateness of on-site stormwater management.

526.2 The Department shall not provide relief unless the applicant proves that on-site compliance is technically infeasible or environmentally harmful, except that, for an AWDZ site, the Department may also consider the appropriateness of on-site compliance in terms of impact on surrounding landowners or overall benefit to District waterbodies.

526.3 In order to support its case for relief, the applicant shall provide the following information demonstrating technical infeasibility or environmental harm:

(a) Detailed explanation of each opportunity for on-site installation of a Best Management Practice (BMP) that was considered and rejected, and the reasons for each rejection; and

(b) Evidence of site conditions limiting each opportunity for a BMP, including, as applicable:

(1) Data on soil and groundwater contamination;

(2) Data from percolation testing;

(3) Documentation of the presence of utilities requiring impermeable protection or a setback;

(4) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law;

(5) Evidence that the installation of a retention BMP would conflict with the terms of a non-expired approval, applied for prior to the end of Transition Period Two A for a major land-disturbing activity or before the end of Transition Period Two B for a major substantial improvement activity, of a:

(A) Concept review by the Historic Preservation Review Board;

(B) Concept review by the Commission on Fine Arts;

(C) Preliminary or final design submission by the National Capital Planning Commission;

(D) Variance or special exception from the Board of Zoning Adjustment; or

(E) Large Tract Review by the District Office of Planning; and

(6) For a utility, evidence that a property owner on or under whose land the utility is conducting work objects to the installation of a BMP; and

(7) For a major substantial improvement activity, evidence that the structure cannot accommodate a BMP without significant alteration, because of a lack of available interior or exterior space or limited load-bearing capacity.

526.4 An applicant for relief shall submit:

(a) A complete application; and

(b) Proof of payment of the applicable fee.

526.5 The Department shall not consider an incomplete application for relief; except that if an application is substantially complete, the Department may begin consideration.

526.6 In determining whether to grant relief, the Department may consider:

(a) The applicant's submittal;

(b) Other site-related information;

(c) An alternative design;

(d) The Department's Stormwater Management Guidebook;

(e) Another BMP that complies with the requirements of this chapter; and

(f) Relevant scientific and technical literature, reports, guidance, and standards.

526.7 After considering whether an application meets the requirements of this section, the Department may:

(a) Require additional information;

(b) Grant relief;

(c) Grant relief, with conditions;

(d) Deny relief; or

(e) Deny relief in part.

526.8 No relief shall be granted unless, for the volume of relief granted, the Stormwater Management Plan (SWMP) for the project provides for:

(a) Use of off-site retention, with the Off-Site Retention Volume documented on the approved SWMP; and

(b) If the relief is from a minimum on-site retention requirement, treatment to remove eighty percent (80%) of total suspended solids.

527 STORMWATER MANAGEMENT: USE OF OFF-SITE RETENTION THROUGH THE IN-LIEU FEE OR STORMWATER RETENTION CREDITS

527.1 A site that undergoes a major regulated project shall use off-site retention to achieve each gallon of its Off-Site Retention Volume (Offv).

527.2 No person shall allow a portion of their Offv obligation to be unfulfilled for any period of time.

527.3 A person shall achieve each gallon of Offv for each year by:

(a) Using one (1) Stormwater Retention Credit (SRC); or

(b) Paying the in-lieu fee to the Department.

527.4 An obligation to use off-site retention for a gallon of Offv shall end if:

(a) On-site retention of the gallon is achieved in compliance with a Department-approved Stormwater Management Plan (SWMP); or

(b) Site redevelopment that follows a Department-approved SWMP occurs.

527.5 No person shall use a SRC to achieve an Offv without obtaining the Department's approval.

527.6 Only the owner of a SRC may apply to the Department for approval to use a SRC to achieve an Offv.

527.7 The Department shall track the use of off-site retention to achieve an Offv.

527.8 An application to use a SRC to achieve an Offv shall be on a form that the Department provides and shall include:

(a) The unique serial number of the SRC; and

(b) Information about the site applying to use the SRC, including property location and stormwater management on the property.

527.9 A person may use a Department-certified SRC without regard to the location within the District of the best management practice or land cover that generated the SRC, except as specified for an Anacostia Waterfront Development Zone site.

527.10 The Department shall not approve an application to use a SRC to achieve an Offv if:

(a) The SRC has already been used to achieve one (1) year of Offv; or

(b) The Department has retired the SRC.

527.11 The one (1)-year lifespan of a SRC and of the in-lieu fee begins on the date that it is used to achieve an Offv.

527.12 A site's obligation to use off-site retention to achieve its Offv shall begin on the date of successful completion of the Department's final construction inspection.

527.13 For each gallon of required Offv, the property owner shall provide the Department at least four (4) weeks before the proposed usage date:

(a) For use of a SRC, a completed application to use the SRC; and

(b) For use of an in-lieu fee:

(1) Notification of intent to use an in-lieu fee; and

(2) Proof of payment of the fee.

527.14 If a lapse in satisfaction of the obligation to achieve an Offv occurs, the Department shall declare the property owner out of compliance and:

(a) Assess the property owner the in-lieu fee annually for each gallon of Offv;

(b) Pro-rate the assessment to the period of lapsed compliance if the property owner comes into compliance; and

(c) Assess an administrative late fee.

527.15 Upon receipt of a notice related to noncompliance with an obligation to achieve an Offv, the property owner shall immediately:

(a) Comply; and

(b) Pay fees and charges assessed.

527.16 For a property owner who does not come into compliance within thirty (30) days after the date of the Department's notice of a lapse in satisfaction of an Offv obligation and who owns an SRC that has not been used to achieve the Offv for another property, the Department may apply that SRC to the Offv obligation that is out of compliance.

527.17 If the Department finds that an obligation has terminated or that its administration of payments would be improved, it may:

(a) Pro-rate the amount of SRCs used and adjust accordingly in the Department's tracking system; and

(b) Pro-rate the in-lieu fee and refund.

528 STORMWATER MANAGEMENT: MAINTENANCE

528.1 Each owner or designee of each lot and parcel that is part of a site that undertook a major regulated project shall be responsible for maintenance required by the

Stormwater Management Plan (SWMP) approved by the Department and shall record that responsibility in a declaration of covenants.

528.2 The Department may assign maintenance responsibility for a Shared Best Management Practice (S-BMP) in an approved SWMP after considering:

(a) How maintenance will be achieved;

(b) Each lot and parcel's responsibility relative to its reliance on each S-BMP and land cover to comply with this Chapter;

(c) Administrative feasibility; and

(d) Accountability and enforceability.

528.3 The owner, governmental agency, or other person with maintenance responsibility shall ensure that a Best Management Practice (BMP) and a land cover on a lot or parcel is maintained in good working order if:

(a) The BMP or land cover was installed to meet the requirements of this chapter for a major regulated project; or

(b) The Department certified a Stormwater Retention Credit for a gallon of retention capacity created by the BMP or land cover.

528.4 Natural land cover employed to comply with a retention requirement in this chapter shall not be converted to compacted or impervious land cover, unless the loss of retention capacity associated with the land conversion will be:

(a) Offset by a corresponding increase in retention capacity elsewhere on the site that complies with the requirements of this chapter; or

(b) Offset by a corresponding increase in use of off-site retention that complies with the requirements of this chapter; and

(c) The Department approves a change to the previously approved SWMP for the site, showing how the loss of retention capacity will be offset.

528.5 Compacted land cover employed to comply with a retention requirement in this chapter shall not be converted to impervious land cover, unless the loss of retention capacity associated with the land conversion will be:

(a) Offset by a corresponding increase in retention capacity elsewhere on the site that complies with the requirements of this chapter; or

(b) Offset by a corresponding increase in use of off-site retention that complies with the requirements of this chapter; and

(c) The Department approves a change to the previously approved SWMP for the site, showing how the loss of retention capacity will be offset.

528.6 Maintenance of each BMP and land cover shall comply with the applicable Department-approved SWMP, including promptly repairing and restoring each:

(a) Grade surface;

(b) Wall;

(c) Drain;

(d) Structure;

(e) Foundation;

(f) Sign;

(g) Plant; and

(h) Erosion or sediment control measure.

528.7 If the Department finds that a BMP or land cover is not being properly maintained:

(a) The Department may require that the condition be corrected; and

(b) The governmental agency, owner, or other person charged with maintenance responsibility shall correct the condition.

528.8 If an owner or other person charged with maintenance responsibility fails or refuses to correct a condition as the Department directs, the Department may:

(a) Declare the owner or person out of compliance;

(b) Take corrective action itself or through its contractor;

(c) Assess the cost incurred and fees; and

(d) Assess a fine or penalty.

528.9 If the Department determines that the condition of a BMP or land cover presents an actual or imminent harm to the environment or the public health, the Department may:

(a) Declare the owner or other person charged with maintenance responsibility to be out of compliance;

(b) Take protective and corrective action itself or through its contractor without prior notice to the owner;

(c) Assess the cost incurred and fees; and

(d) Assess a fine or penalty.

528.10 Used soil media removed from a BMP receiving drainage from an area intended for use or storage of motor vehicles shall not be re-used for planting or as fill material and shall be disposed of in a landfill or at a transfer station for transport to a landfill.

528.11 Non-vegetative waste material from cleaning, maintaining, repairing, and replacing a BMP shall be disposed of in a landfill, trash transfer station, or other facility for processing these materials in accordance with District and Federal law.

529 STORMWATER MANAGEMENT: COVENANTS AND EASEMENTS

529.1 The owner of each lot and parcel that is part of a site that undertook a major regulated project shall record with the Recorder of Deeds:

(a) A declaration of covenants that includes the on-site and off-site responsibilities in the Department-approved Stormwater Management Plan (SWMP); and

(b) An easement that the Department requires to ensure access for inspection and maintenance of a Best Management Practice (BMP) or land cover employed to comply with this chapter.

529.2 An agency of the federal government or District government shall not be required to make or record a declaration of covenants, except that, if a District-owned property is sold to a private owner or leased for more than three (3) years, the property's SWMP must be incorporated in a declaration of covenants and recorded as a burden on the property or the leasehold.

529.3 The declaration of covenants and easement shall:

(a) Be determined legally sufficient by the Attorney General or the Department's designee;

(b) Be binding on each subsequent owner;

(c) Include an agreement to indemnify the District of Columbia, its officers, agents, and employees from and against all claims or liability that may arise out of or in connection with, either directly or indirectly, any of the owner's actions or omissions with regard to the construction, operation, maintenance or restoration of the BMP or land cover; and

(d) Provide for inspection of and access to the BMP or land cover at reasonable times by the Department or its authorized representative.

529.4 If the Department determines that a change to an approved SWMP for a site affects the terms of a declaration of covenants or an easement required by this chapter, the owner of each affected lot or parcel of that site shall revise as the Department approves and record the declaration of covenants or easement accordingly.

530 STORMWATER MANAGEMENT: IN-LIEU FEE

530.1 The base in-lieu fee established by the Department for a purpose of this chapter shall represent the full life-cycle cost for the Department to retain one gallon (1 gal.) of stormwater for one (1) year, including the following costs:

(a) Project planning;

(b) Project design;

(c) Project management;

(d) Construction and installation;

(e) Operations and maintenance;

(f) Project financing;

(g) Land acquisition;

(h) Administration of the in-lieu fee program; and

(i) Legal support for the in-lieu fee program.

530.2 The Department shall annually adjust the base in-lieu fee to account for inflation, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics.

530.3 The Department may re-evaluate the costs underlying the in-lieu fee and re-base the in-lieu fee as the Department determines necessary.

530.4 The Department shall provide notice in the *D.C. Register* prior to re-basing the in-lieu fee.

530.5 An in-lieu fee payment shall be based on the in-lieu fee in effect at the time payment is made.

530.6 An in-lieu fee payment shall:

(a) Be used solely to achieve increased retention in the District of Columbia;

(b) Be used to achieve increased retention in the Anacostia watershed, if the payment achieves Off-Site Retention Volume for an Anacostia Waterfront Development Zone site.

(c) Be deposited in the Stormwater In-Lieu Fee Payment Special Purpose Revenue Fund, established by The Water Pollution Control Act of 1984 (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.*), as amended.

531 STORMWATER MANAGEMENT: CERTIFICATION OF STORMWATER RETENTION CREDITS

531.1 Only the Department shall certify a Stormwater Retention Credit (SRC); and no SRC shall be valid and usable for the purposes of this chapter unless the Department certifies it.

531.2 The Department shall:

(a) Assign a unique serial number to each SRC; and

(b) Retain and track information about each SRC, including final sale price.

531.3 A gallon of retention capacity in a Best Management Practice (BMP) or land cover is eligible for SRC certification if it meets the following eligibility requirements:

(a) The gallon retained by the BMP or land cover shall:

(1) Be in excess of the Stormwater Retention Volume (SWRv) for a major regulated project or, for a site that is not regulated, in excess of pre-project retention;

(2) Be no more than the SRC ceiling; and

(3) Not be installed to comply with a stormwater management requirement of a statute, regulation, or court order, including for:

(A) Reduction of Combined Sewer Overflows (CSOs) in compliance with the court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, except that retention capacity installed on an experimental basis as a requirement of the consent decree shall be eligible if a subsequent modification of the consent decree ends the requirement to maintain that retention capacity; or

(B) Compliance with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay.

(b) Design, installation, and operation shall comply with a Department-approved Stormwater Management Plan (SWMP);

(c) The Department's final construction inspection shall be successfully completed;

(d) A Department inspection shall be successfully completed within six (6) months before the Department decides to certify an SRC; and

(e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of SRCs is requested, in compliance with the Department-approved SWMP for the BMP or land cover, shall be in place.

531.4 The SRC-eligible retention capacity described in Subsection 531.3(a) shall be calculated using the formulas in Chapter seven (7) of the Department's Stormwater Management Guidebook.

531.5 The Department shall begin accepting applications for SRC certification after this section is published as final in the *D.C. Register*.

531.6 A person submitting an application for SRC certification shall be the owner of the land with the SRC-eligible BMP or land cover or shall have been assigned the right to a SRC that is certified.

531.7 The Department may reject as premature an application for SRC certification if it is submitted more than three (3) months before the end of the preceding period of time for which the Department had certified a SRC for the retention capacity.

531.8 The Department shall not consider an incomplete application for SRC certification.

531.9 A complete application for SRC certification shall include:

(a) A completed Department application form;

(b) Documentation of the right to the SRC that would be certified;

(c) A copy of the Department-approved SWMP for the BMP or land cover with SRC-eligible retention capacity and the area draining into it;

(d) A copy of the as-built SWMP or the BMP or land cover with SRC-eligible retention capacity and the area draining into it, certified by a professional engineer licensed in the District of Columbia and meeting the requirements of this chapter;

(e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of the SRC is requested;

(f) Other documentation that the Department requires to determine that the eligibility requirements are satisfied, including documentation that a maintenance provider has the expertise and capacity to provide required maintenance for the time period of SRC certification; and

(g) A signed promise from the owner of the property on which the BMP or land cover is located to notify the Department if, during the period of time for which a SRC is certified, the property is sold or otherwise transferred to another person.

531.10 If the Department determines that a complete application meets the eligibility requirements, it shall certify up to three (3) years' worth of SRCs for each gallon of SRC-eligible retention capacity.

531.11 The Department shall not certify an SRC:

(a) For a period of time that overlaps with the period of time for which the Department has already certified an SRC for the same retention capacity;

(b) For a period that begins earlier than the date of the submittal of a complete application; or

(c) For ineligible retention capacity.

531.12 The Department may waive submittal of documentation required for a complete application if the Department has the documentation on file that reflects current conditions, except that the Department shall not waive submittal of a current maintenance agreement or maintenance contract for the BMP or land cover.

531.13 The Department may conduct an inspection of a BMP or land cover for the purposes of this section before certification of an SRC and after certification.

531.14 The Department may refuse to certify an SRC for a person:

(a) Who is currently lapsed in compliance with an obligation to fulfill an Off-Site Retention Volume for a property; or

(b) Who is an original SRC owner for another SRC and who is currently not maintaining the associated BMP or land cover as promised for the period of time for which the Department certified that SRC.

531.15 At the Director's discretion and to allow for the aggregation of SRCs, the Department may approve a SWMP that proposes aggregation of retention from small sites under a common design and that:

(a) Would not otherwise trigger a stormwater management performance requirement in this chapter;

(b) Proposes the use of a common design for multiple installations of a BMP;

(c) Specifies well-defined technical criteria for location and placement of each BMP;

(d) Specifies details for how multiple installations will be constructed, operated, and maintained;

(e) Contains requirements for inspection by the Department or a Department-approved third party;

(f) Demonstrates the technical capacity to locate, design, install, and maintain each BMP; and

(g) Demonstrates that the requirements of this chapter will be met.

532 STORMWATER MANAGEMENT: LIFESPAN OF STORMWATER RETENTION CREDITS

532.1 A Stormwater Retention Credit (SRC) may be banked indefinitely, until:

(a) It is used to achieve a gallon of Off-Site Retention Volume (Offv) for one (1) year; or

(b) The Department retires it.

532.2 The Department shall retire an SRC if:

(a) An SRC owner submits a complete Department-provided application for retirement and the Department approves it; or

(b) A final determination to retire a SRC is made pursuant to this section.

532.3 Only the owner of an SRC may submit to the Department an application for retirement of that SRC.

532.4 An original SRC owner with an obligation to maintain a Best Management Practice (BMP) or land cover for a year for which the Department has certified an SRC may quit that obligation by submitting and receiving the Department's approval of a:

(a) Request that the Department retire the SRC corresponding to the year for which maintenance is required, if that SRC has not been used or sold;

(b) Request that the Department retire another SRC; or

(c) Payment of the in-lieu fee to the Department.

532.5 If the Department determines that there is a retention failure associated with a certified SRC, the Department may:

(a) If the SRC has not been sold or used:

(1) Deny use of the SRC to achieve an Offv;

(2) Deny an application for transfer of ownership of the SRC;

(3) Retire the SRC; and

(4) Give notice to the owner of the SRC of the right to contest the denial or retirement through the administrative appeals process pursuant to Section 506 of this Chapter, and give public notice of the denial or retirement on the Department's website for fifteen (15) days;

(b) If the SRC has been sold or used:

(1) Order the original SRC owner to replace the SRC with another SRC; or

(2) Assess on the original SRC owner the in-lieu fee corresponding to the SRC; and

(3) Give notice to the original SRC owner of the right to contest the determination through the administrative appeals process pursuant to Section 506 of this chapter.

532.6 If a person fails to comply with the Department's order to replace an SRC or pay the in-lieu fee within sixty (60) days, the Department may assess an administrative late fee of ten percent (10%) of the corresponding in-lieu fee payment.

532.7 If a retention failure associated with a SRC occurs, the Department may calculate compensatory SRCs and the in-lieu fee to reflect the time period for which the retention failure occurred.

532.8 If a retention failure associated with an SRC occurs or a SRC owner requests that the Department retire an SRC, the Department may pro-rate a SRC or an in-lieu fee payment accordingly.

533 STORMWATER MANAGEMENT: OWNERSHIP OF STORMWATER RETENTION CREDITS

533.1 A Stormwater Retention Credit (SRC) may be bought and sold.

533.2 No person may sell a SRC that:

(a) Has already been used to achieve an Off-Site Retention Volume (Offv); or

(b) The person does not own.

533.3 No person may complete a transfer of SRC ownership without receiving the Department's approval.

533.4 A complete application for transfer of SRC ownership shall be in writing on a Department-provided form that includes:

(a) The unique serial number of each SRC;

(b) Identification of the seller and the buyer, including contact information; and

(c) The purchase price.

533.5 Only the existing owner of an SRC (the seller) and the proposed SRC owner (the buyer) shall apply to transfer SRC ownership.

533.6 Before approving a transfer of SRC ownership, the Department shall verify the ownership and status of each SRC.

533.7 The Department shall undertake efforts to publicly share information of the price, purchase, sale, value, time, certification, and use of an SRC that is not personal, proprietary, a trade secret, or otherwise confidential.

534 STORMWATER MANAGEMENT: CERTIFICATION OF STORMWATER RETENTION CREDITS FOR A BEST MANAGEMENT PRACTICE OR LAND COVER INSTALLED BEFORE EFFECTIVE DATE OF STORMWATER RETENTION PERFORMANCE REQUIREMENTS

534.1 A person may apply for certification of a Stormwater Retention Credit (SRC) for a gallon of retention capacity in a Best Management Practice (BMP) or land cover installed before the end of Transition Period One (TP1) or in compliance with a Stormwater Management Plan approved by the Department before the end of TP1 if:

(a) The BMP or land cover was installed after May 1, 2009; and

(b) The retention capacity meets the requirements for certification of a SRC, with the modifications in this section.

534.2 A gallon of retention capacity in an existing BMP or land cover is eligible for SRC certification if it meets the following eligibility requirements:

(a) The gallon retained by the BMP or land cover shall:

(1) Be in excess of the water quality treatment requirements in the Department's stormwater management regulations in place at the time the project was approved, or, for a site that was not regulated, in excess of pre-project retention;

(2) Be no more than the SRC ceiling; and

(3) Not be installed to comply with a stormwater management requirement of a statute, regulation, or court order, including for:

(A) Reduction of Combined Sewer Overflows (CSOs) in compliance with the court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, except that retention capacity installed on an experimental basis as a requirement of the consent decree shall be eligible if a subsequent

modification of the consent decree ends the requirement to maintain that retention capacity; or

(B) Compliance with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay.

(b) An as-built Stormwater Management Plan (SWMP) shall document the design, installation, and operation of the BMP or land cover in sufficient detail for the Department to determine its retention capacity in compliance with the specifications and calculations in the Department's Stormwater Management Guidebook (SWMG);

(c) A Department inspection shall be successfully completed within six (6) months before the Department decides to certify an SRC; and

(d) An executed maintenance contract or a signed promise to follow the Department-approved maintenance plan for the period of time for which the certification of SRCs is requested.

534.3 For the purposes of certifying an SRC for a BMP or land cover installed before the end of TP1 or in compliance with a SWMP approved by the Department before the end of TP1, a person shall submit the following as a complete application:

(a) A completed, Department-provided application form;

(b) If applicable, a copy of the Department-approved SWMP for the BMP or land cover and the area draining into it, certified by a professional engineer licensed in the District of Columbia that the SWMP meets the requirements of this chapter;

(c) A copy of the as-built SWMP for the BMP or land cover and the area draining into it, certified by a professional engineer licensed in the District of Columbia that the SWMP meets the requirements of this chapter;

(d) Documentation of pre-project site conditions;

(e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of SRCs is requested;

(f) A signed promise from the owner of the property on which the BMP or land cover is located to notify the Department if, during the period of time for which SRCs are certified, the property is sold or otherwise transferred to another person; and

(g) Other documentation that the Department requires to determine that the eligibility requirements for certification of SRCs are satisfied.

535-539 [RESERVED]

540 SOIL EROSION AND SEDIMENT CONTROL: APPLICABILITY

540.1 No person shall engage in razing or land-disturbing activity, including stripping, clearing, grading, grubbing, excavating, and filling of land, without obtaining the Department's approval of a soil erosion and sediment control plan, unless exempted in this chapter.

540.2 Notwithstanding any exemptions provided in this chapter, a person who engages in a demolition project that results in debris, dust, or sediment leaving the site shall apply each necessary control measure, upon receiving instruction to do so by the Department.

540.3 Notwithstanding any exemptions provided in this chapter, a person who exposes erodible material and causes erosion shall apply each necessary control measure, upon receiving instruction to do so by the Department.

540.4 A person who applies for Department approval of a soil erosion and sediment control plan shall be the owner of the property where the activity is to take place.

540.5 The approved soil erosion and sediment control plan shall govern all construction work requiring the control of soil erosion and sediment.

540.6 At the Director's discretion, the Department may establish conditions for a general or blanket approval of soil erosion and sediment control plans that are solely covering specified activities carried out under and complying with specifications approved by the Department. These conditions may include requirements for an applicant to provide notice to the Department and comply with inspections as would normally be required under this chapter. The Department shall establish and revise any such conditions as necessary and publish them on its website as updates to the District of Columbia Standards and Specifications for Soil Erosion and Sediment Control.

541 SOIL EROSION AND SEDIMENT CONTROL: EXEMPTIONS

541.1 The following land-disturbing activities are exempt from the requirement to comply with the soil erosion and sediment control provisions of this chapter, except as noted below and in Section 540 (Soil Erosion and Sediment Control: Applicability):

(a) For an individual house, townhouse, or rowhouse:

(1) Gardening;

(2) Landscaping;

(3) Repairs;

(4) Maintenance;

(5) Stormwater retrofits, provided that:

(A) The soil allows for percolation; and

(B) The retrofit location is no closer than ten feet (10 ft.) from a building foundation;

(6) Utility service connection, repair, or upgrade;

(b) A project for which the total cost is less than nine thousand dollars ($9,000);

(c) Tilling, planting, or harvesting of agricultural or horticultural crops;

(d) Installation of fencing, a gate, signpost, or a pole;

(e) Emergency work to protect life, limb or property, and emergency repairs, except that the following is not exempted to the extent described:

(1) The land disturbed must still be shaped and stabilized in accordance with the requirements of this chapter;

(2) Generally applicable control measures shall be used; and

(3) A plan shall be submitted within three (3) weeks after beginning the emergency work; and

(f) Activities that disturb less than fifty square feet (50 ft^2).

542 SOIL EROSION AND SEDIMENT CONTROL: PLAN

542.1 The soil erosion and sediment control plan shall not be approved without the date and signature of the Director or the Director's designee stamped on the plan.

542.2 The approved soil erosion and sediment control plan for a project shall be available on site for Department review for the entire period of construction during ordinary business hours.

542.3 The Department shall approve a soil erosion and sediment control plan only if the Department determines the following:

(a) The plan meets the requirements of this chapter and of the Department's Standards and Specifications for Soil Erosion and Sediment Control;

(b) The applicant has paid each applicable fee; and

(c) The applicant has certified, in writing, that he or she will implement each control measure specified in the plan.

542.4 The Department may, with respect to a soil erosion and sediment control plan:

(a) Reject a submission as incomplete;

(b) Approve;

(c) Deny;

(d) Approve or deny in part; and

(e) Require conditions or modifications.

542.5 If a plan is disapproved, the Department shall notify the applicant in writing, providing the specific reasons for the disapproval of the plan.

542.6 The Department may suggest modifications, terms, and conditions necessary to comply with the requirements of this chapter.

542.7 A soil erosion and sediment control plan may cover multiple phases of a project.

542.8 The applicant shall submit two (2) sets of prints of the soil erosion and sediment control plan to the Department for review.

542.9 The applicant shall, at a minimum, provide the following information on the soil erosion and sediment control plan:

(a) A title that indicates the plan is a soil erosion and sediment control plan;

(b) A project narrative;

(c) The address of the property;

(d) The lot, square, or parcel numbers;

(e) The name, address, and telephone number of:

(1) The property owner;

(2) The developer; and

(3) The plan designer;

(f) For sites where work will be done on slopes in excess of fifteen percent (15%), the seal and signature of a professional engineer, licensed in the District of Columbia;

(g) A vicinity sketch indicating north arrow, scale, and other information necessary to locate the property;

(h) One of the following horizontal scales of profile, unless otherwise approved:

(1) One inch equals ten feet (1 in. = 10 ft);

(2) One inch equals twenty feet (1 in. = 20 ft);

(3) One inch equals thirty feet (1 in. = 30 ft);

(4) One inch equals forty feet (1 in. = 40 ft);

(5) One inch equals fifty feet (1 in. = 50 ft); or

(6) One inch equals eighty feet (1 in. = 80 ft);

(i) One of the following vertical scales of profile, unless otherwise approved:

(1) One inch equals two feet (1 in. = 2 ft);

(2) One inch equals four feet (1 in. = 4 ft);

(3) One inch equals five feet (1 in. = 5 ft); or

(4) One inch equals ten feet (1 in. = 10 ft);

(j) Existing features that may be relevant factors in the development of an erosion prevention plan, such as vegetation, wildlife habitat, water areas, and topsoil conditions;

(k) The existing and proposed topography, including clear identification of all areas of slope greater than fifteen percent (15%);

(l) The proposed grading and earth disturbance including:

(1) Surface area involved;

(2) Volume of spoil material;

(3) Volume of borrow material; and

(4) Limits of clearing and grading including limitation of mass clearing and grading whenever possible;

(m) Storm drainage provisions, including:

(1) Velocities and quantities of flow from a sediment control measure to an approved point of discharge; and

(2) Site conditions around each point of surface water discharge from the site;

(n) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:

(1) Provisions specified to ensure land disturbance does not extend beyond the proposed area of disturbance;

(2) Details of grading practices that will be used on the site;

(3) Methods to minimize, to the extent practicable, off-site vehicle tracking of sediment and generation of dust; and

(4) Design details for structural control measures, including size and location of each erosion and sediment control measure, including:

(A) Use of a crushed stone dike on each access road that is above grade; and

(B) Use of a stabilized construction entrance for a construction project on each access road;

(o) Details of each interim and permanent stabilization measure, including statement of intent to adhere to the following, by placing the statement on the soil erosion and sediment control plan:

"Following initial land disturbance or re-disturbance, permanent or interim stabilization shall be completed within seven (7) calendar days for the

surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than three (3) horizontal to one (1) vertical (3:1); and fourteen (14) days for all other disturbed or graded areas on the project site. The requirements of this paragraph do not apply to those areas which are shown on the plan and are being used for material storage other than stockpiling, or for those areas on which actual construction activities are being performed. Maintenance shall be performed as necessary so that stabilized areas continuously meet the appropriate requirements of the District of Columbia Standards and Specifications for Soil Erosion and Sediment Control;"

(p) The sequence of construction, including:

(1) A description of the relationship between the implementation and maintenance of controls, including permanent and interim stabilization and the various stages or phases of earth disturbance and construction; and

(2) A sequence for each of the following activities:

(A) Clearing and grubbing for those areas necessary for installation of perimeter controls;

(B) Construction of perimeter controls;

(C) Remaining clearing and grubbing;

(D) Road grading;

(E) Grading for the remainder of the site;

(F) Utility installation, including the use or blocking of storm drains after construction;

(G) Final grading, landscaping, or stabilization; and

(H) Removal of controls;

(q) A general description of the predominant soil types on the site, as described by the appropriate soil survey information available from the United States Department of Agriculture National Resources Conservation Service;

(r) Recommendations for areas with unstable soils from a professional engineer licensed in the District of Columbia; and

(s) A statement placed on the soil erosion and sediment control plan stating that the applicant shall contact the Department to schedule a preconstruction meeting before the commencement of a land-disturbing activity.

542.10 After receiving notification that a soil erosion and sediment control plan meets the requirements for the Department's approval, the applicant shall submit a final preconstruction application including:

(a) One (1) Mylar copy of the plan, except for a site that disturbs less than five thousand square feet (5,000 ft^2) of land;

(b) Seven (7) paper copies of the plan, except a site that disturbs less than five thousand square feet (5,000 ft^2) of land shall submit four (4) paper copies; and

(c) Proof that each applicable fee for Department services has been paid.

542.11 The Department shall issue the approved copies of the soil erosion and sediment control plan after the applicant has submitted proof that each applicable fee for Department services has been paid.

542.12 Following approval of the plan, the applicant shall request the Department's approval at each of the following stages of construction:

(a) Installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading; and

(b) Final stabilization of the site before the removal of erosion and sediment controls. Final stabilization means that all land-disturbing activities at the site have been completed and either of the following two (2) criteria are met:

(1) A uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or

(2) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

542.13 Except that this subsection shall automatically lapse if the Department implements separate regulations for groundwater protection and dewatering, if a person engaged in land-disturbing activity sees or smells contaminated groundwater or soil or determines as the result of laboratory analysis that

groundwater or soil is contaminated, as defined in the District of Columbia Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001, as amended (D.C. Law 13-312; D.C. Official Code §§ 8-631 *et seq.*) or the Underground Storage Tank regulations at 20 DCMR Chapter 62:

(a) That person or the applicant shall notify the Department immediately by the most expeditious means possible, and then in writing;

(b) The Department may prohibit or limit the use of an infiltration BMP on the site; and

(c) On a site that has contaminated groundwater that will be dewatered during or after construction directly or through the separate storm sewer system into a District waterbody, the applicant shall submit as soon as practicable to the Department for review and approval a separate detailed dewatering pollution reduction plan, which shall include:

(1) A site description;

(2) Identification of the potential source of the contaminant;

(3) Description of control measures to reduce contamination sufficient to prevent discharge in excess of the District's surface water quality standards;

(4) Monitoring procedures and a monitoring schedule;

(5) A maintenance and inspection schedule;

(6) Record keeping and reporting; and

(7) Contact information for an on-site responsible person, including mobile phone and email address.

542.14 A soil erosion and sediment control plan shall be designed in compliance with this chapter by a District-licensed:

(a) Professional engineer;

(b) Land surveyor; or

(c) Architect.

542.15 In support of a plan which it submits for approval, the applicant shall provide additional available information that the Department considers necessary to

demonstrate compliance with erosion and sediment control requirements in this chapter.

542.16 A copy of each approved plan shall be at the construction site from the date of commencement of the construction activities to the date of final stabilization and shall be made available for the Department's inspection.

543 SOIL EROSION AND SEDIMENT CONTROL: REQUIREMENTS

543.1 Erosion and sediment control measures shall be those the Department approves.

543.2 The Department shall maintain a copy of its Standards and Specifications for Soil Erosion and Sediment Control on its website and make a hard copy available for review at its offices.

543.3 Soil erosion and sediment control measures shall prevent transportation of sediment from the site.

543.4 Waterway crossing and stream bank protection measures designed and installed in compliance with the Department's Standards and Specifications for Soil Erosion and Sediment Control shall be assumed to be adequate for that purpose.

543.5 A best management practice shall be protected from sedimentation and other damage during construction to ensure proper post-construction operation.

543.6 Erosion and sediment control measures shall be in place before and during land disturbance, except as otherwise specifically stated.

543.7 Erosion and sediment control measures shall be in place to stabilize an exposed area as soon as practicable after construction activity has temporarily or permanently ceased but no later than fourteen (14) days following cessation, except that temporary or permanent stabilization shall be in place at the end of each day of underground utility work that is not contained within a larger development site.

543.8 Permanent stabilization of streets and parking areas shall be with base course crushed stone or other Department-approved measures.

543.9 Measures shall be implemented and corrective action taken, including as specified by the Department, to prevent the discharge to District sewers or District waterbodies of erodible material or waste material including those materials that have been transported off site.

543.10 A site disturbing greater than five thousand square feet (5,000 ft^2) of land shall:

(a) Adhere to a Stormwater Pollution Prevention Plan (SWPPP) that:

(2) The Department provides in its Stormwater Management Guidebook,

(3) The Department approves as including the minimum measures in the Department-provided SWPPP; or

(4) Is required under the Construction General Permit issued by Region III of the United States Environmental Protection Agency; and

(b) Post a legible copy of the SWPPP on site.

543.11 A person shall avoid work on a slope in excess of fifteen percent (15%), to the maximum extent practicable. Where avoidance is not practicable, the Soil Erosion and Sediment Control Plan for the site shall be designed, signed, and sealed by a professional engineer, licensed in the District of Columbia, and the applicant shall incorporate additional protection strategies which the Department may require in order to prevent erosion or transportation of sediments from the site.

543.12 Except on an area that is undergoing construction, perimeter controls that disturb land, including dikes, swales, ditches, and perimeter slopes, shall be stabilized within one (1) week of initial land disturbance or redisturbance:

(a) On the surface of each disturbed area; and

(b) On each associated slope greater than three (3) horizontal to one (1) vertical (3:1).

543.13 Runoff from the site shall be controlled by either diverting or conveying the runoff through areas with erosion and sediment control measures, such as through the installation of lined conveyance ditches, channels, or checkdams.

543.14 Critical area stabilization shall be applied to each cut and fill slope:

(a) That is equal to or steeper than 3:1;

(b) That is flatter than 3:1 if the Department determines that the soil characteristics require it; and

(c) To every cut and fill slope when construction is out-of-season for planting and until permanent protection can be provided.

543.15 If the Department determines that a cut and fill slope is likely to result in erosion by stormwater of sediment from the site onto adjacent property or a nearby waterbody, then the cut and fill slope shall be protected against erosion by the use

of structural diversions that are protected by vegetation or matting, in a frequency and manner that a geotechnical or civil engineer licensed in the District of Columbia has determined, based on site conditions, is sufficient to prevent erosion.

543.16 Stockpiled material:

(a) That is actively being used during a phase of construction shall be protected against erosion by establishing and maintaining perimeter controls around the stockpile; and

(b) That is not being actively used or added to shall be stabilized with mulch, temporary vegetation, hydro-seed or plastic within fifteen (15) calendar days after its last use or addition.

543.17 Sediment traps or basins and other erosion and sediment controls shall be:

(a) Installed no later than the first phase of land grading;

(b) Installed as soon as new site-related runoff is detected; and

(c) Employed at all times to protect inlets or storm sewers below silt-producing areas.

543.18 Debris basins, diversions, waterways, and related structures shall be seeded and mulched, or have sod or a stabilization blanket installed immediately after they are built.

543.19 Construction site access measures to minimize off-site vehicle tracking shall:

(a) Be installed no later than the first day of construction;

(b) Stabilize each construction entrance;

(c) Include each additional measure required to keep sediment from being:

(1) Tracked, or otherwise carried, onto public streets by construction vehicles; and

(2) Washed into a storm drain or waterway; and

(d) Comply with all other Department requirements.

543.20 Off-site accumulations of sediment:

(a) Shall be removed daily during construction; and

(b) Shall be removed immediately if the Department so requires after an inspection.

543.21 Maintenance shall be performed to prevent stabilized areas from becoming unstabilized.

543.22 A sign that notifies the public to contact the Department in the event of erosion or other pollution shall be prominently posted on every site subject to this chapter, and the sign shall:

(a) Be in plain view of and readable by the public at a distance of twelve feet (12 ft);

(a) Be placed at each entrance to the site or as directed by the Department; and

(b) Provide contact information identified by the Department, including telephone numbers and email address.

544 SOIL EROSION AND SEDIMENT CONTROL: ROADWAY PROJECTS

544.1 Rough graded rights-of-way awaiting installation of utilities or pavement shall be protected by the installation of:

(a) Interceptor dikes across rights-of-way so located as to limit roadway grade to a length between dikes of not more than five hundred feet (500 ft); or

(b) Alternative controls that are recommended by a Professional Engineer (PE) licensed in the District of Columbia and that are approved by the Department.

544.2 Temporary diversion dikes and flumes, or alternative controls that are recommended by a PE licensed in the District of Columbia and that are approved by the Department, shall be used to carry runoff down cut-and-fill slopes to an outlet approved by the Department as part of the soil erosion and sediment control plan.

544.3 A permanent drainage structure, including diversions at top-of-slope cuts and diversions to lead runoff to a storm sewer or other suitable outlet, shall be installed at the completion of rough grading, unless the Department approves an alternative that has been recommended by a PE licensed in the District of Columbia.

545 SOIL EROSION AND SEDIMENT CONTROL: BUILDINGS, DEMOLITION, RAZING, AND SITE DEVELOPMENT

545.1 Erosion shall be controlled by the installation of gutters and downspouts as soon as practicable.

545.2 Measures shall be taken to achieve a non-eroding velocity for stormwater exiting from a roof or downspout or to temporarily pipe that stormwater directly to a storm drain.

545.3 The site work shall maximize the preservation of natural vegetation and limit the removal of vegetation to that which is necessary for construction or landscaping activity.

545.4 If site conditions preclude employment of other means of erosion control, the Department may approve installation of small dikes constructed along a low-lying perimeter area of a job site.

545.5 In an area along a waterbody, a buffer must be established:

(a) By not disturbing the land immediately adjacent to the waterbody, except to restore native vegetation;

(b) Of at least twenty-five feet (25 ft) on both sides of the water body, measured perpendicular to and horizontally from the top of bank; and

(c) With vegetation or other measure required by the Department to insure that the buffer acts as a filter to trap sediment and keep it onsite.

545.6 The Department may approve an exception to or modification of the requirement for a project to establish a buffer if:

(a) During construction, the project employs the control measures specified in the Department-approved Soil Erosion and Sediment Control Plan for the project; and

(b) By the end of construction and thereafter, the project:

(1) Achieves a 1.7 inch Stormwater Retention Volume (SWRv) for the area of land disturbance within the buffer, calculated using the SWRv formula in Section 520 of this chapter, with a P equal to 1.7 inches;

(2) Applies for relief from extraordinarily difficult site conditions for a portion of the 1.7 inch SWRv and achieves the treatment and off-site retention requirements for the volume of relief granted; or

(3) Receives a Department determination to grant relief for a portion of a the 1.7 inch SWRv, on-site treatment is not feasible, and the Department approves alternatives to on-site treatment that will help to protect or restore the waterbody for which the buffer is intended; and

(c) The land disturbance is:

(1) Required to construct, install, or repair a:

(A) Public trail for walking, biking, and similar purposes;

(B) Public point of access for boating, fishing, or viewing a waterbody; or

(C) Stormwater outfall or other utility line; or

(2) Required to enable development of the rest of the site in a manner that is similar to the proposed project.

546 SOIL EROSION AND SEDIMENT CONTROL: UNDERGROUND UTILITIES

546.1 If the land-disturbing activity involves work on an underground utility, the site shall comply with the following requirements:

(a) No more than five hundred linear feet (500 ft) of trench shall be open at any one time;

(b) All excavated material shall be placed on the uphill side of a trench;

(c) Interim or permanent stabilization shall be installed upon completion of refilling; and

(d) When natural or artificial grass filter strips are used to collect sediment from excavated material, mulches and matting shall be used in order to minimize erosion of these materials.

547 SOIL EROSION AND SEDIMENT CONTROL: RESPONSIBLE PERSONNEL

547.1 If a site involves a land disturbance of five thousand square feet (5,000 ft^2) or more, the owner of the site and the site manager shall ensure that a responsible person is present or available as this section requires.

547.2 A responsible person shall, while the site is in a phase involving land-disturbing activity, ensure that the activity complies with this chapter by:

(a) Inspecting the site and its erosion and sediment control measures at least once biweekly and after a rainfall event to identify and remedy each potential or actual erosion problem;

(b) Being available to respond to each potential or actual erosion problem identified by construction personnel; and

(c) Being available to speak on site with the Department to remedy each potential or actual erosion problem.

547.3 A responsible person shall be:

(a) Licensed in the District of Columbia as a civil or geotechnical engineer, a land surveyor, or architect; or

(b) Certified through a training program that the Department approves, including a course on erosion control provided by another jurisdiction or professional association.

547.4 During construction, the responsible person shall have available on site proof of professional licensing or of successful completion of a Department-approved training program.

547.5 A Department-approved training program shall cover the following topics, as demonstrated in the training syllabus:

(a) The detrimental effects of sediment pollution to waterbodies;

(b) The benefits of proper and effective erosion and sediment control implementation and maintenance;

(c) The purpose and provisions of the District of Columbia erosion and sediment control laws, rules, and regulations;

(d) A description of sediment as a pollutant;

(e) The process of:

(1) Erosion;

(2) Sediment transport; and

(3) Sediment deposition;

(f) Proper implementation of erosion and sediment control;

(g) Recognition and correction of improperly implemented erosion and sediment controls;

(h) Proper maintenance of erosion and sediment controls; and

(i) Responsibilities of supervisory and enforcement personnel.

548-551 [RESERVED]

552 TRANSITION

552.1 Sections 500 through 545, 546, 547, and 599 of this chapter shall be enforced immediately upon publication as final, except as described below.

552.2 The Department shall enforce a transition to the stormwater management performance requirements in §§ 520 through 522, as follows:

(a) A major regulated project submitting a Stormwater Management Plan (SWMP) in support of a building permit application before the end of Transition Period One (TP1), shall:

(1) Be exempt from the requirements of §§ 520 through 522;

(2) Comply with the preceding stormwater management requirements for water quality treatment and detention, in 21 DCMR §§ 529-30 (as published at 35 DCR 21 (January 1, 1988)), as amended and effective through June 30, 2013; and

(3) Have the right to generate each applicable Stormwater Retention Credit for each gallon of eligible retention capacity in excess of the water quality treatment requirements in subparagraph (2).

(b) A major land-disturbing activity submitting a SWMP in support of a building permit application after TP1 and before the end of Transition Period Two A (TP2A) and a major substantial improvement activity submitting a SWMP in support of a building permit application after TP1 and before the end of Transition Period Two B (TP2B) shall comply with this chapter, except that:

(1) The requirement in § 520 to achieve a minimum of fifty percent (50%) of the 1.2 inch Stormwater Retention Volume (SWRv) on site shall be waived; and

(2) The entire SWRv may be achieved off-site, in accordance with § 527.

(c) A major regulated project submitting a SWMP in support of a building permit application, for an area that was described explicitly in an Advanced Design (AD) and for which the approval of the AD reviewing body has not expired, shall comply with:

(1) Paragraph (a) of this subsection, if the AD was submitted before the end of TP1; and

(2) Paragraph (b) of this subsection, if the AD was submitted after TP1 and before the end of TP2A, for a major land-disturbing activity or before the end of TP2B, for a major substantial improvement activity.

(d) An area of a multi-phased major land-disturbing activity for which each stormwater infrastructure and best management practice required in a Department-approved SWMP was installed during a preceding phase of construction shall be deemed to have achieved compliance with the stormwater management requirements of this chapter and shall not be required to submit a separate SWMP to support a building permit application.

552.3 A major regulated project shall comply with the stormwater management requirements of §§ 552.1 and 552.2 that are enforced at the time it submits a SWMP if:

(a) The project must re-apply for a building permit because the preceding permit has expired under 12A DCMR § 105.5 or the permit application had been abandoned under 12A DCMR § 105.3.2; or

(b) The project applies for a building permit after the approving body's approval of an AD has expired.

552.4 This section shall be narrowly construed, and nothing in this section shall be interpreted to otherwise affect the enforcement of the other requirements and procedures in this chapter.

Section 599 is amended to delete the section and replace it with the following:

599 DEFINITIONS

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

Advanced Design (AD) - Detailed design for an area of a project described explicitly in a:

(a) Stage Two (2) Planned Unit Development (PUD) application to the District Zoning Commission;

(b) Application for design review under the Capitol Gateway Overlay District to the District Zoning Commission; and

(c) Final design submission to the National Capital Planning Commission (NCPC).

Anacostia Waterfront Development Zone (AWDZ) - the following areas of the District of Columbia, as delineated on a map in the Department's Stormwater Management Guidebook:

(a) Interstate 395 and all rights-of-way of Interstate 395, within the District, except for the portion of Interstate 395 that is north of E Street, S.W., or S.E.;

(b) All land between that portion of Interstate 395 that is south of E Street, S.W., or S.E., and the Anacostia River or Washington Channel;

(c) All land between that portion of Interstate 695, and all rights of way, that are south of E Street, S.W. or S.E., and the Anacostia River;

(d) The portion of Interstate 295 that is north of the Anacostia River, within the District, and all rights-of-way of that portion of Interstate 295;

(e) All land between that portion of Interstate 295 that is north of the Anacostia River and the Anacostia River;

(f) The portions of:

(1) The Anacostia Freeway that are north or east of the intersection of the Anacostia Freeway and Defense Boulevard and all rights-of-way of that portion of the Anacostia Freeway;

(2) Kenilworth Avenue that extend to the northeast from the Anacostia Freeway to Eastern Ave; and

(3) Interstate 295, including its rights-of-way that are east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard.

(g) All land between those portions of the Anacostia Freeway, Kenilworth Avenue, and Interstate 295 described in paragraph (6) of this section and the Anacostia River;

(h) All land that is adjacent to the Anacostia River and designated as parks, recreation, and open space on the District of Columbia Generalized Land Use Map, dated January 2002, except for the land that is:

(1) North of New York Avenue, N.E.;

(2) East of the Anacostia Freeway, including rights-of-way of the Anacostia Freeway;

(3) East of the portion of Kenilworth Avenue that extends to the northeast from the Anacostia Freeway to Eastern Avenue;

(4) East of the portion of Interstate 295, including its rights-of-way, that is east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard, but excluding the portion of 295 and its rights-of-way that go to the northwest across the Anacostia River;

(5) Contiguous to that portion of the Suitland Parkway that is south of Martin Luther King, Jr. Avenue; or

(6) South of a line drawn along, and as a continuation both east and west of the center line of the portion of Defense Boulevard between Brookley Avenue, S.W., and Mitscher Road, S.W.;

(i) All land, excluding Eastern High School, that is:

(1) Adjacent to the land described in paragraph (8) of this section;

(2) West of the Anacostia River; and

(3) Designated as a local public facility on the District of Columbia Generalized Land Use Map, dated January 2002;

(j) All land that is:

(1) South or east of that portion of Potomac Avenue, S.E., between Interstate 295 and 19th Street, S.E.; and

(2) West or north of the Anacostia River;

(k) The portion of the Anacostia River within the District; and

(l) The Washington Channel.

Anacostia Waterfront Development Zone Site (AWDZ site) - A site within the Anacostia Waterfront Development Zone that undergoes a major regulated project that is publicly owned or publicly financed.

Animal confinement area - An area, including a structure, used to stable, kennel, enclose, or otherwise confine animals, not including confinement of a domestic animal on a residential property.

Applicant - A person or their agent who applies for approval pursuant to this chapter.

As-built plan - A set of architectural, engineering, or site drawings, sometimes including specifications that certifies, describes, delineates, and presents details of a completed construction project.

Best Management Practice (BMP) - Structural or nonstructural practice that minimizes the impact of stormwater runoff on receiving waterbodies and other environmental resources, especially by reducing runoff volume and the pollutant loads carried in that runoff.

Buffer - An area along a stream, river, or other natural feature that provides protection for that feature.

Building permit - Authorization for construction activity issued by the District of Columbia Department of Consumer and Regulatory Affairs.

Clearing - The removal of trees and brush from the land excluding the ordinary mowing of grass, pruning of trees or other forms of long-term landscape maintenance.

Common plan of development - Multiple, separate, and distinct land-disturbing, substantial improvement, or other construction activities taking place under, or to further, a single, larger plan, although they may be taking place at different times on different schedules.

Compacted cover - An area of land that is functionally permeable, but where permeability is impeded by increased soil bulk density as compared to natural cover, such as through grading, construction, or other activity and will require regular human inputs such as periodic planting, irrigation, mowing, or fertilization. Examples include landscaped planting beds, lawns, or managed turf.

Control measure - Technique, method, device, or material used to prevent, reduce, or limit discharge.

Construction - Activity conducted for the:

(a) Building, renovation, modification, or razing of a structure; or

(b) Movement or shaping of earth, sediment, or a natural or built feature.

Critical area stabilization - Stabilization of areas highly susceptible to erosion, including down-slopes and side-slopes, through the use of brick bats, straw, erosion control blanket mats, gabions, vegetation, and other control measures.

Cut - An act by which soil or rock is dug into, quarried, uncovered, removed, displaced, or relocated and the conditions resulting from those actions.

Demolition - The removal of part or all of a building, structure, or built land cover.

Department - The District Department of the Environment or its agent.

Detention - Controlling the peak discharge rate of stormwater from a site.

Dewatering - Removing water from an area or the environment using an approved technology or method, such as pumping.

Director - The Director of the District Department of the Environment.

District - The District of Columbia.

Drainage area - Area contributing runoff to a single point.

Easement - A right acquired by a person to use another person's land for a special purpose.

Electronic media - Means of communication via electronic equipment, including the internet.

Erosion - The process by which the ground surface, including soil and deposited material, is worn away by the action of wind, water, ice, or gravity.

Excavation - An act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and the conditions resulting from those actions.

Exposed area - Land that has been disturbed or land over which unstabilized soil or other erodible material is placed.

Grading - Causing disturbance of the earth, including excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

Impervious cover - A surface area which has been compacted or covered with a layer of material that impedes or prevents the infiltration of water into the ground, examples include conventional streets, parking lots, rooftops, sidewalks, pathways with compacted sub-base, and any concrete, asphalt, or compacted gravel surface and other similar surfaces.

Infiltration - The passage or movement of surface water through the soil profile.

Land cover - Surface of land that is impervious, compacted, or natural.

Land cover change - Conversion of land cover from one type to another, typically in order to comply with a requirement of this chapter or to earn certification of a Stormwater Retention Credit.

Land-disturbing activity - Movement of earth, land, or sediment that disturbs the land surface and the related use of pervious land to support that movement. Land-disturbing activity includes stripping, grading, grubbing, trenching, excavating, transporting, and filling of land, as well as the use of pervious adjacent land for movement and storage of construction vehicles and materials. Land-disturbing activity does not include repaving or remilling that does not expose the underlying soil.

Low Impact Development (LID) - A land planning and engineering design approach to manage stormwater runoff within a development footprint. It emphasizes conservation, the use of on-site natural features, and structural best management practices to store, infiltrate, evapotranspire, retain, and detain rainfall as close to its source as possible with the goal of mimicking the runoff characteristics of natural cover.

Major land-disturbing activity - Activity that disturbs, or is part of a common plan of development that disturbs, five thousand square feet (5,000 ft^2) or greater of land area, except that multiple distinct areas that each disturb less than 5,000 ft^2 of land and that are in separate, non-adjacent sites do not constitute a major land-disturbing activity.

Major regulated project - A major land-disturbing activity or a major substantial improvement activity.

Major substantial improvement activity - Substantial improvement activity and associated land-disturbing activity, including such activities that are part of a common plan of development, for which the combined footprint of improved building and land-disturbing activity is five thousand square feet (5,000 ft^2) or greater. A major substantial improvement activity may include a substantial improvement activity that is not associated with land disturbance.

Market value of a structure - Assessed value of the structure for the most recent year, as recorded in the real property assessment database maintained by the District of Columbia's Office of Tax and Revenue.

Natural cover - Land area that is dominated by vegetation and does not require regular human inputs such as irrigation, mowing, or fertilization to persist in a healthy condition. Examples include forest, meadow, or pasture.

Nonstructural Best Management Practice (BMP) - A land use, development, or management strategy to minimize the impact of stormwater runoff including conservation of natural cover or disconnection of impervious surface.

Off-site retention - Use of a stormwater retention credit or payment of in-lieu fee in order to achieve an off-site retention volume under these regulations.

Off-Site Retention Volume (Offv) - A portion of a required stormwater retention volume or required Water Quality Treatment Volume that is not retained on site.

On-site retention - Retention of a site's stormwater on that site or via conveyance to a shared best management practice on another site.

On-site stormwater management - Retention, detention, or treatment of stormwater on site or via conveyance to a shared best management practice.

Original Stormwater Retention Credit (SRC) owner - A person who is indicated as the proposed SRC owner in an application to the Department for the certification of an SRC. The proposed SRC owner becomes the original SRC owner upon the Department's certification of the SRC.

Owner - The person who owns real estate or other property, or that person's agent.

Peak discharge - The maximum rate of flow of water at a given point and time resulting from a storm event.

Person - A legal entity, including an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, cooperative, the District government and its agencies, and the federal government and its agencies.

Post-development - Describing conditions that may be reasonably expected to exist after completion of land development activity on a site.

Practice - A system, device, material, technique, process, or procedure that is used to control, reduce, or eliminate an impact from stormwater; except where the context indicates its more typical use as a term describing a custom, application, or usual way of doing something.

Pre-development - Describing conditions of meadow land and its relationship to stormwater before human disturbance of the land.

Pre-project - Describing conditions, including land covers, on a site that exist before the construction described in a stormwater management plan has begun.

Publicly-owned or publicly-financed project – A project:

(a) That is District-owned or District-instrumentality owned;

(b) Where at least fifteen percent (15%) of a project's total cost is District-financed or District-instrumentality financed; or

(c) That includes a gift, lease, or sale from District-owned or District instrumentality-owned property to a private entity.

Public Right of Way (PROW) - The surface, the air space above the surface (including air space immediately adjacent to a private structure located on public space or in a public right of way), and the area below the surface of any public street, bridge, tunnel, highway, lane, path, alley, sidewalk, or boulevard.

Public Space - All the publicly owned property between the property lines on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

Raze - The complete removal of a building or other structure down to the ground or to its foundation.

Record drawing - The final annotated set of engineering drawings for a construction project, which includes all deviations, field changes, approved changes, constructed depths of footing and structural elements, and horizontal and vertical locations of utility facilities referenced to survey data.

Responsible person - Construction personnel knowledgeable in the principles and practices of erosion and sediment control and certified by a Department-approved soil erosion and sedimentation control training program to assess conditions at the construction site that would impact the effectiveness of a soil erosion or sediment control measure on the site.

Retention - Keeping a volume of stormwater runoff on site through infiltration, evapo-transpiration, storage for non-potable use, or some combination of these.

Retention capacity - The volume of stormwater that can be retained by a best management practice or land cover.

Retention failure - Failure to retain a volume of stormwater for which there is an obligation to achieve retention, including retention that an applicant promises to achieve in order to receive Department-certified Stormwater Retention Credits. Retention failure may result from a failure in construction, operation, or maintenance; a change in stormwater flow; or a fraud, misrepresentation, or error in an underlying premise in an application.

Retrofit - A best management practice or land cover installed in a previously developed area to improve stormwater quality or reduce stormwater quantity relative to current conditions.

Runoff - That portion of precipitation (including snow-melt) which travels over the 1and surface, and also from rooftops, either as sheetflow or as channel flow, in small trickles and streams, into the main water courses.

Sediment - Soil, including soil transported or deposited by human activity or the action of wind, water, ice, or gravity.

Sedimentation - The deposition or transportation of soil or other surface materials from one place to another as a result of an erosion process.

Shared Best Management Practice (S-BMP) - A Best Management Practice (BMP), or combination of BMPs, providing stormwater management for stormwater conveyed from another site or sites.

Site - A tract, lot or parcel of 1and, or a combination of tracts, 1ots, or parcels of land for which development is undertaken as part of a unit, sub-division, or project. The mere divestiture of ownership or control does not remove a property from inclusion in a site.

Site Drainage Area (SDA) - The area that drains to a point on a site from which stormwater discharges.

Soil - All earth material of whatever origin that overlies bedrock and may include the decomposed zone of bedrock which can be readily excavated by mechanical equipment.

Soil Erosion and Sediment Control Plan - A set of drawings, calculations, specifications, details, and supporting documents related to minimizing or eliminating erosion and off-site sedimentation caused by stormwater on a construction site. It includes information on construction, installation, operation, and maintenance.

Soils report - A geotechnical report addressing all erosion and sediment control-related soil attributes, including but not limited to site soil drainage and stability.

Storm sewer - A system of pipes or other conduits which carries or stores intercepted surface runoff, street water, and other wash waters, or drainage, but excludes domestic sewage and industrial wastes.

Stormwater - Flow of water that results from runoff, snow melt runoff, and surface runoff and drainage.

Stormwater management - A system to control stormwater runoff with structural and nonstructural best management practices, including: (a) quantitative control of volume and rate of surface runoff and (b) qualitative control to reduce or eliminate pollutants in runoff.

Stormwater Management Guidebook (SWMG) - The current manual published by the Department containing design criteria, specifications, and equations to be used for planning, design, and construction, operations, and maintenance of a site and each best management practice on the site.

Stormwater Management Plan (SWMP) - A set of drawings, calculations, specifications, details, and supporting documents related to the management of stormwater for a site. A SWMP includes information on construction, installation, operation, and maintenance.

Stormwater Pollution Prevention Plan (SWPPP) - A document that identifies potential sources of stormwater pollution at a construction site, describes practices to reduce pollutants in stormwater discharge from the site, and may identify procedures to achieve compliance.

Stormwater Retention Credit (SRC) - One gallon (1 gal.) of retention for one (1) year, as certified by the Department. May also be referred to as a RainReC.

Stormwater Retention Credit Ceiling - Maximum retention for which the Department will certify a Stormwater Retention Credit, calculated using the Stormwater Retention Volume (SWRv) equation with P equal to 1.7 inches.

Stormwater Retention Volume (SWRv) - Volume of stormwater from a site for which the site is required to achieve retention.

Stripping - An activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and rock mat, and top soil removal.

Substantial improvement - A repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the improvement or repair is started.

Structural best management practice - A practice engineered to minimize the impact of stormwater runoff, including a bioretention, green roof, permeable paving system, system to capture stormwater for non-potable uses, etc.

Supplemental review - A review that the Department conducts after the review it conducts for a first re-submission of a plan.

Swale - A narrow low-lying stretch of land which gathers or carries surface water runoff.

Transition Period One (TP1) – The one hundred and eighty (180) day period of time starting upon publication of the notice of adoption as final in the *D.C. Register* of the stormwater retention rulemaking.

Transition Period Two A (TP2A) – For a major land-disturbing activity, the three hundred and sixty-five (365) day period of time starting at the completion of Transition Period One.

Transition Period Two B (TP2B) – For a major substantial improvement activity, the five hundred and forty-five (545) day period of time starting at the completion of Transition Period One.

Waste material - Construction debris, dredged spoils, solid waste, sewage, garbage, sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the State Health Planning and Development Agency, with the Department of Health, pursuant to the authority set forth in § 22 of the Health Services Planning Program Re-establishment Act of 1996 (Act), effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-421 (2001)), hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapters 40, 41, 42, 43, and 45 and to repeal Chapter 46 of Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the proposed rule is to update procedures for applying for, reviewing, renewing, withdrawing, reconsidering, and submitting reports for a Certificate of Need. These changes are necessary to comply with amendments to the Act.

Pursuant to § 22 of the Act, the proposed rules are being transmitted to the Council of the District of Columbia, and the proposed rules will not become effective until the expiration of the forty-five (45) day period of Council review or upon approval by Council resolution, whichever occurs first, and publication of a notice of final rulemaking in the *D.C. Register*.

Title 22-B DCMR (Public Health & Medicine) is amended by repealing Chapter 46, striking Chapters 40 through 43 and 45 in their entirety, and inserting new Chapters 40 through 43 and 45 to read as follows:

4000 GENERAL PROVISIONS

4000.1 The provisions of Chapters 40 through 45 shall apply to a review of an application for a Certificate of Need (CON) required under Section 7 of the District of Columbia Health Services Planning Program Re-Establishment Act of 1996, as amended (Act), effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-406).

4000.2 No person shall undertake any activity for which a CON is required if:

(a) The original term of the CON has expired and the person has not obtained an extension pursuant to Section 4007; or

(b) The Director has revoked the CON pursuant to Section 4010 or Section 4308 of this title.

4000.3 A CON shall be valid for up to three (3) years.

4000.4 A CON shall be valid upon its issuance. However, because the Director may revoke or modify a CON after reconsideration or an appeal decision, a CON holder proceeds solely at its own risk during the period when reconsideration or appeal may be requested and during any period that any reconsideration or appeal is in process.

4000.5 The issuance of a CON, if required under the Act, shall be a condition precedent to the issuance of any license, permit, or any other type of official approval (except zoning approval) by any agency or officer or employee of the District government that is necessary for the project in addition to the CON.

4000.6 A CON shall be for a specific site, except that a proposed change of site within the same Advisory Neighborhood Commission shall not require further CON review if the change is made before the project is implemented. Any proposed change in the location of an approved service or facility outside the same Advisory Neighborhood Commission shall require application for a new CON.

4000.7 For the purpose of Section 4000.6, the term "official approval" shall mean final approval by the District government subject only to appeal.

4000.8 State Health Planning and Development Agency (SHPDA) shall not be required to issue a CON before an administrative budget review body approves a budget request that is under consideration by the Council because the project relies on the appropriation of funds from the District budget.

4000.9 For the purposes of Chapters 40 through 45 the term “major medical equipment” includes:

(a) Equipment used for providing medical or health services acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a health care facility, or by or on behalf of any private group practice of diagnostic radiology or radiation therapy, for which the fair market value exceeds one million five hundred thousand dollars ($1,500,000) adjusted from time to time to reflect changes in the Consumer Price Index; or

(b) A single piece of diagnostic or therapeutic equipment acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician or group of physicians, or an independent operator of the equipment, for which the fair market value exceeds two hundred and fifty thousand dollars ($250,000) adjusted from time to time to reflect changes in the Consumer Price Index.

4000.10 For the purposes of Chapters 40 through 45 the term “major medical equipment” excludes medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services when it is independent of a physician’s office or a hospital and satisfies the requirements of § 1861(s)(10) and (11) of the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)).

4000.11 For the purposes of Chapters 40 through 45 an entity is “acquiring effective control” if it does any of the following:

(a) Transferring, assigning, or otherwise disposing of fifty percent (50%) or

more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity that is a health care facility (HCF) or is the operator or owner of an HCF;

(b) Engaging in a transaction that results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, fifty percent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity that is an HCF;

(c) Engaging in a transaction that results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of a corporation that is an HCF; or

(d) Engaging in a conversion that results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, of a nonprofit HCF to a for-profit entity, whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including an entity that results from, or is created in connection with, the conversion.

4000.12 For the purposes of Chapters 40 through 45 a facility is considered a "diagnostic health care facility" if the facility is not operated by a hospital and is not the offices of a private physician or dentist, unless one (1) or more pieces of major medical equipment is located within the office, and is:

(a) A diagnostic imaging center accredited by the American College of Radiology whose primary business is providing diagnostic imaging services to the public;

(b) A cardiac catheterization laboratory;

(c) A radiation therapy facility; or

(d) An independent diagnostic laboratory whose primary business is providing diagnostic imaging services to the public at which at least three (3) of the following are performed:

(1) Magnetic resonance imaging;

(2) CAT scan;

(3) Nuclear medicine;

(4) Ultrasound;

(5) X-ray; or

(6) Mammography.

4001 STATE HEALTH PLANNING AND DEVELOPMENT AGENCY AND STATEWIDE HEALTH COORDINATING COUNCIL

4001.1 The project application and review files of SHPDA shall be open for public inspection and review during regular business hours.

4001.2 SHPDA shall duplicate CON documents for any person upon request and upon payment of the reasonable costs of duplicating the requested documents. SHPDA shall restrict access of the general public to portions of applications or supporting documents that contain detailed descriptions of security systems, medical record systems, controlled storage systems, or proprietary financial information.

4001.3 The Director shall provide information on the status of any review or on the status of any outstanding CON upon request.

4001.4 The Director may establish charges for all SHPDA studies, reports, data compilations, publications, or other types of documents. The charges shall be reasonably related to the costs of preparing, developing, retrieving, duplicating, and paying postage, where applicable.

4001.5 The review meetings of SHPDA and the Statewide Health Coordinating Council (SHCC) shall be open to the public.

4001.6 SHCC shall:

(a) Assist SHPDA with developing the Health Systems Plan (HSP);

(b) Review and make recommendations to SHPDA on the HSP; and

(c) Make recommendations to SHPDA on CON applications.

4002 PRE-APPLICATION CONSULTATION WITH PROSPECTIVE APPLICANT

4002.1 A prospective applicant for a CON may consult with a designated member of SHPDA staff before submitting a Letter of Intent for any project and during the application process.

4002.2 The Director shall assign a staff person to assist each applicant for a CON. The applicant shall consult with the assigned SHPDA staff person throughout the application process, except during any period for which *ex parte* contacts are

prohibited under Section 4305 and D.C. Official Code § 44-409(i).

4002.3 SHPDA staff shall:

(a) Review with the applicant the procedures and criteria that SHPDA will follow during the application review;

(b) Provide technical assistance on information required in the application;

(c) Provide a tentative schedule for review of the application; and

(d) Provide other assistance that may be helpful to the applicant.

4002.4 Consulting with SHPDA staff before applying for a CON shall not relieve an applicant from the requirement to file a formal Letter of Intent pursuant to Section 4003. Pre-application consultation shall not commit SHPDA to issuing a CON and shall not represent SHPDA's official position concerning an application submitted subsequent to the consultation.

4003 LETTER OF INTENT AND PUBLIC NOTICE

4003.1 Before submitting a formal application for a CON, an applicant shall submit a Letter of Intent to the Director for the purposes of notifying SHPDA that an application for a CON will be forthcoming and providing SHPDA sufficient time to prepare for application review. The Letter of Intent shall contain the following information:

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

(b) The name of an individual authorized to respond to SHPDA staff questions regarding the application;

(c) The proposed location for the health care facility, health service, or other entity; and

(d) A brief description of the proposed health care facility, health service, or other entity, including its cost and the projected date of implementation.

4003.2 The applicant's chief executive officer or a person authorized to act on behalf of the chief executive officer shall sign the Letter of Intent.

4003.3 An applicant shall provide notice to the community of its intent to file a CON application by publishing a notice in a newspaper of general distribution within the District of Columbia that generally describes the proposed project and states that the Letter of Intent will be filed with SHPDA.

4003.4 An applicant shall submit the Letter of Intent to SHPDA at least sixty (60) days but not more than one hundred eighty (180) days before filing the application for a CON and shall include with the Letter of Intent a copy of the notice required by Section 4003.3.

4003.5 An applicant may submit an application after consulting with SHPDA staff.

4003.6 The Director shall designate a SHPDA staff member to assist the applicant upon filing of a Letter of Intent.

4003.7 If an applicant has not submitted a CON application within one hundred eighty (180) days after submitting the Letter of Intent, the Letter of Intent shall be void unless the applicant requests and receives written approval for an extension to file the CON application.

4003.8 An applicant may request one (1) extension of not more than one hundred eighty (180) days. The request shall be made in writing before the initial one hundred eighty (180) day period expires. The Director shall respond to the request in writing and may grant an extension of one hundred eighty (180) days or less.

4003.9 SHPDA may use the period of time after receiving a Letter of Intent and before receiving a formal application for a CON to do the following:

(a) Answer inquiries concerning the requirements for a CON;

(b) Advise the applicant on appropriate joint planning with other HCFs, HMOs, and affected parties; and

(c) Advise the applicant on the involvement of other community and public agencies, providers, and consumers in the long and short-range planning of the applicant.

4003.10 SHPDA shall provide technical assistance to individuals and public and private entities for obtaining and completing the form necessary for preparing an application.

4004 CONDITIONAL CERTIFICATES OF NEED

4004.1 SHPDA may require an applicant to comply with certain conditions when granting a CON, provided that the conditions relate directly to an adopted SHPDA review criteria.

4004.2 The expiration date, if any, of each condition shall be specified in the CON.

4004.3 If a CON holder violates a condition of a CON, the Director shall issue the CON holder written notice of the violation and may revoke the CON using the

procedure for noncompliance with the CON, as specified in Section 4010.

4004.4 If the Director determines that the applicant has violated a condition and is not permitted to begin full operation, the applicant may appeal in the same manner as with any decision to issue or not issue a CON.

4004.5 The completed application for a CON and related documentation shall be considered to be a part of any CON issued after review and approval of the application.

4004.6 The CON holder shall proceed only in compliance with the CON and the related application and documentation that the Director has approved.

4004.7 In the case of an application approved for a CON with conditions, SHPDA may (if no licensing or operating approval is required by any other District agency) grant the CON holder the authority to begin "conditional operation" while the CON holder demonstrates its compliance with the conditions attached to the CON.

4005 PROPOSED CHANGES IN APPROVED PROJECTS

4005.1 The Director shall specify in the CON the maximum amount of capital expenditure that may be obligated under the CON.

4005.2 A CON holder shall report a proposed change in the project budget that will result in an expenditure greater than the maximum capital expenditure specified in the CON.

4005.3 A CON holder shall request the Director's approval for a proposed change in the project budget that will result in an expenditure that is twenty-five per cent (25%) or more larger than the approved capital expenditure specified in the CON. The Director shall issue a decision on a proposed change in not more than thirty (30) days after receiving a request to modify the project budget. A CON holder shall not commence work on the proposed changes that are twenty-five per cent (25%) or more than the maximum capital expenditure before the Director approves the modification.

4005.4 A CON holder shall report cumulative costs of individual budget changes to the Director for review and approval as part of the CON holder's regular, periodic reports. A CON holder shall submit a new application for any proposed change that exceeds the proposed budget by more than fifty per cent (50%) of the approved capital expenditure.

4005.5 Except for routine construction change orders, the purpose of which is to correct architectural or engineering errors or to compensate for errors in "as built" drawings of existing buildings, errors in surveys, or similar types of errors, all proposed changes to an approved project budget shall be promptly reported to

SHPDA.

4005.6 A CON holder shall report routine construction change orders when the CON holder reports completion of the project.

4005.7 If the Director determines that a proposed non-budgetary change will not affect patient care, the Director may approve the change (subject to reconsideration and appeal) without referring the change to SHCC for review. If the Director approves a change pursuant to this subsection, the Director shall notify SHCC of the change at the next monthly meeting of SHCC.

4005.8 If patient care is not significantly affected, and, if either of the following conditions is met, SHPDA shall approve or disapprove the change without referral to SHCC, and shall notify SHCC at the next scheduled SHCC meeting:

(a) The cost increase is directly related to inflation, unforeseen construction difficulties, or changes in building plans in the nature of routine change orders consistent with the CON application approved by SHPDA; or

(b) The cost increase involves changes in acquisition plans from lease or similar arrangements to purchase or vice versa (if the change is economically justifiable as determined by SHPDA).

4005.9 If a new CON is required pursuant to Section 4005.4, the Director shall consider the date of issuance of the original CON to be the date of issuance of the consolidated CON for all SHPDA purposes, including quarterly reports and extension schedules.

4005.10 A CON holder shall report each proposed change to the specifications (as stated in the approved CON) of a project. This report shall include any service, any equipment, and any other type of change whatsoever to the specifications of an approved project.

4005.11 If the Director determines that a proposed non-budgetary change will not significantly affect patient care, the Director may issue a decision that the change may be made (subject to reconsideration and appeal) without prior approval of the SHCC.

4005.12 SHPDA shall update its files concerning the nature of the change and shall notify the SHCC at the next scheduled SHCC meeting.

4005.13 If the Director finds that a proposed non-budgetary change would substantially affect patient care, the Director shall require the CON holder to apply for and receive a new CON before the proposed change may be implemented.

4005.14 If a new CON is required under Section 4005.13, SHPDA shall consider the date of issuance of the original CON to be the date of issuance of the consolidated

CON for all SHPDA purposes, including quarterly reports and extension schedules.

4005.15 A proposed change in a completed project associated with a capital expenditure for which SHPDA has previously issued a CON shall require review and issuance of a new CON if the change is proposed within two (2) years after the date the activity for which the expenditure was approved is undertaken. (For example, if a hospital receives approval to construct a new wing, the hospital will "undertake the activity" when it begins to provide services in the wing. If, in the two (2) years after undertaking the activity, the hospital decides to increase the number of beds in the wing by a number that would not otherwise trigger a review, a review would still be required.). For the purposes of this section, a CON holder has undertaken an activity when it begins to provide services under the CON.

4005.16 The provisions of Section 4005.15 shall apply to a change associated with capital expenditures that are subject to review under this title.

4005.17 SHPDA review and approval shall be required regardless of whether a capital expenditure is associated with the proposed change.

4005.18 A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility or the addition or termination of a health service.

4006 PRE-OPERATIONAL INSPECTION

4006.1 A CON holder shall not begin operation of an approved project until SHPDA has conducted a preoperational inspection and has determined that the project is in compliance with the CON requirements.

4006.2 For a large project that may be completed in phases, the Director may approve the project in phases as the phases are completed and after a CON holder requests phased implementation of the project in writing.

4006.3 Not later than thirty (30) days before the date that the CON holder proposes beginning operation, the CON holder shall inform the Director in writing of the proposed date for operation of the facility or service (or a part of the facility) approved under a CON.

4006.4 After the notification required by Section 4006.3, SHPDA shall conduct an on-site pre-operational inspection and review for compliance with all CON requirements.

4006.5 The CON Holder shall make all portions of the facility or service available for inspection and shall produce all records, including cost records, SHPDA deems necessary to determine compliance with the specifications of the approved CON.

4006.6 The CON holder shall not begin operation without a Letter of Completion. If, after inspection, the Director determines that a project, or an operational portion of a project, is substantially complete, and that the CON holder has satisfied all requirements and specifications of the CON, the Director shall issue a Letter of Completion for that project or an operational portion of the project.

4006.7 If all phases of a project are completed, receipt of the Letter of Completion issued under Section 4006.6 terminates the CON review process, provided that all conditions included in the CON that have continuing applicability shall remain in effect.

4006.8 If the Director determines that a project, or an operational portion of a project, is not substantially complete or is not in compliance with all requirements of the CON, the Director shall notify the CON holder in writing of the deficiencies.

4006.9 A notice of deficiency issued pursuant to Section 4006.8 shall:

(a) Identify the parts of the project that are not complete;

(b) Identify any deficiencies regarding the requirements for the project; and

(c) Identify the steps necessary for the CON holder to complete the project or correct deficiencies.

4006.10 A CON holder may request reconsideration of, and appeal, a notice of deficiency as if the notice was a denial of a CON, pursuant to Chapter 43 of this title.

4007 ISSUANCE AND EXTENSION OF CERTIFICATE OF NEED

4007.1 A CON shall be issued for a period of up to three (3) years as the Director determines to be appropriate. An applicant may request, and the Director may grant, an applicant's written request for a CON period of less than three (3) years.

4007.2 The Director may grant an extension of an expiring CON for a period of up to four (4) years, including the original term and excluding any administrative extensions that may have been granted, upon a written showing of substantial progress or a justification for lack of progress.

4007.3 For purposes of this section, the phrase "substantial progress" means reasonable compliance with SHPDA-approved schedule for the project.

4007.4 For purposes of this section, the phrase "justification for lack of progress" means an explanation acceptable to the Director for the CON holder's non-compliance with the SHPDA-approved schedule, and may include factors beyond the control of the CON holder.

4007.5 SHPDA shall extend or deny an extension of a CON based on the quarterly progress reports filed by the CON holder under Section 4008 and any additional information required by this chapter.

4007.6 The "SHPDA-approved schedule" shall be the latest of the following:

(a) The final schedule submitted for approval in the applicant's CON application;

(b) The schedule required by SHPDA in any condition of a CON; or

(c) The schedule approved by SHPDA in an extension.

4007.7 If the applicant has not made substantial progress, SHPDA shall issue a ninety (90) day administrative extension of the CON for the purpose of allowing SHPDA to commence proceedings for revoking the CON under the provisions of Section 4010.

4007.8 If an applicant has made substantial progress but there has been a deviation from another aspect of the approved application, and the Director intends to grant an extension, SHPDA may require the applicant to comply with the previously approved requirements or a SHPDA-approved modification of those requirements.

4007.9 The Director’s decision to extend or not extend a CON may be appealed under the provisions of Chapter 43 of this title.

4007.10 The Director may grant an administrative extension of the validity of a CON for up to ninety (90) days for good cause, which may include a showing that the project is within ninety (90) days of completion.

4007.11 A CON that is not extended shall be void.

4007.12 A CON holder requesting extension of a CON beyond a total of four (4) years shall submit a new application for a CON for the project to SHPDA no later than six (6) months before the current CON expires.

4007.13 If a CON holder provides written assurance that the project will be completed within six (6) months after the expiration of its current CON, including any extension up to but not exceeding a total of four (4) years, SHPDA may grant an additional administrative extension for up to six (6) months without the need for an applicant to submit a new CON application.

4008 PROGRESS REPORTS

4008.1 A CON holder shall make quarterly progress reports to SHPDA.

4008.2 A progress report shall include the following information, if applicable:

(a) Original CON registration number;

(b) Status of the project, including current estimated completion date, in relation to the SHPDA-approved construction schedule, and any revised construction schedule reported in previous quarterly progress reports but not yet approved by SHPDA;

(c) Reasons for not progressing at the rate contemplated in the most recently approved schedule, if applicable;

(d) Any events that might delay or halt future progress, and actions to be taken in response to these events, if applicable;

(e) Any changes in the proposed schedule and justification for those changes;

(f) Changes in the scope of the project or program approved in the CON (if there are changes, submit copies of revised construction drawings, specifications, leases, or other relevant documentation);

(g) An itemization of any changes in the project's cost from those approved by SHPDA, and as modified in previous quarterly progress reports;

(h) A statement of the current means of financing the project, and the continued adequacy of the financing;

(i) Any foreseeable events that might jeopardize financing, and the proposed response to an event that could jeopardize financing;

(j) A description of efforts made toward complying with any conditions of the CON; and

(k) Other pertinent supplemental information the CON holder wishes to bring to the Director's attention or other information the Director specifically requests that relates to the project.

4008.3 The Director may request additional information after receiving a progress report if the Director determines that the report is not complete.

4008.4 The Director may approve or deny a request for a CON extension without submitting the extension request to the SHCC, unless the request would require submission of a new application and full review.

4008.5 SHPDA staff shall prepare a memorandum of the progress made by the CON

holder receiving the complete progress report for the third (3rd) quarter of each CON year. The analysis shall include the following:

(a) The project's rate of progress according to the most recent SHPDA-approved schedule for the project;

(b) Whether any reported delay is beyond the control of the CON holder;

(c) Whether the CON holder will complete the project on schedule;

(d) Whether any change in the proposed schedule is reasonable with respect to the health requirements of District residents and visitors;

(e) Whether any cost changes exceed the rate of inflation for construction projects in the District;

(f) Whether the CON holder has minimized costs;

(g) Whether financing for the project continues to be adequate;

(h) Whether the CON holder is continuing to comply with any conditions of the CON; and

(i) Whether the project continues to be adequate with respect to all review criteria, except those for need and conformance to the State Health Plan.

4008.6 SHPDA staff shall make a recommendation to the Director about whether to issue an extension for a CON under Section 4007or to take action under Section 4010 to revoke a CON.

4009 SALE OR TRANSFER OF EFFECTIVE CONTROL

4009.1 Pursuant to D.C. Official Code § 44-411 a CON may not be sold or transferred. The sale or transfer of effective control over a project for which a current CON has been granted shall cause the CON to be subject to review and approval by SHPDA. The process for reviewing a CON resulting from transfer of effective control is subject to the requirements of D.C. Official Code § 44-406(b) and this section. For the purpose of this section, a current CON means authorization from SHPDA that has not been fully implemented.

4009.2 For purposes of this section the term "effective control" includes:

(a) The ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity that holds a CON, to direct or cause the direction of the management or policies of that corporation, partnership, or other entity; and

(b) Creation of a new legal entity regardless of whether the owners remain the same.

4009.3 If a current CON is held by a partnership, either general or limited, the addition of a general partner who was not identified as a general partner in the certificate of partnership on file with SHPDA at the time the original CON was issued, or the succession of a general partner who was named as a general partner by another person at any time after issuance of the original CON, shall be reviewed and approved by SHPDA, or shall cause withdrawal of the CON, effective as of the time at which the addition or succession of a general partner occurs.

4009.4 Any transfer, assignment, or other disposition of ten per cent (10%) of the stock or voting rights thereunder of a corporation or other entity that operates a health care facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of he corporation or other entity that results in the ownership or control of more than ten percent (10%) of the stock or voting rights of the corporation or other entity by any person shall, when that corporation or entity holds a current CON, shall cause the CON to be subject to review and approval by SHPDA.

4009.5 For a partnership, ten percent (10%) of the stock or voting rights shall include the following:

(a) The obligation of any partner to provide ten percent (10%) or more, including property and services, of the total capital contribution of the partnership, as reflected in an amendment of the original certificate of partnership;

(b) The right of any partner to receive distribution of ten percent (10%) or more of the profits of the partnership, as reflected in an amendment of the original certificate of partnership; or

(c) The right of any partner, upon dissolution of the partnership, to receive ten percent (10%) or more of partnership assets remaining after payment of all partnership debts, as reflected in an amendment of the original certificate of partnership.

4009.6 A party proposing to gain effective control of a project for which a CON has been granted, or of an entity that holds a CON, shall apply for a new CON. No Letter of Intent shall be required in this circumstance.

4009.7 The criteria and standards normally applicable to a CON application shall apply to a sale or transfer of effective control. SHPDA shall also weigh the qualifications of the party proposing to gain effective control to effectively operate the project.

4009.8 SHPDA shall review a CON application under this section by examining the financial responsibility and business interests of the person or entity seeking to obtain the effective control in addition to any other prescribed and published SHPDA review criteria.

4009.9 Under D.C. Official Code § 44-416(e), failure to obtain a new CON before effecting the sale, transfer, assignment, or other disposition of effective control over, or the acquisition of ten per cent (10%) or more of stock or voting rights, in the holder of record of a current CON shall cause the automatic revocation of the current CON, effective as of the time at which the acquisition, sale, transfer, assignment, or other disposition occurs.

4010 ENFORCEMENT AND REMEDIES FOR NONCOMPLIANCE

4010.1 The Director may request that the Office of the Attorney General enjoin the activities of a person offering, developing, or operating a health care facility in violation of the Act, as specified in D.C. Official Code § 44-416(b).

4010.2 The Director may revoke a current CON, after holding a hearing to ascertain the facts. If the Director finds that a person has violated a provision of the Act or 22 DCMR Chapters 40 through 45, the Director may take action to revoke a current CON even though action has been initiated to criminally prosecute, sue for injunctive relief, or impose a civil fine, penalty, or fee for a violation of the Act or Title 22 Chapters 40 though 45.

4010.3 The Director may revoke a current CON for lack of substantial progress under this chapter.

4010.4 Before revoking a CON, the Director shall publish a notice of alleged violation or lack of substantial progress in a newspaper of general circulation in the District, and shall notify all interested parties, including the CON holder.

4010.5 The notice shall include a detailed description of the alleged violation or lack of substantial progress and shall provide the time and location of a public hearing to consider the alleged violation.

4010.6 The public hearing shall be held no sooner than fourteen (14) days from the date of the notice and no later than thirty (30) days from that date.

4010.7 The hearing shall be conducted according to the procedures specified in Chapter 43 of this title for reconsideration hearings, except that the SHPDA staff person in charge of a CON review, or a designee, shall have up to one (1) hour to present the details of the alleged violation or lack of substantial progress. Following this presentation, the CON holder may question the SHPDA staff person.

4010.8 The CON holder shall have up to one (1) hour to make its presentation, after

which SHPDA staff may ask questions of the CON holder. Other persons may then testify.

4010.9 Following all testimony, the CON holder may make a ten (10) minute closing statement.

4010.10 The Director shall decide whether to revoke a CON within thirty (30) days following the close of the public hearing. The Director's decision shall be:

(a) Written;

(b) Based on the complete record of the withdrawal action; and

(c) Include findings of fact and conclusions of law.

4010.11 There shall be no *ex parte* contacts between the CON holder and SHPDA staff or the SHCC following the public hearing and before the Director issues a decision.

4010.12 The Director's decision to revoke a CON may be appealed to the Office of Administrative Hearings without further reconsideration by the Director.

4011 NOTICE OF CERTAIN CAPITAL EXPENDITURES

4011.1 A health care facility or service (except an HMO exempt under D.C. Official Code § 44-407(c) and 22 DCMR 4109) shall notify SHPDA that it intends to obligate an expenditure of two million five hundred thousand dollars ($ 2,500,000) or more for construction, repairs, or renovation of facilities, when that action requires issuance of any type of permit from the District government notwithstanding that the capital expenditure intended is less than the CON review threshold.

4011.2 A health care facility or service shall submit with the notice either of the following:

a) A summary of the project, including total estimated capital expenditure; or

b) A copy of the required permit application filed with the appropriate District government agency or agencies.

4011.3 The notice shall contain a description of any related capital construction repairs or renovations that the facility may consider undertaking within two (2) years of the completion of the work for which notification is presently being given.

4011.4 The health care facility or service shall file notice with SHPDA at least ninety (90) days before undertaking the construction, repairs, or renovation in question.

4011.5 A health care facility or service, except an HMO exempt under Chapter 41, shall notify SHPDA of its intention to obligate an expenditure to acquire by lease, donation, or other transfer, any major equipment. Notice shall be given not less than thirty (30) days before acquiring the equipment.

4011.6 A health care facility or service, except an HMO exempt under Chapter 41, shall notify SHPDA of its intention to acquire by lease, donation, or other transfer, diagnostic or medical treatment equipment (including the replacement of parts of existing equipment that enhance the original capabilities of the equipment), whether a single unit or system with related functions, the fair market value of which is under one million five hundred thousand dollars ($1,500,000). Notice shall be given not less than thirty (30) days before acquiring the equipment.

4011.7 The notice required by Sections 4011.5 and 4011.6 shall include:

(a) The purchase price or fair market value of each item of equipment to be obtained;

(b) Each item's function;

(c) The services and locations within the facility that will be affected by the equipment acquisition; and

(d) A description of functionally related equipment extensions or enhancements that the facility may consider purchasing within two (2) years of putting the equipment described in the notice into operation.

4011.8 If the Director determines that the activity described in the notice is related to subsequent action to be taken within the two (2) year period and should be considered a single project, a CON review shall be required when the total cost of the present and subsequent actions exceeds the capital expenditure threshold for CON review.

4011.9 If a health care facility or service, except an HMO exempt under Chapter 41, intends to undertake related construction, repairs, or renovations, or intends to acquire functionally related equipment, extensions or enhancements to equipment not describe in a notice to SHPDA, the additional activities or equipment shall be subject to CON review when the total cost within a given two (2) year period exceeds the capital expenditure threshold for CON review.

4011.10 SHPDA shall conduct an expedited review of a CON application required under this section, and the applicant shall not be required to file a letter of intent.

4011.11 The Director's determination under this section that intended action by a health care facility or service is subject to CON review may be appealed by an affected person to the District of Columbia Office of Administrative Hearings.

4012 GENERAL CRITERIA AND STANDARDS FOR REVIEW

4012.1 Whenever a criterion or standard requires proof of a fact, the applicant shall have the burden of affirmatively proving that fact.

4012.2 The criteria and standards set forth in this section shall apply to every CON application other than an application that relates to acquiring an existing health care facility.

4012.3 Each project shall conform to the general provisions, defined priorities, goals, objectives, recommended actions, criteria, and standards contained in the State Health Systems Plan (HSP) and the Annual Implementation Plan (AIP) for the development of health facilities or services, if applicable.

4012.4 Each project shall be consistent with the applicant's long range development plan.

4012.5 Each project shall be consistent with non-health sector plans for the service area of the proposed facility or service. The applicant shall demonstrate consistency by providing evidence and assurances that:

(a) It has considered other plans adopted or endorsed by the District, including public and private transportation, housing, and economic development that will impact the area the facility or service serves; and

(b) The proposal is consistent with those plans specified in Subsection (a).

4012.6 Each applicant shall demonstrate the need for the project on a health care system wide basis (for those projects that substantially affect patient care). The applicant shall demonstrate need by meeting the following standards:

(a) The applicant shall provide evidence and assurances that the project is needed to meet service or facility levels required for the District as specified in the HSP. If a proposal serves a geographic area larger than the District, the applicant shall document that the project is needed to meet the service or facilities requirements of the larger area as specified in the HSP.

(b) If the HSP does not specify need, the applicant shall provide evidence and assurances that the project is needed based on a special analysis of the District or larger area service and facility needs. This study shall consider the utilization rates of the same or similar services of the applicant and other providers.

(c) If the application involves new technology, the applicant shall provide evidence and assurances of the developmental level of the technology and

the extent to which it has been proven to be beneficial in controlled trials comparing its use with the use of conventional techniques or equipment. Applications involving new technology that has not been proven to the satisfaction of the Director to be beneficial in controlled trials shall not be considered needed unless the applicant proposes to conduct the trials in addition to providing patient care.

(d) An application involving new technology that has been proven to the satisfaction of the Director to be generally accepted by the scientific community as beneficial in controlled trials shall also demonstrate that other actual or potential applicants that might more appropriately be given approval for acquisition of the new technology:

(1) Already have the technology or have SHPDA approval for its acquisition and that an additional need for the technology to meet patient requirements exists; or

(2) Will not seek approval to acquire the new technology within (12) months of the application date. The applicant shall identify other actual or potential applicants considering the following:

(A) The number of beds operated;

(B) Teaching programs;

(C) Research programs;

(D) Current or approved specialized units or specialized services provided; and

(E) Current or approved special capabilities in terms of equipment and personnel skills.

(e) The Director shall consider the special needs and circumstances of an applicant, as documented by the applicant, for an application from an entity that provides a substantial portion of its services or resources, or both, to individuals from outside the metropolitan area.

4012.7 Each applicant shall demonstrate need for the project on an institutional basis by providing evidence and assurances that the project is required to meet institutional needs.

4012.8 Each applicant shall satisfy the criterion of availability of training opportunities by meeting the following standards:

(a) An applicant shall provide evidence and assurances that the proposed

project will not negatively impact opportunities for health professional training if a health profession school or program asserts, and the Director agrees, that training opportunities are necessary; and

(b) If the Director finds that a project is not otherwise needed under the criteria in Sections 4012.5 and 4012.6, an applicant may provide evidence that the project is needed to provide reasonable access to training opportunities in operating services.

4012.9 Each applicant shall satisfy the criterion for requirements of research projects and programs by meeting the following standards:

(a) An applicant shall provide evidence and assurances that the proposed project will not negatively impact the availability of facilities and equipment needed for biomedical and behavioral research projects designed to meet a national need and for which local conditions offer special advantages, as determined by the Director; and

(b) If the Director finds that a project is not otherwise needed, an applicant may provide evidence that a project is essential to meeting the reasonable needs of biomedical or behavioral research projects that are designed to meet a national need and for which local conditions offer special advantages, as determined by the Director.

4012.10 Each applicant shall satisfy the criterion for the schedule for project implementation by providing evidence and assurances that the proposal, if approved, will be implemented in a prompt and orderly fashion consistent with the approved schedule and public need for the service or facility and cost containment in project implementation.

4012.11 Each applicant shall satisfy the criterion for the effect of operating policies, personnel capabilities, and the physical structure on the proposed project's care of patients, patient accessibility to medical care, and patient understanding of medical care by meeting the following standards:

(a) An applicant shall provide evidence and assurances that the project will not negatively impact services available to the following:

(1) Service area ethnic populations who speak a language other than English;

(2) Low-income residents;

(3) Persons with physical or mental disabilities;

(4) Racial and ethnic minorities;

(5) Women;

(6) Elderly persons;

(7) Persons whose care is paid for by Medicaid, Medicare, public medical assistance programs, or other public programs;

(8) Persons uninsured or who have limited insurance coverage; and

(9) Other under-served groups.

(b) An applicant shall provide evidence and assurances that access to care is not unreasonably restricted by its admissions policies, requirements, or hours of operation. If an application is for major medical equipment, unless otherwise specified in the HSP for specific types of equipment, not otherwise exempt, the standard for this criterion shall not be considered met unless the equipment is regularly scheduled for operation at least fifty (50) hours per week, fifty-two (52) weeks per year and is available for emergency use at all other times, if the equipment is of a type reasonably expected to be necessary for emergency care.

4012.12 Each applicant shall satisfy the criterion for compliance with uncompensated care and community service requirements. The standard for satisfying this criterion is by providing evidence and assurances of compliance with applicable provisions of § 11 of the Act (D.C. Official Code § 44-410) as well as the following:

(a) An applicant that has not previously held a CON shall provide assurances of prospective compliance; and

(b) An applicant that has previously held a CON shall provide evidence of past compliance and assurances of prospective compliance.

4012.13 Each applicant shall satisfy the criterion for involvement of the community in the process of project planning and development. The standard for satisfying this criterion is by providing evidence and assurances of opportunities for community participation in the preparation and development of the project through the following:

(a) Public notice of the project to affected Advisory Neighborhood Commissions (ANC's); and

(b) Consideration of comments received from community agencies, groups, and individuals.

4012.14 Each applicant shall satisfy the criterion for impact of the proposed project on the

health system and the health of District residents and visitors. The standard for satisfying this criterion is by providing evidence and assurances that the project, if it involves a direct patient care service, will not adversely impact the health care system and the health of the public in terms of health status as measured by industry standards, such as hospital admissions, emergency room visits, length of stay, and other relevant measures.

4012.15 Each applicant shall satisfy the criterion for observance of rights of patients. The standard for satisfying this criterion is by providing evidence and assurances of the applicant's mechanism for guaranteeing patient's rights. Minimal compliance with this standard requires compliance with all federal and District laws and regulations regarding patient rights.

4012.16 Each applicant shall satisfy the criterion for assurance that the care to be provided is of acceptable quality. The standard for satisfying this criterion is by providing evidence and assurances that it will meet professional and community standards of quality care. The applicant shall document compliance with this standard by showing that the project conforms to the requirements of District and federal regulatory agencies and recognized accreditation bodies including the Joint Commission on the Accreditation of Health Care Organizations and the Commission on Accreditation of Rehabilitation Facilities.

4012.17 Each applicant shall satisfy the criterion for compliance with building and equipment requirements. The standard for satisfying this criterion is by providing evidence and assurances that all new construction meets the standards contained in minimum requirements of latest edition of *Guidelines for Design and Construction of Health Care Facilities*, and District construction and licensing codes and regulations, as applicable to the type of project proposed. A remodeling project shall satisfy as many of these requirements as are reasonably practical, as determined by the Director, acting in consultation with District licensing and construction authorities.

4012.18 Each applicant shall satisfy the criterion for selection of the best of alternative means of providing the project's services. The standard for satisfying this criterion is by providing a description of the alternatives the applicant considered, and the findings that led the applicant to select the proposed approach rather than an alternative approach. The applicant shall select the most favorable alternative available by evaluating and comparing the final selected plan with the following alternative means:

(a) If shared services are not proposed, the applicant shall demonstrate why shared services are not practical or cost effective;

(b) If a merger is not proposed, the applicant shall demonstrate why a merger agreement is not desirable or practical;

(c) The applicant shall demonstrate that the proposed method for providing services, whether provided in-house or contracted out, is more desirable than the alternative. Where applicable, the estimated costs for both contract and in-house services should be presented;

(d) The applicant shall demonstrate that the option of taking no action is not desirable; or

(e) The applicant shall demonstrate that it considered other alternatives and demonstrate why they were considered less desirable.

4012.19 Each applicant shall satisfy the criterion for the effect of operational costs of the project on general costs, rates, or consumer charges. The standard for satisfying this criterion is by providing evidence and assurances that the project will reduce costs or charges for the service in question and for related services to the maximum practical extent or increase cost and charges to the minimum practical extent, consistent with benefits provided, if any. Unless a different standard is adopted in the HSP for a specific service, projects that are projected to operate at less than eighty percent (80%) utilization of available capacity in their third (3rd) year of operation, given operating hours determined by the Director to be reasonable, shall be deemed not to meet this standard. The Director may consider special circumstances concerning utilization for teaching and research in determining compliance with the utilization rate standard.

4012.20 Each applicant shall satisfy the criterion for the effect of operational costs of the project on the applicant's budget. The standard for satisfying this criterion is by providing evidence and assurances that the applicant's operating cost and revenue analysis show that the project will not substantially negatively affect the applicant's continuing financial operational viability, given reasonable revenue and volume projections.

4012.21 Each applicant shall satisfy the criterion for adoption of energy conservation techniques. The standards for satisfying this criterion are as follows:

(a) If a project is designed to conserve energy, the applicant shall provide evidence and assurances that the proposal is the most cost effective and practical means available and that over the life cycle of the facility the proposal will result in reduced costs; and

(b) If a project is not designed primarily to conserve energy, if construction or equipment replacement is involved in the project, the applicant shall provide evidence and assurances that the project incorporates the most cost effective and practical energy conservation techniques over the life cycle of the project.

4012.22 Each applicant shall satisfy the criterion for effect on competition. The standards

for satisfying this criterion are as follows:

(a) If a new service does not involve capital expenditures of an amount that would otherwise require a CON review, the applicant shall provide evidence and assurances that the project will positively affect competitive factors and result in a more appropriate supply of services at lower charges or at charges no higher than is justified by the benefits of its more appropriate availability, quality, and other features; and

(b) For all other projects, including acquisitions, the applicant shall provide evidence and assurances that the project will not adversely affect competition or an adequate supply of services.

4012.23 Each applicant shall satisfy the criterion for efficiency and effectiveness of existing services. The standards for satisfying this criterion are as follows:

(a) If an application proposes to modernize a service, to replace equipment, or to expand a service, an applicant shall provide evidence and assurances that the results of the proposed modernization, service expansion, or equipment replacement cannot be achieved by reasonable increases in the applicant's efficiency or effectiveness, including reasonable changes in operating hours, more efficient use of other equipment, use of revised procedures, better scheduling of services, or referral to other providers; and

(b) For a proposed new service, an applicant shall provide evidence and assurances that the proposal is the most efficient, effective, and practical manner of providing needed services, considering not only alternatives that the applicant might offer but also the operations or potential operations of other providers.

4012.24 Each applicant shall satisfy the criterion for construction plan design and specification alternatives. The standard for satisfying this criterion is by providing evidence and assurances that the construction methods and material specifications selected are the most cost effective over the life cycle of the proposed project, taking construction, energy, operating, and maintenance costs into consideration.

4012.25 Each applicant shall satisfy the criterion for financial viability of project operation. The standard for satisfying this criterion is by providing evidence and assurances that sufficient financial resources are available, not only to complete the project but also to sustain operations for at least two (2) years. Financial resources that may be used to meet this requirement include:

(a) Reserves for start-up costs; and

(b) Patient revenue, based on estimated patient volume, payer mix, and reimbursements the Director determines to be reasonable. Reimbursements and projected patient volume are not reasonable if the projections are based, in whole or in part, providing services that are inconsistent with the criterion and standard specified in Section 4012.27.

4012.26 Each applicant shall satisfy the criterion for availability of required capital. The standard for satisfying this criterion is by providing evidence and assurances that the proposed source of funds, including loans, are fully described, to the extent possible at the time of proposal submission for the project review. Each proposed loan agreement shall be accompanied by information on duration and repayment terms. The applicant shall provide evidence and assurances that more favorable financial arrangements cannot be obtained. The financial arrangements shall be reasonable when compared to those for other similar projects.

4012.27 Each applicant shall satisfy the criterion for compatibility with the reimbursement policies of third-party payers, where applicable. The standard for satisfying this criterion is by providing evidence and assurances that the applicants proposed services are reimbursable by third-party payers (including Medicare and Medicaid) if the third-party payers reimburse other providers in the District for providing the same services.

4012.28 Each applicant shall satisfy the criterion for availability of personnel. The standard for satisfying this criterion is by providing evidence and assurances that the proposal includes adequate qualified personnel and that the required personnel can be obtained without substantial negative effects on other services the applicant or other providers offer.

4012.29 Each applicant shall satisfy the criterion for management capability. The standard for satisfying this criterion is by providing evidence and assurances of a stable and competent background in the administration and conduct of existing programs, if any, and demonstrating the ability to conduct the proposed program in a competent and effective manner.

4012.30 Each applicant shall satisfy the criterion for availability of ancillary services, as required. The standard for satisfying this criterion is by providing evidence and assurances that required ancillary or support services necessary for operation of a proposed facility or service shall be available within the applicant's existing operation, through supply agreement with another provider, or as a part of the proposal.

4012.31 Each applicant shall satisfy the criterion for relationship of the project to the health care system. The standard for satisfying this criterion is by providing evidence and assurances that clearly define the relationship of the proposed project to existing services and facilities in the health care system, and the effect of the project on other facilities and services, including those of other providers.

The applicant shall demonstrate appropriate linkages to ensure continuity of care.

4012.32 The general criteria set forth in Sections 4012.33 and 4012.34 shall be applicable to applications submitted by HMOs.

4012.33 Each HMO applicant shall satisfy the criterion for need for the project to meet the needs of enrolled members of the HMO (or combination of HMOs) and to meet the needs of reasonably anticipated new members. The standard for satisfying this criterion is by providing evidence and assurances that the proposed project is reasonably required to meet the health care needs of the HMO members or future members who can be expected to use the proposed service or facility.

4012.34 Each HMO applicant shall satisfy the criterion for reasonable availability of the proposed service or facility only through direct provision by the applicant HMO. A proposed service or facility is presumed not to be reasonably available to an HMO other than by direct provision by the HMO (or group of HMOs) unless the Director determines that the proposed facility or service:

(a) Would be available to the HMO under a contract, lease, or similar arrangement of at least five (5) years duration;

(b) Would be reasonably available and conveniently accessible through physicians and other health professionals associated with the HMO (for example, HMO physicians having full staff privileges at a non-HMO hospital);

(c) Would not cost appreciably more than if the facility or service was provided directly by the HMO; and

(d) Would be available in a manner that is administratively feasible to the HMO.

4012.35 The general criteria set forth in Sections 4012.36 through 4012.40 shall apply to applications proposing decreases in bed capacity or closure of services.

4012.36 If the Director determines that a proposed closure of beds or of a service does not comply with life safety, or licensure codes, the proposed closure shall satisfy the criterion of financial capability of the applicant to bring the facility, beds, or service into compliance with life safety and licensure standards. The standard for satisfying this criterion is by providing evidence and assurances that the applicant is financially incapable of taking actions necessary to bring the beds or service into code or standards compliance.

4012.37 When a proposed closure of beds or of a service is based on the applicant's claim of financial infeasibility of continued operations, the proposed closure shall satisfy the criterion for financial feasibility of continued operations. The standard

for satisfying this criterion is by providing evidence and assurances that, despite operation of the facility in accordance with recognized management procedures and reasonable levels of efficiency, continued operation of the beds or service would produce continuing significant long term financial losses.

4012.38 For proposed bed reductions or service closures not subject to Sections 4012.36 or 4012.37, the proposed reduction or closure shall satisfy the criterion for consistency of the proposed bed reduction or service closure with the goals of the HSP and AIP. The standard for complying with this criterion is by providing evidence and assurances that the project complies with the goals of the HSP and AIP.

4012.39 For proposed bed reductions or service closures not subject to Sections 4012.36 or 4012.37, the proposed reduction or closure shall satisfy the criterion for degree of patient impact. The standard for complying with this criterion is by providing evidence and assurances that a proposed reduction or closure will not negatively affect consumers of health care services by causing any of the following:

(a) Substantially increasing the cost of health care;

(b) Substantially reducing the quality of health care;

(c) Substantially reducing the availability of health care;

(d) Substantially reducing the acceptability of health care;

(e) Substantially reducing continuity of health care; or

(f) Substantially reducing the accessibility of health care.

4013 FEES

4013.1 Pursuant to D.C. Official Code § 44-420(a), SHPDA shall collect application fees for a CON request. SHPDA may collect fees for data, analyses, and reports published by SHPDA. SHPDA shall also collect an annual user fee for private hospitals in lieu of a CON application fee. SHPDA may also establish user fees for other classes of facilities. All fees collected under this section shall be non-refundable.

4013.2 Pursuant to D.C. Official Code § 44-420(a), SHPDA may adjust user fees periodically to reflect changes in the Consumer Price Index. User fees stated in this section reflect changes in the Consumer Price Index through 2009. SHPDA may make further adjustments to the user fees by publishing notice of the revised fee in the *D.C. Register*, and the change shall become effective upon publication of the notice.

4013.3 The schedule of fees for application for CON and user fees shall be as follows:

(a) The CON application fee shall be the greater of three percent (3%) of the proposed capital expenditure for a proposed project or five thousand dollars ($5,000);

(b) The annual user fees for private hospitals shall be four dollars ($4.00) per inpatient admission; and

(c) The CON application fee for a project receiving funds through the Medical Homes DC Initiative, operated by the District of Columbia Primary Care Association shall be five thousand dollars ($5,000).

4013.4 SHPDA may adjust the annual user fee required of private hospitals under § 4013.3(b) to reflect changes in the Consumer Price Index issued by the Bureau of Labor Statistics by publishing the change in fee in the *D.C. Register*.

4013.5 The schedule of fees for data, analyses, and reports published by SHPDA shall be as follows:

(a) RESERVED.

(b) RESERVED.

4099 DEFINITIONS

4099.1 When used in Chapters 40 through 45 of this title, the following terms and phrases shall have the meanings ascribed:

Act—the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401 *et seq*.).

Acute long-term care—services provided by a hospital in a separate unit set aside for patients requiring hospital level care for periods longer than thirty (30) days.

Ambulatory care facility or clinic—

(1) An institution, place, or building devoted primarily to providing health care services to outpatients through any organizational arrangement other than solely through the private practice of one (1) or more physicians acting as a sole practitioner or a group practice. A group practice shall not include any arrangement in which one (1) or more physicians are hired as employees, as contractors, or other comparable arrangement to provide health

services. This term does not include facilities maintained by employers solely to provide first aid or primary health care services to their employee during the employees' hours of work. This term does not include a health fair that continues for less than seven (7) days;

(2) An entity that received federal grant support, a block grant, or other program for the operation of a community or neighborhood health center; or

(3) An entity that receives donations for providing health services to outpatients.

Ambulatory surgical facility—a facility that is not a part of a hospital that provides surgical treatment to patients not requiring hospitalization and that is licensed or proposed to be licensed as an ambulatory surgical treatment center by the District under the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq*.).

Annual Implementation Plan or AIP—the annual plan prepared by SHPDA and SHCC to specify actions that will achieve the goals and objectives of the State Health Systems Plan.

Applicant—a person who consults with SHPDA before applying for a CON or a person who applies for a CON.

Certificate of Need or CON—the documentation demonstrating approval from SHPDA that is required before a person may offer or develop a new institutional health service or obligate a capital expenditure to obtain an asset.

Director—the Director of the SHPDA of the Department of Health.

Ex parte contact—an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

Freestanding hemodialysis facility—a kidney disease treatment facility, not located within a hospital, that provides chronic maintenance hemodialysis services.

General hospital—an institution that primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured,

disabled, or sick persons, and that is licensed or proposed to be licensed as a hospital by the District government.

Health care facility or HCF—a private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility, home health agency, hospice, or other comparable health care facility that has an annual operating budget of at least five hundred thousand dollars ($500,000). This term shall not include Christian Science sanitariums, operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional or group of professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment, or a health facility licensed or to be licensed as a community residence facility, or an Assisted Living Residence.

Health Maintenance Organization or HMO—a private organization that is a qualifying HMO under federal regulations or has been determined to be an HMO under 22 DCMR Chapters 40 through 45.

Health service—a medical or clinical related service, including a service that is diagnostic, curative, or rehabilitative, and those related to alcohol abuse, drug abuse, inpatient mental health services, home health care, hospice care, medically supervised day care, and renal dialysis. This term shall not include services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

Health Systems Plan or HSP—the comprehensive health plan prepared by SHPDA and the SHCC according to the requirements of the Act.

Home health agency—a public agency or private organization, or a subdivision of an agency or organization, that is primarily engaged in providing skilled nursing services and at least one (1) other therapeutic service to individuals in their residences, that has at least one (1) employee in addition to the proprietor if the agency is a sole proprietorship. This term does not include an entity that provides only housekeeping services.

Inpatient—the provision of health care services over a period of twenty-four (24) consecutive hours or longer.

Intermediate care facility or ICF—an institution that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility

provides, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board), that is licensed or proposed to be licensed as an intermediate care facility by the District government.

Other specialty hospital—an institution primarily engaged in providing to inpatients diagnosis and treatment for the limited category of illness or illnesses for which the institution is or proposes to be licensed as a "special hospital" by the District government. The term does not include a psychiatric hospital, rehabilitation facility, or rehabilitation hospital.

Outpatient—the provision of health care services over less then twenty-four (24) consecutive hours.

Psychiatric hospital—an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment, and rehabilitation of mentally ill and emotionally disturbed persons, that is licensed or proposed to be licensed as a hospital by the District government.

Rehabilitation facility or rehabilitation hospital—a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision, and that, if it serves inpatients, is licensed or proposed to be licensed as a "special hospital" by the District government.

Skilled nursing facility or SNF—an institution or a distinct part of an institution that primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, that is licensed or proposed to be licensed as a skilled nursing facility by the District government.

SHCC --Statewide Health Coordinating Council

SHPDA --State Health Planning and Development Agency

Year—unless otherwise indicated, any period of three hundred sixty-five (365) consecutive days.

4100 NEW HEALTH SERVICES

4100.1 Except for a new institutional health service offered solely for research, no person shall construct, develop, or otherwise establish a new institutional health service,

including a new health care facility, health care service, or home health or nursing service, without first obtaining a CON. A person establishing a new institutional health service solely for research shall notify SHPDA in writing of its intent to do so and the purpose of the new institutional health service.

4100.2 The following shall be institutional health services for purposes of this title:

(a) Acute medical-surgical services not otherwise specified;

(b) Cardiac catheterization services;

(c) Cardiac surgery services;

(d) Coronary care services;

(e) Computed tomography services;

(f) Neonatal intensive care services;

(g) Newborn services;

(h) Obstetric services;

(i) Pediatric services;

(j) Pediatric cardiac surgery services;

(k) Physical medicine and rehabilitation services;

(l) Psychiatric care services, short-term;

(m) Psychiatric care services, long-term;

(n) Emergency medical services;

(o) Physical therapy services;

(p) Occupational therapy services;

(q) Home health services;

(r) Hospice care;

(s) Diagnostic radiology and ultrasound services;

(t) Radiation therapy services;

(u) Burn services;

(v) Ambulatory surgery services;

(w) Primary care centers' services;

(x) Alcoholism-chemical dependency services;

(y) Acute long-term services;

(z) Skilled nursing services;

(aa) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;

(bb) Outpatient staff-assisted in-facility chronic maintenance hemodialysis services;

(cc) Outpatient self-care in-facility chronic maintenance hemodialysis services, including training;

(dd) Outpatient self-care in-facility intermittent peritoneal dialysis services, including training;

(ee) Training for home intermittent peritoneal dialysis;

(ff) Training and follow-up services for continuous ambulatory peritoneal dialysis;

(gg) Renal dialysis services based on dialysis technologies not otherwise specified;

(hh) Renal transplantation services;

(ii) New technology as determined by SHPDA;

(jj) Transplant services; and

(kk) Open heart surgery.

4100.3 The Director may periodically assess and update the list set forth in Section 4100.2, as warranted by changes in medical technology and practice, and may add a health service to the list when, in his or her judgment, a new medical technique is of a highly specialized nature.

4101 NEW HEALTH SERVICES DETERMINATIONS

4101.1 A person shall request a determination from SHPDA as to whether a new technique constitutes a new institutional health service subject to review before offering any new medical technique of a highly specialized nature not appearing on SHPDA list of health services.

4101.2 No person shall offer any new medical technique, other than for research or emergency purposes, before receiving a final determination from SHPDA that the technique does or does not constitute a new health service.

4101.3 The Director shall make a determination whether a medical technique constitutes a new health service within one hundred twenty (120) days after receiving the request. SHPDA may request additional documentation from the person in support of the request to assist SHPDA in making its determination.

4102 CAPITAL EXPENDITURES

4102.1 Except for a capital expenditure made solely for research, no person shall make or obligate a capital expenditure for a health service or facility before first obtaining a CON if:

(a) The capital expenditure is two million five hundred thousand dollars ($2,500,000) or more;

(b) The capital expenditure is for major medical equipment valued at one million five hundred thousand dollars ($1,500,000) or more; or

(c) The capital expenditure is for a single piece of diagnostic equipment for which the cost or value is two hundred fifty thousand dollars ($250,000) or more.

4102.2 A person intending to make a capital expenditure solely for the purpose of research shall notify SHPDA of its intent in writing and describe the nature of the capital expenditure to be made for research purposes.

4102.3 For the purposes of this section, capital expenditure includes the cost of any studies, surveys, designs, plans, working drawings, specifications, or other services (including staff effort) associated with the capital expenditure.

4102.4 A capital expenditure unrelated to patient care valued at eight million dollars ($8,000,000) or more, by an existing health facility shall require CON review unless the facility or activity is specifically exempted from CON review.

4102.5 A capital expenditure by a non-health facility component of a larger institution that also includes a hospital or other health facility or service (such as those made by a university or medical school that operates a hospital) shall not be treated as

relating to the health service or facility unless either of the following applies:

(a) Any part of the capital expenditure is made by or represents an obligation of the health facility or service component; or

(b) The expenditure actually or potentially directly affects patient charges or the cost of providing care.

4102.6 An obligation for a capital expenditure shall be considered to be incurred by or on behalf of a health care facility:

(a) On the date that a health care facility, or another entity on behalf of the HCF, enters into a contract enforceable under law for the construction, acquisition, lease, or financing of a capital asset;

(b) On the date that the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the HCF as its own contractor; or

(c) On the date on which the gift is completed, when the property is donated.

4102.7 An obligation for a capital expenditure that is contingent on the issuance of a CON shall be considered not to be incurred until SHPDA issues the CON.

4102.8 The provisions of Section 4102.1 shall not limit any form of preliminary budget approval for inclusion in the budget by the applicant's administrative review authority.

4102.9 Budget inclusion shall be a prerequisite for submitting a complete application for a CON.

4103 MAJOR MEDICAL EQUIPMENT

4103.1 Except for the acquisition of major medical equipment solely for research, no person or HCF shall acquire (in whole or in part) through lease, rental, donation, or any comparable arrangement, or put into operation, major medical equipment (a single unit or system with related functions) without first obtaining a CON.

4103.2 A HCF acquiring major medical equipment solely for research shall notify SHPDA in writing of its intent to acquire the equipment and describe the use to be made of the major medical equipment.

4103.3 If major medical equipment is acquired by a lease or comparable arrangement, or any other type of transfer by two (2) or more persons acting in concert, and if the aggregate cost of the acquisition would be one million five hundred thousand dollars ($1,500,000) or more, or two hundred fifty thousand dollars ($250,000) or

more for a single piece of diagnostic equipment, if the acquisition had been by purchase at fair market value, the acquisition shall be deemed an acquisition of major medical equipment requiring CON review, notwithstanding that the cost or value to each participating person of that acquisition may be less than the monetary threshold for major medical equipment.

4104 REVIEW OF PROPOSALS: BEDS

4104.1 No person shall increase, decrease, or redistribute among health service categories the bed capacity of a HCF by ten percent (10%) or ten (10) beds, whichever is less, in any two (2) year period.

4104.2 The distribution of bed types shall use the following categories:

(a) Medical-surgical;

(b) Coronary care;

(c) Obstetrics-gynecology;

(d) Obstetrics-gynecology;

(e) Normal nursery and neonatal intermediate care;

(f) Neonatal Intensive care;

(g) Pediatrics;

(h) Alcoholism, chemical dependency;

(i) Rehabilitation;

(j) Extended acute long-term care;

(k) Medical-surgical or skilled nursing;

(l) SNF;

(m) ICF; and

(n) Skilled nursing or intermediate care (swing in a facility licensed as both a SNF and ICF).

4104.3 A person may lawfully close a bed without obtaining a CON under the following circumstances:

(a) A HCF has not staffed or otherwise held the bed ready for immediate use by patients for twelve (12) consecutive months; and

(b) The bed, when taken together with the sum of all other beds closed and opened does not represent a net change of more than ten (10) beds or ten percent (10%) of the total number of beds authorized in the HCF or particular service during the twenty-four (24) month period preceding the closure.

4104.4 The date on which the HCF removes the last patient from a recognized unit shall begin the consecutive twelve (12) month period under Section 4104.3(a) for every bed in the unit proposed for closure.

4104.5 Reopening one (1) or more beds by re-staffing it and otherwise holding it ready for immediate use, while at the same time removing staff and otherwise removing the same or a similar number of other beds of the same general type from immediate use by patients shall not constitute the beginning of another consecutive twelve (12) month period.

4104.6 Rotating short-term suspensions of individual beds or units shall not be used to circumvent the consecutive twelve (12) month period specified in Section 4104.3(a).

4105 REVIEW OF PROPOSALS: NEW SERVICES

4105.1 No person shall offer an institutional health service by or through an HCF that was not offered by the same HCF on a regular basis within the twelve (12) month period before the time the service would begin without first obtaining a CON.

4105.2 For purposes of this section, the term “offer a service on a regular basis” shall mean being staffed and otherwise prepared to deliver the service at all times or on a regularly scheduled basis. Inability to deliver a service as scheduled for reasons beyond the control of the provider in emergency situations of short duration shall not affect a provider’s offering of a service on a regular basis.

4105.3 A service offered “through” an HCF or an HMO includes a service that is offered to a substantial extent (as determined by SHPDA) on behalf of that institution by others and not offered physically in the institution subject to review.

4105.4 A service offered at a different facility shall not satisfy the requirement that the service has been offered on a regular basis.

4106 REVIEW OF PROPOSALS: RENAL DIALYSIS

4106.1 No person shall increase the number of renal dialysis stations in an HCF or health service or move stations from one HCF to another without first obtaining a CON.

4106.2 For purposes of this section, a "renal dialysis station" means a station certified for participation in the Federal End Stage Renal Disease (ESRD) Program under Medicare, or an equivalent station.

4106.3 Renal dialysis stations shall be categorized into the following types, with each type considered a separate health care service:

(a) Acute dialysis services, including inpatient hemodialysis and inpatient intermittent peritoneal dialysis;

(b) Outpatient staff-assisted, in-facility, chronic maintenance hemodialysis services;

(c) Outpatient self-care, in-facility, chronic maintenance hemodialysis services, including training;

(d) Outpatient self-care, In-facility, Intermittent peritoneal dialysis services, including training;

(e) Training for home intermittent peritoneal dialysis; and

(f) Any other dialysis service approved by the Director.

4106.4 An increase in renal dialysis services not involving stations may be subject to CON review under other provisions of Chapters 40 through 45 of this title.

4107 REVIEW OF PROPOSALS: CLOSURES

4107.1 No person shall permanently close a health care facility or health service, without notifying SHPDA, in writing and obtaining its approval.

4107.2 For purposes of this section, the phrase "permanently close a health care or service" means removing staff or equipment necessary to operate a facility or service for a period longer than twelve (12) consecutive months.

4107.3 Removing equipment shall include allowing equipment that is not operational to remain in place.

4107.4 The date of the removal for inpatient facilities is the date that the last patient is removed from the facility and shall be the beginning of the twelve (12) consecutive month period under Section 4107.2.

4107.5 An HCF shall maintain nurse staffing schedules, daily patient census, and other relevant records so that compliance with the requirements of this section may be readily demonstrated, and shall permit SHPDA inspection of those records upon

request.

4107.6 A person proposing to permanently close an HCF or health service shall notify SHPDA of the proposed closing not later than ninety (90) days before the proposed closing.

4107.7 The notice required by Section 4107.6 shall include the following information:

(a) A description of what is to be closed;

(b) The name of the owner of the HCF or health service to be closed;

(c) The expected date of closure;

(d) The number, type, and condition of patients affected;

(e) The provisions that the provider is making for the continuing care of the affected patients; and

(f) A detailed explanation for the closure.

4107.8 SHPDA shall provide assistance for an orderly transition of patient care to the extent possible.

4108 ACQUISITIONS

4108.1 No person shall acquire an existing HCF by purchase, lease, or other arrangement to acquire effective control over a facility without first obtaining a CON.

4108.2 For purposes of this section, the phrase “acquire effective control” includes:

(a) A transfer, assignment or other disposition of fifty per cent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of the corporation or entity;

(b) A transaction resulting in a person, or a group of persons acting in concert, owning or controlling, directly or indirectly, fifty per cent (50%) or more of the stock, voting rights thereunder, ownership interest, or operating assets of the corporation or entity;

(c) A transaction resulting in a person, or a group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of a corporation or entity; or

(d) A conversion that results in selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets

or a material amount of the assets of a nonprofit HCF to a for-profit entity, whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including an entity that results from, or is created in connection with, the conversion.

4109 HEALTH MAINTENANCE ORGANIZATIONS

4109.1 A Health Maintenance Organization (HMO), or combination of HMOs, shall obtain a CON before undertaking any activity for which a CON is required unless it applies for and receives an exemption from SHPDA under this section.

4109.2 In its application for exemption, the HMO, or combination of HMOs, shall provide information to demonstrate the following:

(a) The facility in which the service will be provided is or will be geographically located in a place that is reasonably accessible to the enrolled individuals; and

(b) At least seventy-five percent (75%) of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO (or HMOs in combination).

4109.3 SHPDA shall grant a HMO an exemption under this section after a review of not more than fifteen (15) days if it has not begun to provide health care services on the date an application is submitted for an exemption and it satisfies the criteria in Section 4109.2.

4109.4 Any decision by SHPDA to approve or deny an application for an HMO exemption shall be based solely on the record established in the administrative proceedings held with respect to the application.

4109.5 No exemption shall be granted solely because SHPDA failed to reach a decision within the fifteen (15) day review period.

4199 DEFINITIONS

4199.1 The provisions of Section 4099 of this title, and the definitions set forth in that section shall apply to this chapter.

CHAPTER 42 APPLICATION FOR CERTIFICATE OF NEED REVIEW

4200 SUBMISSION OF APPLICATIONS

4200.1 An applicant shall submit an application for a CON in writing on a form prescribed by SHPDA. The form shall contain the information that SHPDA

uniformly prescribes and publishes as requirements for a CON.

4200.2 An application for major medical equipment or a capital expenditure shall specify the applicant's proposed timetable to make that service or equipment available and to complete the project, as well as other information SHPDA shall require for evaluating the application under the appropriate review criteria, the State Health Plan, and the requirements of the District of Columbia Health Services Planning Program Re-Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-191; D.C. Official Code § 44-401 *et seq.*).

4200.3 SHPDA shall use a single form for each type of application, except transfer of ownership, even though not all questions on the form may be relevant for a particular type of application. SHPDA, in a pre-application meeting between the applicant and an assigned SHPDA staff member, shall specify for each applicant the questions that require responses for that application.

4200.4 If SHPDA determines that an application is incomplete, and that additional information is needed to evaluate the application, SHPDA shall request additional information from the applicant pursuant to the requirements of Sections 4200.5 through 4200.7. The information requirements may vary according to the purpose of the review or the type of health service being reviewed.

4200.5 A request from SHPDA for information from the applicant pursuant to § 4200.4 and in connection with a CON review shall be in writing and limited to the information that is necessary for SHPDA and SHCC to perform their reviews.

4200.6 SHPDA shall notify the applicant in writing when it has determined that the application is complete.

4200.7 SHPDA may review an application that has not been determined to be complete if the applicant has declined to provide further information and shall base its findings on the information available from the applicant that will demonstrate that the application complies with the HSP or the applicable criteria and standards for the service or HCF.

4201 RESERVED

4202 REVIEW PROCESS

4202.1 SHPDA shall begin a review at the beginning of one (1) of twelve (12) review cycles to be held each calendar year.

4202.2 The regular or expedited review cycles for an application shall be determined by the day on which the application is complete or deemed complete upon refusal of the applicant to supply further information. The review cycle for a CON application shall begin on the twentieth (20th) day of each month, or on the first

(1st) business day following, if that day falls on a weekend or holiday. The review period for a regular review shall end ninety (90) days after the beginning of the review cycle. The review period for an expedited review shall end thirty (30) days after the beginning of the review cycle.

4202.3 SHPDA shall complete the review within the time period specified in Section 4202.2 unless the applicant requests, and SHPDA approves, an extended review period.

4202.4 If SHPDA fails to approve or deny an application within the applicable time period, the applicant may, within a reasonable period of time following expiration of the applicable time period, bring an action in Superior Court to require SHPDA to approve or deny the application. No CON shall be issued solely because SHPDA failed to reach a decision within the specified review period.

4202.5 An applicant may request in writing to SHPDA that either the regular ninety (90) day review period or the thirty (30) day expedited review period be extended for up to twelve (12) months. SHPDA may grant an extension of the review period for a period of time that is not longer than the applicant's request.

4202.6 For a batched review, a request for extension of the review period shall affect each application in the batched review. The request for extension of time to complete the review shall not be granted unless there is agreement to the extension of time from each applicant involved in that particular batched review.

4202.7 If SHPDA denies an extension of time for a batch review, the requesting party may:

(a) Go forward with the batch review;

(b) Request review of the application at a later date; or

(c) Withdraw the application.

4202.8 If SHPDA or SHCC requires additional information necessary to performing the review after the review period has begun, an applicant shall have fifteen (15) days to provide the information. The applicant's response time shall extend the ninety (90) day review period.

4202.9 If SHPDA finds it impractical to complete a review within ninety (90) days, SHPDA may extend the review period for the following administrative reasons:

(a) When an application modification is extensive but not so substantial as to require withdrawal and resubmission under Sections 4203.1 and 4203.3;

(b) When the SHCC or a SHCC committee requests that SHPDA perform additional staff analysis of an application modified as described in paragraph (a) of this subsection and in accordance with § 4202.9 after the staff has substantially competed the initial analysis;

(c) When there is a sudden or unexpected major disruption of normal SHPDA operations, including those resulting from utility failure, natural disasters, and equipment failure; or

(d) When a public hearing is held during the review period.

4202.10 When there is an administrative extension of the review process as provided in Section 4202.9, SHPDA shall complete the review as expeditiously as is reasonable in the circumstances, and shall inform the applicant and other affected persons of the projected timetable for completing the review.

4203 SUBSTANTIAL MODIFICATION OF APPLICATION

4203.1 When an applicant proposes a substantial modification of a CON application the applicant may be required to withdraw the original application and submit a new application reflecting the modifications.

4203.2 The new application constitutes a wholly separate application and is subject to all elements of the review process, including submission of a Letter of Intent for the new application. SHPDA shall waive the sixty (60) day waiting period following the submission of a Letter of Intent for the submission of a new application when the application results from substantial modification of an original application.

4203.3 For purposes of this section, the term "substantial modification" includes:

(a) A change in the location of the facility to a different Advisory Neighborhood Commission, service, or the type of facility or service;

(b) A change in the proposed capital expenditure budget of thirty percent (30%) or more;

(c) A change increasing or decreasing patient load or units of service by forty percent (40%) or more from the capacity originally proposed; or

(e) A change in the ownership or effective control of the entity seeking to obtain a CON that, if the entity already held a valid CON, would cause the revocation of the CON under Section 4009 of this title.

4204 MORATORIUM ON APPLICATIONS

4204.1 If SHPDA determines that it needs additional time to develop and adopt CON

application review criteria and standards for specific types of facility or service, SHPDA may impose a moratorium on consideration of all applications for that specific type of facility or service for which a review has not begun.

4204.2 For the purposes of this section, development and adoption of CON application review criteria and standards shall include development and adoption of, or revision of, the HSP if the HSP will contain the required criteria and standards.

4204.3 A moratorium imposed pursuant to Section 4204.1 shall last for not more than one hundred twenty (120) days in a twelve (12) month period.

4204.4 SHPDA shall give general notice in a newspaper of general circulation within the District of Columbia and on the Department of Health website of the terms and conditions of the moratorium within fifteen (15) days after a decision to declare a moratorium on a specific type of facility or service. SHPDA shall also give specific notice within 15 days to:

(a) The SHCC; and

(b) Every person who has submitted a Letter of Intent.

4299 DEFINITIONS

4299.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

CHAPTER 43 REVIEW SCHEDULES

4300 GENERAL PROVISIONS

4300.1 An application that SHPDA determines to be complete by the tenth (10th) day of any month shall be reviewed during the review that begins on or after the twentieth (20th) day of the same month.

4300.2 An application that SHPDA determines to be complete after the tenth (10th) day of any month shall be reviewed during the next regular review that begins on or after the twentieth (20th) day of the following month.

4300.3 SHPDA shall conduct batched reviews for the types of applications specified in the following schedule:

APPLICATION TYPE	MONTHS
Alcoholism/chemical dependency services	January, July
Diagnostic radiology and ultrasound services	February, August
Home health services	April, October

	Renal disease services	March, September

4301 REGULAR AND EXPEDITED REVIEWS

4301.1 SHPDA shall review each CON application by either a regular or an expedited process.

4301.2 Except as provided in Section 4301.3, the expedited review process shall be used for each application that proposes major medical equipment or a new institutional health service for which there is an explicit finding of need in the HSP.

4301.3 SHPDA shall not conduct an expedited review for an otherwise qualified project related to a service for which the HSP states there is an excess of capacity or that has not been included in the HSP.

4301.4 SHPDA shall review an application through the regular review process at the request of an applicant even though the application qualifies for expedited review.

4301.5 The Director shall render a written decision regarding a request for expedited review. A person may request reconsideration of the decision in writing upon providing good cause. A request for reconsideration shall not be referred to the SHCC.

4301.6 The results of an expedited review shall be reported to the SHCC at the next regularly scheduled SHCC meeting.

4301.7 SHPDA shall use the same criteria and standards that apply to projects reviewed by the regular process for an application that will receive expedited review, and designation for expedited review shall in no way imply automatic approval of the application by SHPDA.

4301.8 The expedited review process differs from the regular review process as follows:

(a) An application reviewed through the expedited process shall not be referred to the SHCC for review and comment before the Director approves or denies an application; and

(b) An expedited review shall be completed within thirty (30) days after receipt of a completed application.

4302 PUBLIC HEARINGS

4302.1 SHPDA may call a public hearing on its own initiative on an application during the first thirty (30) days of the CON application review period.

4302.2 SHPDA shall also call a public hearing at the request of an affected person. The

request for public hearing shall be in writing and submitted no later than thirty (30) days after the beginning of the review period or the date of notice required pursuant to Section 4302.6, whichever is later.

4302.3 For the purposes of this section, an affected person includes:

(a) The applicant;

(b) A person who participated in the proceedings before SHPDA or the Office of Administrative Hearings;

(c) A person who is a recipient of the types of services proposed in the CON application;

(d) A person who resides within the boundaries of the Advisory Neighborhood Commission where the facility or service will be located or provide services;

(e) An HCF or HMO located in the health service area in which the project is proposed to be located that provides services similar to the services of the facility under review;

(f) An HCF or HMO that, prior to SHPDA's receipt of the proposal being reviewed, has formally indicated an intention to provide similar services in the future;

(g) A third party payer who reimburses an HCF for services in the health service area in which the project is proposed to be located; and

(h) A person who regularly uses an HCF within the geographic area where the facility or service is to be located or provided.

4302.4 An affected person shall have the right to be represented by counsel and to present oral or written testimony and evidence relevant to the matter that is the subject of the public hearing.

4302.5 SHPDA shall maintain a verbatim electronic record of the public hearing.

4302.6 RESERVED

4302.7 The notice shall include:

(a) The name of the applicant;

(b) The service to be provided;

(c) The proposed location of the service to be provided;

(d) The date, time, and location of the meeting

(e) The planned hearing agenda; and

(f) A description of matter to be discussed.

4302.8 SHPDA shall hold the public hearing no sooner than fourteen (14) days after the date of the notice of the public hearing.

4302.9 SHPDA shall not charge a fee to hold a public hearing.

4303 STATEWIDE HEALTH COORDINATING COUNCIL

4303.1 Unless SHPDA has determined that it cannot complete a regular review within ninety (90) days for a reason specified in § 4200 or the Applicant has requested postponement of the review, SHPDA shall forward to the members of the appropriate SHCC committee or the entire SHCC, as directed by the SHCC, a staff analysis of an application being reviewed under the regular review process no later than fifty-five (55) days after the beginning of the regular review process.

4303.2 SHPDA analysis under Section 4303.1 shall include positive and negative aspects of the application in relation to the HSP and adopted criteria.

4303.3 After SHCC receives SHPDA staff analysis, the SHCC shall review and comment on the application pursuant to the SHCC by-laws.

4303.4 A SHCC member who has a conflict of interest concerning an application shall follow the provisions of the SHCC by-laws regarding conflicts of interest.

4303.5 During the SHCC review and before the SHCC adopts a formal recommendation, the SHCC may require a public hearing on the application.

4303.6 The Director shall schedule a public hearing required by the SHCC pursuant to Section 4303.5 pursuant to the procedures specified in Section 4302. The Director shall provide notice for meetings of the SHCC according to the procedures set forth in Subsections 4302.5 through 4302.7. The Director shall make the minutes and hearing record available according to the requirements set for in Subsection 4302.10.

4303.7 If the SHCC fails to make a recommendation concerning an application within eighty (80) days after receiving the SHPDA staff analysis, the Director may render a decision on the CON application without the advice of the SHCC.

4303.8 The Director shall consider a timely made recommendation of the SHCC in making a decision.

4304 INSPECTION OF RECORDS

4304.1 Except as provided in Section 4304.3, a person may inspect a CON application and other information contained in SHPDA project files during regular business hours.

4304.2 A person may receive a copy of a document subject to inspection upon the payment of a reasonable fee to cover the cost of reproduction.

4304.3 A person shall not inspect or copy a portion of a CON application or other document related to a CON application that contains detailed technical descriptions of proprietary financial information, security systems, medical records systems, or controlled substance storage systems if SHPDA designates that portion of an application as "restricted".

4304.4 SHPDA may designate a portion of a CON application as "restricted" by the following procedures:

(a) The applicant shall make a written request to SHPDA to restrict the material at the time the applicant submits the application;

(b) SHPDA shall maintain the material to be categorized as "restricted" separate from the remainder of the CON application retained in SHPDA files until it renders a decision about whether the material should be restricted;

(c) The SHPDA staff person in charge of the CON review shall make a determination whether the information in question would provide information for a person to violate the security of the system in question or reveal proprietary information that would give a competitor an unfair advantage; and

(d) If SHPDA agrees to restrict material, the applicant shall provide a non-restricted and non-technical summary of the "restricted" material and submit the original information printed on paper, other than white or blue, and marked on each page at top and bottom with the statement "Restricted Security System Information; Not for Public Inspection."

4304.5 If the applicant disagrees with the SHPDA staff person in charge of the CON review concerning a request for classifying material as "restricted," the applicant may appeal the decision by making a written request for a meeting to review the matter with the Director, who shall make the final decision.

4304.6 An applicant shall not submit medical records that identify individual patients to SHPDA. Any patient record the applicant provides to SHPDA that includes personal identifying information, such as copies of driver's licenses, social security cards, that is submitted inadvertently shall not be available for public inspection.

4305 *EX PARTE* CONTACTS

4305.1 There shall be no *ex parte* contacts between:

(a) A person acting on behalf of the applicant or a CON holder, or any person opposed to or in support of issuing or modifying a CON or in favor of withdrawing a CON; and

(b) A person in SHPDA who exercises responsibility for reviewing the application or withdrawing the application.

4305.2 There shall be no oral *ex parte* contacts after the commencement of a hearing for an application for a CON, a proposed modification, or withdrawal of a CON and until SHPDA makes a decision. An interested person, including the applicant, may make written *ex parte* contacts to the SHPDA after commencement of the hearing if SHPDA keeps the hearing record open after the hearing.

4305.3 When SHPDA will not hold a hearing for a CON, a proposed modification, or a withdrawal, there shall be no oral *ex parte* contacts after the conclusion of the project review committee meeting for that application. An interested person, including the applicant, may make written *ex parte* contacts after the conclusion of the project review committee meeting if the project review committee allows additional time for an interested party to supply additional information.

4305.4 If a SHPDA staff person or SHCC member receives an *ex parte* contact prohibited under this section, he or she shall, within forty-eight (48) hours after first having reason to believe that there was a prohibited contact, prepare and deliver a written statement summarizing the substance of an oral contact or the written communication, or a copy, to the Director's designee, or deliver to the person the Director designates.

4305.5 The Director or his or her designee shall make the statements or contacts available for inspection by placing them in a file separate from the public record of the application or proposed withdrawal under review.

4305.6 If a member of SHCC occupies an employment, fiduciary, consulting, or other similar relationship (as described in the SHCC by-laws provision governing conflict of interest) with an applicant or a CON holder, the SHCC member shall be considered to be acting on behalf of the applicant or CON holder; and any contact between the SHCC member and SHPDA staff, Director, or other SHCC

members occurring in the period specified in Section 4305.2 shall be subject to the *ex parte* contacts prohibition of this section, provided that the contacts are related to the matter in question.

4305.7 For purposes of this section, the phrase "SHPDA staff" shall include the Director, staff, and the SHCC.

4305.8 A request for information concerning the status of a review made in accordance with Section 4201 shall not be considered an *ex parte* contact.

4306 CLOSING THE PROJECT RECORD

4306.1 The record for a decision on issuing or modifying a CON shall close at the end of the second (2nd) business day following the meeting of a Committee of the SHCC at which the Committee makes the initial recommendation on the application; provided, that the record shall include those proceedings of the SHCC during which the application was considered, concluding with the final SHCC vote taken on the application.

4306.2 When SHPDA conducts an expedited review the record shall close five (5) business days before the date of decision.

4306.3 The Director may order that the record remain open for a longer period of time if the Director determines that keeping the record open is necessary to ensure an adequate record.

4306.4 The SHCC and the Director shall not consider information received from a person after the date specified in the notice (unless the Director extends the record) to make a recommendation or render a decision on an application.

4307 CONSIDERATIONS AND CRITERIA FOR REVIEW

4307.1 SHPDA and the SHCC, shall develop, adopt, and use general criteria and standards set forth in Section 4012 of this title and the specific considerations and criteria in this section to conduct a CON review. The applicant shall bear the burden of producing evidence and assurances sufficient to persuade the Director that the applicant can satisfy the requirements of each applicable criterion or standard.

4307.2 SHPDA shall evaluate an HMO, an ambulatory care facility, or HCF that is controlled, directly or indirectly, by an HMO or combination of HMOs, by the criteria and considerations set forth in Section 4307.15.

4307.3 A review may consider the relationship between the health services being proposed and the applicable AIP and HSP. Each decision of SHPDA, or the appropriate judicial or administrative review body, to issue a CON shall be

consistent with the HSP, except in emergency circumstances that pose an imminent threat to public health.

4307.4 A review may consider the availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

4307.5 A review may consider the immediate and long-term financial feasibility of the proposal, and the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.

4307.6 A review may consider the need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, particularly low income persons, racial and ethnic minorities, women, persons with disabilities, the elderly, or other underserved groups, are likely to have access to those services.

4307.7 A review may consider the contribution of the proposed service in meeting the health related needs of members of medically underserved groups that have traditionally experienced difficulties in obtaining equal access to health services (such as low income persons, racial and ethnic minorities, women, and persons with disabilities), particularly those needs identified in the applicable AIP and HSP as deserving priority.

4307.8 SHPDA may consider the following for the purpose of determining accessibility of the proposed service:

(a) The rate at which medically underserved populations currently use the applicant's services as compared to the percentage of the population in the applicant's service area that is medically underserved, and the rate at which medically underserved populations are expected to use the proposed services;

(b) The applicant's performance with meeting its obligation, if any, under any applicable federal and District regulations requiring the applicant to provide uncompensated care, community service, or access by minorities, and persons with disabilities to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

(c) The rate at which the applicant serves Medicare, Medicaid, District program and medically indigent patients; and

(d) The extent to which the applicant offers a range of means for a person to access its services (*e.g.*, outpatient services, admission by house staff, admission by personal physicians).

4307.9 A review may consider the relationship of the services proposed to be provided to the existing health care delivery system.

4307.10 A review may consider the availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for providing the services proposed to be provided and the need for alternative uses for those resources as identified by the applicable AIP and HSP.

4307.11 A review may consider the relationship of the health services proposed to be provided to ancillary or support services.

4307.12 A review may consider the effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area where the services are to be provided.

4307.13 A review may consider the special needs and circumstances of those entities that provide a substantial portion of their services or resources, or both, to individuals not residing in the District or in an adjacent health service area. Those entities may include medical and other health professions schools, multidisciplinary clinics, and specialty centers.

4307.14 A review may consider the special needs and circumstances of HMOs. Those needs and circumstances shall be limited to the following:

(a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and

(b) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner that is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, SHPDA shall consider only whether the services from these providers would meet the following requirements:

(1) The services shall be available under a contract of at least five (5) years' duration;

(2) The services shall be available and conveniently accessible through physicians and other health professionals associated with the HMO (such as, whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(3) The services shall cost no more than if the services were provided by the HMO; and

(4) The services shall be available in a manner that is administratively feasible to the HMO.

4307.15 A review may consider the special needs and circumstances of biomedical and behavioral research projects that are designed to meet a national need and for which local conditions offer special advantages.

4307.16 A review of a construction project may consider the following:

(a) The costs and methods of the proposed construction, including the costs and methods of providing energy;

(b) The probable impact of the construction project under review on the costs of providing health services by the applicant and on the costs and charges to the public of providing health services by other persons; and

(c) Compliance with applicable General Services' Administration guidelines.

4307.17 If proposed health services are to be available in a limited number of facilities, a review may consider the extent to which the health professional schools in the area will have access to the services for training purposes.

4307.18 A review may consider the special circumstances of an HCF with respect to the need for conserving energy.

4307.19 A review may consider the effect of competition on the supply of the health services being reviewed.

4307.20 A review may consider improvements or innovations in financing and delivering health services that foster competition and serve to promote quality assurance and cost effectiveness.

4307.21 A review may consider the efficiency and appropriateness of using existing services and facilities similar to the health services or facilities proposed to be provided.

4307.22 A review may consider the quality of care provided by existing facilities for a review of existing services or facilities.

4307.23 When an osteopathic or allopathic facility applies for a CON to construct, expand, or modernize an HCF, acquire major medical equipment, or add services, SHPDA may consider the need for that construction, expansion, modernization, acquisition of equipment, or addition of services based on the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. SHPDA may consider the application in

terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

4307.24 Criteria used for reviews in accordance with this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

4307.25 SHPDA may adopt or revise review criteria and standards for all applications or particular types of applications.

4307.26 SHPDA may establish or revise criteria and standards by including them in an adopted HSP.

4307.27 The criteria and standards adopted by SHPDA under Sections 4307.25 and 4307.27 shall be incorporated in this title by reference.

4308 REVIEW DECISIONS

4308.1 The Director's decision to approve, deny, modify, or revoke a CON shall be in writing and shall be based on the following:

(a) The review conducted pursuant to the Act and rules promulgated pursuant to the Act; and

(b) The record established in an administrative proceeding related to a CON application review, reconsideration, or a SHPDA proposal to revoke or modify a CON application. For the purposes of this section the record shall include SHPDA staff research, testimony from a public hearing, and the information the applicant has provided.

4308.2 The written decision shall state the findings of fact related to the CON, including:

(a) Whether the project is needed;

(b) Whether the project will meet SHPDA's CON application review criteria and standards; and

(c) Whether the applicant has complied or will be able to comply with uncompensated care requirements.

4308.3 SHPDA shall provide a copy of the written decision to the applicant and make a copy available to any other person upon request.

4308.4 If SHPDA approves the CON application the CON shall constitute the decision document.

4308.5 The Director shall not issue a CON unless the Director finds that the applicant has satisfied all of the requirements specified in Section 4308.2.

4309 NOTIFICATION OF REVIEW DECISIONS

4309.1 The Director shall notify the applicant of a review decision by issuing a CON or notifying the applicant by regular mail of findings denying the CON application.

4309.2 The Director shall provide the notice required by this section no later than the end of the review period, including any extension, established for the application.

4310 RECONSIDERATION OF REVIEW DECISIONS

4310.1 An affected person may request reconsideration of the review decision within thirty (30) days after the date of decision.

4310.2 The Director shall grant a request for reconsideration and shall hold a public hearing, if good cause is shown.

4310.3 For purposes this section "good cause" may be demonstrated as follows:

(a) By presenting significant and relevant information not previously considered by SHPDA. Information that could have been presented during the course of review with reasonable diligence shall not be considered good cause for the purpose of this section;

(b) By demonstrating that there has been a significant change in a factor or circumstance the Director relied on to reach a review decision. Those factors may include the opening or closure of other facilities, changes in reimbursement policies of major third party payers, or changes in SHPDA's criteria or standards or the HSP after the date of the review decision (but before expiration of the period to request reconsideration);

(c) By demonstrating that SHPDA materially failed to follow its review procedures as specified in the Act and this title. A "material failure" is one that may reasonably be believed to have affected the outcome of the Director's review decision, that prevented the presentation of relevant information in time to be considered by the Director, or that involves an alleged violation of the prohibition on *ex parte* contacts specified in D.C. Official Code § 44-409(i); or

(d) By presenting other information that leads the Director to conclude that "good cause" is shown and a public hearing for reconsideration is in the public interest.

4310.4 If the Director finds good cause and grants reconsideration, the Director shall convene a public hearing within forty-five (45) days after a finding of good cause.

4310.5 The Director shall give notice of the hearing to the person requesting the hearing, the applicant for the CON in question, SHCC, and the general public.

4310.6 Notice of the public hearing shall be published in a newspaper of general distribution within the District.

4310.7 There shall be no *ex parte* contacts between any party and any member of SHPDA staff or SHCC related to the decision after the reconsideration hearing adjourns.

4310.8 A reconsideration public hearing is an informational hearing at which the CON applicant and any other person may submit oral or written testimony. The hearing is not a "contested case" hearing as that term is defined in D.C. Official Code § 2-502.

4310.9 A person proposing to give oral testimony at a public hearing for reconsideration (except the person requesting the hearing and the applicant or CON holder being reconsidered) shall schedule testimony with SHPDA at least one (1) business day before the hearing.

4310.10 A person who does not schedule oral testimony in advance shall be permitted to testify after all scheduled testimony has been presented.

4310.11 The person who requested reconsideration and the CON holder (if different from the person requesting reconsideration) shall each have one (1) hour to make a presentation. One (1) or more persons may present testimony on behalf of the applicant or the person who requested the reconsideration.

4310.12 Any other person or group shall be permitted to present oral testimony for up to ten (10) minutes.

4310.13 A member of SHPDA staff may address questions, at the discretion of the hearing officer, to a person presenting oral testimony.

4310.14 The time spent asking and responding to questions shall not count against the time limit of the person testifying.

4310.15 A person may submit written testimony to SHPDA before the hearing, at the hearing, or at any time before the hearing record closes.

4310.16 The hearing officer may close the record at the end of all oral testimony or hold the record open for a period of time not to exceed fourteen (14) days following the end of oral testimony.

4310.17 The Director or the hearing officer may, under special circumstances, extend the time limits for presentations prescribed in this section.

4310.18 The Director may limit the scope of the hearing as follows:

(a) To the matters for which "good cause" was demonstrated in the reconsideration request;

(b) To issues of substantial progress or justification for lack of progress for a CON proposed to be withdrawn because of lack of progress; or

(c) To evidence of subsequent occurrences or information not previously available.

4310.19 SHPDA shall maintain a verbatim record of the hearing by making a sound recording or by making a transcription of the proceeding.

4310.20 SHPDA shall make a Copy of the recorded hearing available upon payment of a reasonable fee to cover the cost of duplication.

4310.21 The Director shall issue a written decision, including findings of fact and conclusions of law, within thirty (30) days following the close of the hearing record.

4310.22 The Director may affirm, modify, or reverse the original SHPDA decision.

4310.23 The Director's decision shall constitute the final decision of SHPDA for all purposes.

4311 APPEAL OF REVIEW DECISIONS

4311.1 The Director's finding regarding a showing of "good cause" and the final decision resulting from a reconsideration review may be further appealed to the Office of Administrative Hearings by any person directly affected, including the applicant, the person who requested reconsideration, previously appearing parties, and the SHCC, within fifteen (15) days of the date of Director's finding or decision.

4311.2 A person adversely affected by a SHPDA decision may appeal the decision to the District of Columbia Court of Appeals after exhausting all administrative remedies including an appeal to the Office of Administrative Hearings.

4312 APPLICATION FEES

4312.1 Notwithstanding any other provision of Chapters 40 through 45 of this title, SHPDA shall not accept an application for CON review until the applicant first

pays a non-refundable application fee in the amount specified in D.C. Official Code § 44-420(a). Acceptable forms of payment include a certified check or money order for the application fee made payable to the "D.C. Treasurer".

4312.2 A CON holder shall not be required to pay an application fee for an extension of a CON pursuant to Section 4007. A CON holder seeking extension beyond a fourth (4^{th}) year, except for an administrative extension, shall submit a new CON application pursuant to Section 4007.14 and pay the applicable fee.

4312.3 An applicant shall not pay an application fee after withdrawing and resubmitting an application as a result of a substantial modification of an application pursuant to Section 4203, provided that the new application is submitted to SHPDA and judged to be complete by SHPDA within six (6) months of the date of withdrawal. If the applicant fails to re-submit an application within six (6) months, the application shall be deemed void, and any further request for CON review shall require the payment of a new application fee. If the resubmitted application requires a fee higher than that charged for the initial (withdrawn) application, the applicant shall pay the difference between the fee previously paid and the fee that would apply if the resubmitted application had been originally submitted.

4399 DEFINITIONS

4399.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section, shall apply to this chapter.

CHAPTER 45 DATA REPORTING

4500 REPORTS

4500.1 Pursuant to D.C. Official Code §44-405(b), a HCF or a person holding a CON under the Act shall submit to SHPDA periodic data reports related to the development of proposals subject to CON review.

4500.2 The requirements of this chapter may be supplemented, from time to time, with requirements for additional data when the data is reasonably necessary for SHPDA to carry out its mission under the Act. When the Director requires additional data from an HCF, the Director shall give written notice of the requirement not less than sixty (60) days before implementing the requirement. The notice required by this section shall include the basis for the requirements.

4501 DATA REPORTING

4501.1 An HCF subject to the requirements of Section 4500.1 shall submit to SHPDA, or to a data processing agent specified by SHPDA, the data described in this chapter, or other similar data that SHPDA may request.

4501.2 A person or entity required to file a report under this chapter shall report the data in the form and format and according to the schedule SHPDA designates. The data shall be submitted on a form prescribed by SHPDA.

4501.3 An annual report required by this chapter shall be submitted not later than ninety (90) days after the end of the report period.

4501.4 Data due less often than annually shall be submitted no later than sixty (60) days following the end of the report period.

4502 REPORT CATEGORIES

4502.1 A report submitted pursuant to Sections 4506 and 4507 of this chapter shall use the following age categories:

(a) Eighteen (18) years of age and younger; and

(b) Over (18) years.

4502.2 A report that requires listing a patient's residence under Sections 4506, 4507, and 4511 of this chapter shall use the following categories:

(a) District of Columbia;

(b) Maryland--Calvert County;

(c) Maryland--Charles County;

(d) Maryland--Montgomery County;

(e) Maryland--Prince George's County;

(f) Maryland--St. Mary's County;

(g) Maryland--other counties;

(h) Virginia--Alexandria City;

(i) Virginia--Arlington County;

(j) Virginia--Fairfax County (including Fairfax City and Falls Church);

(k) Virginia--Loudon County;

(l) Virginia--Prince William County (including Manassas and Manassas

Park);

(m) Virginia--other counties;

(n) Other states and foreign countries; and

(o) Residence unknown.

4503 FINANCIAL REPORTS

4503.1 An HCF or health service shall submit to SHPDA, not later than one-hundred and twenty (120) days following the end of the fiscal year being reported upon, a copy of its audited financial report.

4503.2 The audited financial report and supplemental data supplied with the report shall include the following information, as applicable:

(a) Balance sheet;

(b) Income statement;

(c) Cash flow schedule;

(d) Costs statement, including payroll costs, inpatient care costs, outpatient care costs, capital costs, and operating costs;

(e) Per Diem rates for inpatient room types;

(f) Rate structure;

(g) Average cost per patient day;

(h) Average cost and average charge per outpatient visit;

(i) Average cost and average charge per emergency room visit; and

(j) Revenues, including specification of Medicaid revenue, Medicare revenue, other third-party revenue, and self-pay revenue.

4504 ANNUAL REPORTS

4504.1 A hospital of any type, unless specifically exempted by SHPDA, shall provide annually, the data required in Section 4504.2 for each of the following services:

(a) Total medical-surgical services (including intensive care beds, and cardiac care services);

(b) Intensive care service;

(c) Coronary care service;

(d) Obstetrics service;

(e) Obstetrics-gynecology swing service;

(f) Nursery service;

(g) Intermediate neonatal and neonatal intensive care services;

(h) Pediatric service;

(i) Psychiatric service;

(j) Rehabilitation service;

(k) Alcoholism-chemical dependency service;

(l) Diagnostic imaging;

(m) Emergency service;

(n) Radiation therapy; and

(o) Any other service that SHPDA specifies after giving notice to the hospital at least thirty (30) days before the beginning of the period for which the data is required.

4504.2 A hospital subject to § 4504.1 shall submit a report including the following information for each service specified in that subsection:

(a) The number of patients admitted during the reporting period for the purpose of receiving inpatient nursing care; in the nursery service, the number of admissions refers to newborn infants admitted to the hospital following birth and infants admitted following transfer from home or another hospital; in the intensive and coronary care units, the number of admissions include only those patients directly admitted to the units; patients initially admitted to the medical-surgical service and later transferred to intensive care shall be reported as intra-hospital transfers to those units;

(b) The number of deliveries, the complete expulsion or extraction from its mother of a product of conception, regardless of the duration of pregnancy

(excludes induced abortions); the number of deliveries includes live births and fetal deaths; multiple births shall be counted as one (1) delivery;

(c) The number of emergency room registrants, including the sum of visits to the emergency room and psychiatric emergency services that result in the acceptance of the patient for the purpose of receiving inpatient nursing care within the hospital;

(d) The number of deaths that occur before the complete expulsion or extraction from its mother of a product of conception; death is indicated by the fact that after separation from the mother, a fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles (excludes induced abortions);

(e) The number of patients receiving surgical procedures that are performed exclusively on an outpatient basis;

(f) The number of live births, which is the complete expulsion or extraction from its mother of a product of conception (regardless of the duration of pregnancy) that, after separation from its mother, breathes or shows any other evidence of life (such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles) whether or not the umbilical cord has been cut or the placenta is attached;

(g) The number of bassinets or cribs regularly maintained for use by infants as of the last day of the reporting period;

(h) The number of beds regularly maintained for use by inpatients as of the last day of the reporting period;

(i) The number of patients who registered to receive care in an organized outpatient department;

(g) The total number of patient days of care rendered during the reporting period (i.e., the cumulative sum of the number of occupied beds in a particular service on each day of the reporting period); and

(h) Other data that SHPDA may require.

4505 ANNUAL DISCHARGE DATA REPORTS

4505.1 Each hospital, unless specifically exempted by SHPDA, shall provide annually, in a form, format, and medium designated by SHPDA, a hospital discharge data set including the following information for each patient:

(a) Age;

(b) Sex;

(c) Race;

(d) Major hospital service;

(e) Disposition;

(f) Patient residence;

(g) Admission date;

(h) Discharge date;

(i) Expected source of payment;

(j) Principal diagnosis and other diagnoses;

(k) Principal procedure and other procedures;

(l) Hospital identification;

(m) Patient sequence number (assigned in a way unrelated to the medical record number);

(n) Birth weight in grams (neonates only);

(o) Financial data;

(p) Ward; and

(q) Other data that SHPDA may require.

4505.2 Hospital discharge data shall be submitted not later than one-hundred and twenty (120) days following the end of the year being reported upon.

4506 HEART SURGERY REPORTS

4506.1 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of open heart surgery operations performed by patient age and patient residence categories for each of the following:

(a) Congenital heart disease;

(b) Valvular heart disease;

(c) Coronary heart disease; and

(d) Other.

4506.2 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of closed heart surgery operations and the number of all other cardiac operations not reported under Section 4506.1, reported by the patient age and patient residence categories specified in Section 4502, performed for the following:

(a) Congenital heart disease;

(b) Valvular heart disease; and

(c) Other.

4506.3 Each hospital, unless specifically exempted by SHPDA, shall report annually the cardiac surgery operative mortality (the number of deaths within thirty (30) days) reported by the patient age categories specified in Section 4502, for the following:

(a) Open heart surgery - coronary bypass;

(b) Open heart surgery - all others;

(c) Closed heart surgery; and

(d) Other cardiac surgery.

4506.4 For the purposes of this section, the term “open heart surgery” includes an operation that uses a mechanical pump to temporarily perform the function of circulation during surgery.

4506.5 For the purposes of this section, the term “closed heart surgery” includes an operation that does not require the use of a mechanical pump during surgery. Closed heart surgery shall include the following:

(a) Valve commissurotomy;

(b) Thoracic aneurysm repair or transection;

(c) Systemic pulmonary shunt;

(d) Ligation/division of patent ductus arterlosus;

(e) Resection of coarctation of aorta;

(f) Pulmonary artery banding; and

(g) Valvulotomy.

4506.6 For the purposes of this section, pacemaker implantations and implants of pulsation balloons are excluded from the category of operations defined as "closed heart surgery."

4507 CARDIAC CATHETERIZATION REPORTS

4507.1 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of procedures performed in the cardiac catheterization laboratory in the categories specified below by the patient age and patient residence categories specified in Section 4502 (the procedure includes all. diagnostic studies, angiographic and physiologic, performed on a patient during one (1) session in the laboratory):

(a) Right heart catheterizations (with and without angiography);

(b) Left heart catheterizations without coronary angiography;

(c) Left heart catheterizations with coronary angiography;

(d) Combined right and left heart catheterizations without angiography;

(e) Combined right and left heart catheterizations with angiography (other than coronary angiography);

(f) Combined right and left heart catheterizations with coronary angiography;

(g) Permanent pacemaker implantation;

(h) Other cardiac procedures (includes temporary pacemakers);

(i) Electrophysiological studies (e.g., HIS Bundle);

(j) Percutaneous transluminal coronary angioplasty (PTCA);

(k) Streptokinase thrombolysis; and

(l) Other non-cardiac angiographic procedures.

4507.2 Each hospital, unless specifically exempted by SHPDA, shall report annually the number of cardiac catheterization patients in the following categories by each

patient age and patient residence category specified in Section 4502:

(a) Number of cardiac patients studied;

(b) Number of non-cardiac patients studied;

(c) Number of patients studied with pre-catheterization diagnosis of the following:

(1) Coronary artery disease;

(2) Coronary artery and valvular or congenital disease;

(3) Valvular or congenital disease only; and

(4) Other diseases.

4507.3 Each hospital, unless specifically exempted by SHPDA, shall report annually the cardiac catheterization mortality (the number of deaths when mortality occurs during or immediately following surgery), reported by the patient age and patient residence categories specified in Section 4502.

4508 EMERGENCY ROOM REPORTS

4508.1 Each hospital, unless specifically exempted by SHPDA, shall report annually, on the basis of a one (1) week sample survey, the number of emergency room encounters that were judged not to require emergency service.

4508.2 SHPDA shall notify a hospital at least three (3) months in advance of the selected week for the survey required in Section 4508.1.

4508.3 Each hospital, unless specifically exempted by SHPDA, shall report quarterly the data listed below:

(a) Average daily hours of operation;

(b) Average daily hours on diversion;

(c) Average daily hours closed;

(d) Average daily number of patients; and

(e) Severity quotient;

4509 REPORTS OF OTHER FACILITIES

4509.1 Each SNF and each ICF shall provide the following data annually:

(a) The number of operating (staffed and otherwise held ready for occupancy) beds, by bed category (i.e., SNF and ICF);

(b) The number of patient days by bed category;

(c) The jurisdiction of residence of patients at the time of admission, by bed category (using the jurisdiction categories specified in Section 4502);

(d) The number of admissions by bed category;

(e) The number of discharges by bed category;

(f) The average length of stay by bed category;

(g) Payment source by days of care by bed category; and

(h) Long-term acute care.

4509.2 Each renal dialysis facility shall report annually, by jurisdiction of patient residence (using the categories as specified in Section 4502), the number of patients regularly receiving each type of service the facility offers, the number of treatments given by type, and the facility's hours of operation.

4509.3 Each home health agency and each home care hospice shall report annually the number of patients serviced, and the number of visits provided, by type and major payment source (Medicaid, Medicare, other third party, and self-pay) and any other information SHPDA may request.

4509.4 Each ambulatory surgical facility, neighborhood health center, drug treatment center, alcohol treatment clinic, and other freestanding medical facility subject to CON requirements, shall report annually the number of patients serviced, the number of patient encounters, and, if applicable, the number of enrollees by major payment source.

4509.5 Each HMO shall annually report the number of enrollees by the following categories:

(a) Jurisdiction of residence as specified Section 4502;

(b) The number of ambulatory visits;

(c) The number of hospital admissions (by hospital); and

(d) The number of inpatient days of care (by hospital and service).

4599 DEFINITIONS

4599.1 The provisions of § 4099 of Chapter 40 of this title, and the definitions set forth in that section shall apply to this chapter.

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 5th Floor, 899 North Capitol Street, NE, Washington, DC 20002, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, except holidays, between the hours of 8:15 A.M. and 4:45 P.M. at the same address. Questions concerning the rulemaking should be directed to Angli Black, Administrative Assistant, at Angli.Black@dc.gov or (202) 442-5977.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2008 Repl. & 2012 Supp.)), hereby gives notice of its intent to adopt the following proposed amendments to Chapter 58 of Title 14 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed amendments is to provide guidance on the policy for terminating assistance for participants based on criminal activity.

The additional provisions of Chapter 58 "Owner Eviction Guidelines and Grounds for Termination from the Housing Choice Voucher Program," of Title 14, "Housing," of the DCMR are proposed as follows:

Section 5804 is added as follows:

5804 Termination of Participation and Assistance for Criminal Activity

5804.1 DCHA shall terminate participation of a Family if:

(a) DCHA determines that any adult member of the household has ever been convicted of drug related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing; or

(b) Any member of the household is subject to a lifetime registration requirement under a state or District of Columbia sex offender program.

5804.2 DCHA may terminate participation of a Family if:

(a) Any adult Family member is currently engaged in any illegal use of a drug at or in the proximity of the assisted unit, that causes a nuisance or a disturbance at or in the proximity of the assisted unit or surrounding neighborhood or, threatens the health or safety of neighbors at or in the proximity of the assisted unit or surrounding neighborhood; or

(b) Any Family member has engaged in any felonious drug related criminal activity in the preceding two (2) years from the date of a notice of recommendation for termination for drug related criminal activity.

5804.3 As used in this section only, "currently engaged" shall mean one or more offenses that occurred no more than nine months prior to the date a notice of

recommendation for termination for drug related criminal activity is issued by DCHA.

5804.4 DCHA has the burden of proving that a Family violated one or more of its obligations by a preponderance of the evidence.

5804.5 The following types of evidence of drug related activity are relevant to show that a family member has violated the family obligation prohibiting such activity:

(a) Conviction or the arrest for any crime described in Title 48, Subtitle III, Chapter 9, Subchapter IV of the D.C. Official Code;

(b) Police report listing drug related criminal activity by household member or at or near the assisted property;

(c) Report by other law enforcement agencies or offices or DCHA investigative or compliance staff;

(d) Credible evidence provided by persons with knowledge of the alleged activity; or

(e) Search warrant return for the property listing drugs, or drug paraphernalia.

5804.6 DCHA may terminate participation of a Family if:

(a) Any adult Family member has engaged in any violent criminal activity in the preceding two (2) years from the date of a notice of recommendation for termination for violent criminal activity.

(b) Any adult Family member has engaged in any violent criminal activity in the preceding two (2) years from the date of a notice of recommendation for termination for violent criminal activity.

5804.7 The following types of evidence of violent criminal activity are relevant to show that a Family member has violated their family obligation prohibiting such activity:

(a) Conviction or arrest for any of the following criminal offenses listed in D.C. Official Code § 23-1331(4);

(b) Police report listing violent criminal activity by a household member;
(c) Report by other law enforcement agencies or offices or DCHA investigative or compliance staff;

(d) Credible evidence provided by persons with knowledge of the alleged activity; or

(e) Search warrant return for the property listing illegal weapon(s), illegal ammunition, or any legal weapon believed to be used in the act of violent criminal activity.

5804.8 In instances where DCHA has discretion to terminate assistance for the activities as described in § 5804.2 and § 5804.6, DCHA will consider evidence of or testimony about relevant mitigating circumstances, rehabilitation, and disabilities as enumerated at 24 C.F.R. § 982.552(c)(2).

5804.9 Prior to an Informal Hearing a Head of Household may present evidence of mitigating circumstances for consideration directly to the HCVP Director or an appointed designee prior to an Informal Hearing, but only if the person alleged to have committed the criminal activity is not the Head of Household.

5804.10 After a Head of Household or Family member provides evidence of mitigating circumstances to DCHA, the HCVP Director or an appointed designee will notify the Family within ten (10) business days via first class mail whether the information provided was sufficient to rescind the recommendation for termination.

5804.11 DCHA shall not consider evidence of mitigating circumstances prior to the Informal Hearing when the person alleged to have committed the criminal activity is the Head of Household.

5804.12 A Family shall be notified of their rights under Chapter 89 of this title of the DCMR on the notice of termination.

5804.13 DCHA shall not terminate assistance for criminal activity pursuant to the factors enumerated at § 4907.5 if the Head of Household or immediate family member is the victim of an intra-family offense.

All persons desiring to comment on the subject matter of this rulemaking should file comments in writing no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599; (202) 535-2835; copies of these rules may be obtained from DCHA at that same address. Alternatively, copies of the rules can be requested from and comments can be sent to Karen Harris at Office of the General Counsel, District of Columbia Housing Authority, at PublicationComments@dchousing.org. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking" in the subject line.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-203 (2008 Repl. & 2012 Supp.)), hereby gives notice of its intent to adopt the following proposed amendments to Chapter 89 of Title 14 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed amendments is to amend the existing policies on informal hearings.

Chapter 89 (Informal Hearing Procedures For Applicants And Participants Of The Housing Choice Voucher And Moderate Rehabilitation Program) of Title 14 (Housing) of the DCMR is amended as follows:

8903 Notice of Hearing and Production of Documents

8903.1 Requests for an Informal Hearing shall follow the following guidelines:

(a) Requests for an Informal Hearing or extension of time to request an Informal Hearing shall be reduced to writing.

(b) DCHA may assist participants in reducing requests for an Informal Hearing or extension of time to request an Informal Hearing to writing to comply with § 8903.1(a).

(c) Any assistance provided by DCHA to reduce a request to writing shall not be deemed the provision of legal advice to the participant.

(d) Participants shall either mail via first class mail or personally deliver to DCHA's Office of Fair Hearings their request for an Informal Hearing or request for an extension of time to request an Informal Hearing. If personally delivered, DCHA shall provide a receipt to the participant noting that the request for an Informal Hearing was received and the date it was received.

(e) If the request for an Informal Hearing is mailed to DCHA, the request shall be postmarked within thirty-five (35) calendar days from:

(1) the postmark date of DCHA's notification under § 8902; or

(2) the notice of an action or determination by DCHA.

(f) If the request for an Informal Hearing is personally delivered to DCHA, the request must be received by DCHA's Office of Fair Hearings within thirty-five (35) calendar days from:

(1) the postmark date of DCHA's notification under § 8902; or

(2) the date of the issuance of the notice of a challenged action.

(g) Requests to reschedule an Informal Hearing shall be subject to the following conditions:

(1) Either party may request to reschedule an Informal Hearing for the convenience of the party up to three (3) calendar days prior to the first scheduled Informal Hearing date, with or without a showing of good cause.

(2) Either party may request to reschedule an Informal Hearing any time prior to the first scheduled Informal Hearing date or prior to any subsequent hearing date, only if the requesting party can demonstrate good cause and if delay will not result in harm or prejudice to the other party.

(3) Notwithstanding the paragraph above, the Office of Fair Hearings will reschedule an Informal Hearing as a reasonable accommodation if the participant can demonstrate that a disability prevented them from rescheduling within the prescribed time periods.

(h) Once a timely request for an Informal Hearing has been filed, the Housing Assistance Payments (HAP) will continue to the current landlord in accordance with the current HAP contract in effect at the time of the request for an Informal Hearing until a final determination is made in accordance with this Chapter.

(i) If a participant has not submitted a timely request for an Informal Hearing per § 8903.1, but still desires an Informal Hearing to be held, the participant must file a "Good Cause Hearing" request. The Good Cause Hearing request shall explain the reason or reasons that the participant failed to comply with the requirements of § 8903.1.

8903.2 Good Cause Hearings shall follow the following guidelines:

(a) A participant can only request a Good Cause Hearing if the participant has been terminated from the Housing Choice Voucher Program.

(b) If the Office of Fair Hearings receives an Informal Hearing request that does not comply with the deadlines in § 8903.1, the Office of Fair Hearings will notify the participant in writing of the right to request a Good Cause Hearing.

(c) Any Good Cause Hearing Request received more than sixty (60) calendar days after the date of the issuance of the notice pursuant to§ 8903.2(a) shall be denied as untimely and barred.

(d) If the Office of Fair Hearings does not schedule a Good Cause Hearing within thirty (30) calendar days of the participants' timely request, then DCHA shall automatically reinstate any relevant benefits retroactive to the date of termination, pending the issuance of a decision following a Good Cause Hearing.

(e) The sole issue for determination in the Good Cause Hearing shall be whether the participant had good cause for failing to timely request an Informal Hearing.

(f) In determining whether the participant has demonstrated good cause, the Hearing Officer shall consider the following factors:

(1) Whether and when the participant received notice of the challenged DCHA determination, action, or inaction; and

(2) Any mitigating circumstances related to the untimely filing of the request for an Informal Hearing, including but not limited to circumstances related to the participant's disability, incapacity, or an emergency affecting the participant or a member of the participant's household.

(g) At the Good Cause Hearing, the Hearing Officer shall not hear evidence or address the merits of the participant's underlying challenge to the DCHA's action, inaction or determination. The Hearing Officer shall only consider evidence regarding the timeliness of the request and the factors listed in § 8903.2 (f) at the Good Cause Hearing.

(h) In the event that the Hearing Officer hears the merits of the underlying challenged DCHA action or determination, either party may request the Executive Director or his/her designee to vacate the Hearing Officer's decision and reschedule the Good Cause Hearing with another impartial Hearing Officer in accordance with the provisions above.

(i) The Hearing Officer shall make his or her best effort to render a decision on the good cause showing on the same day that the Good Cause Hearing is held, but shall render a decision no more than three (3) business days af-

ter the Good Cause Hearing.

8903.3 The following process for scheduling and issuing Informal Hearing and Good Cause Hearing notification letters shall apply:

(a) When the Office of Fair Hearings receives a timely written request for an Informal Hearing or a Good Cause Hearing the following provisions apply:

(1) The Office of Fair Hearings shall mail a letter notifying the participant of the date and time of the Hearing within fifteen (15) calendar days of the postmark date of the hearing request if the hearing request is mailed to the Office of Fair Hearings, or within fifteen (15) calendar days of the receipt if the hearing request is hand-delivered to the Office of Fair Hearings.

(2) The Office of Fair Hearings notification letter shall also be mailed to any representative of the participant who is identified by name and address on the request for the Hearing or who has entered his or her appearance since then.

(3) The Office of Fair Hearings shall deliver a letter notifying the DCHA Office of General Counsel of the date and time of the Hearing within fifteen (15) calendar days of the postmark date of the hearing request.

(4) The date of the hearing shall be no sooner than fifteen (15) calendar days and no later than thirty (30) calendar days after the postmark date of the Office of Fair Hearings letter notifying the participant of the date and time of the Hearing.

(b) All notification letters for Hearings shall contain:

(1) The date and time of the Hearing;

(2) The location of the Hearing;

(3) The participant’s right to bring evidence, witnesses, and legal or other representation at the participant’s expense;

(4) The right to view, or have their counsel or other representative view, subject to a timely request under § 8903.4 any documents in the participant's file, or any evidence in the possession of DCHA, upon which DCHA based the proposed action, inaction or determination, or that DCHA intends to rely on at the Hearing;

(5) The right to obtain, subject to a timely request under Section 8903.4, a copy of documents or evidence in the possession of DCHA prior to the Hearing and notice that DCHA shall provide the copies pursuant to § 8903.4; and

(6) The participant must provide to the Office of the General Counsel copies of any documents or evidence the participant intends to use at the Hearing at least three (3) business days prior to the scheduled Hearing.

(c) If DCHA provides evidence that it mailed the notice via first class mail in the ordinary course of business to the participant's address of record and the notice was not returned to DCHA, then the participant shall be presumed to have received the notice. The participant bears the burden of rebutting this presumption by providing sufficient evidence that the notice was not received.

8903.4 The following rules shall apply to the Production of Documents:

(a) DCHA shall make copies of requested documents for the participant. DCHA shall provide the first seventy-five (75) such pages to the participant at no charge and shall charge twenty-five (25) cents per page for each page in excess of seventy-five (75). If the documents are provided electronically or on a CD, DCHA is authorized to charge for the cost of the CD and the total number of pages produced electronically.

(b) Upon request by a participant or its representative to review and/or copy any documents in the participant's file, DCHA shall make such documents available to the participant, or its representative for review and/or copying either within twenty-one (21) calendar days of the request or seven (7) calendar days prior to the Informal Hearing date, whichever is sooner.

(c) In no case shall the participant, or its representatives, be allowed to remove a file from DCHA's office.

All persons desiring to comment on the subject matter of this rulemaking should file comments in writing no later than thirty (30) days after the publication of this Notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599; (202) 535-2835; copies of these rules may be obtained from DCHA at that same address. Alternatively, copies of the rules can be requested from and comments can be sent to Karen Harris, at Office of the General Counsel, District of Columbia Housing Authority, at PublicationComments@dchousing.org. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking" in the subject line.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles (Director), pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2009 Repl.); Section 801 of the Motor Vehicle and Safe Driving Amendment Act of 2000, effective April 27, 2001 (D.C. Law 13-289; D.C. Official Code § 50-921 (2009 Repl.)); and Sections 6 and 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03 and 50-1401.01 (2009 Repl.)), hereby gives notice of the intent to adopt the following rulemaking that will amend Chapter 1 (Issuance of Driver's Licenses) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR). The proposed rule will extend the time period for waiver of the written or road test after a non-commercial driver's license has expired and repeals the provision pertaining to an applicant who has points on his or her record.

This rulemaking shall be submitted to the Council of the District of Columbia for a forty-five (45) day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. Pursuant to D.C. Official Code § 50-921 (2009 Repl.), the proposal shall be deemed approved except that if within the 45-day period a resolution of disapproval has been introduced by three (3) members of the Council, the regulations shall not be deemed approved.

Final rulemaking action may be taken thirty (30) days after the date of publication of this notice in the *D.C. Register,* or the completion of the forty-five (45) day Council review period for these rules, whichever is later.

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

Chapter 1, ISSUANCE OF DRIVER'S LICENSES, is amended as follows:

Section 104, EXAMINATION OF APPLICANTS FOR DRIVER'S LICENSES, is amended as follows:

Subsection 104.9 is amended to read as follows:

104.9 Except as provided in Section 111, the Director or his or her designee may waive the requirement that an applicant take a written test or road test in the following circumstances:

(a) The written examination may be waived if the applicant presents a District driver's license that has expired for three hundred sixty five (365) days or less, or at any time successfully completes an online course as designated by the Department; and

(b) The road test, including the motorcycle road test in the case of a motorcycle endorsement holder, may be waived if the applicant presents a driver's license issued by the District that has expired for five hundred and forty-five (545) days or less.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024 or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation ("DDOT"), pursuant to the authority set forth in Sections 3(b), 5(4)(A), 6(b), and 7 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02(b), 50-921.04(4)(A), 50-921.05(b), and 50-921.06 (2009 Repl. & 2012 Supp.)), Section 604 of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198, D.C. Official Code§ 10-1141.04) ((2012 Supp.)); and Mayor's Order 96-175, dated December 9, 1996, hereby gives notice of the intent to adopt the following rulemaking to amend Chapter 24 (Stopping, Standing, Parking, and other Non-Moving Violations) and Chapter 99 (Definitions) of Title 18 (Vehicles and Traffic), and Chapter 33 (Public Right-Of-Way Occupancy Permits) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

The proposed rulemaking will establish a public right of way occupancy permit process for reserved on-street car-sharing companies to enter the reserved on-street car-sharing program. The proposed rulemaking will also modify the reserved on-street car-sharing program to require car-sharing vehicles in each ward.

Final rulemaking action shall not be taken in less than thirty (30) days after date of publication of this notice in the *D.C. Register*.

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

Chapter 24, STOPPING, STANDING, PARKING, AND OTHER NON-MOVING VIOLATIONS, is amended as follows:

Section 2406, PARKING PROHIBITED BY POSTED SIGN, is amended as follows:

Subsection 2406.12 is amended as follows:

Paragraph (a) is amended to read as follows:

(a) The Director may establish reserved on-street parking spaces for the exclusive use of car-sharing vehicles pursuant to public right-of-way occupancy permits issued pursuant to 24 DCMR § 3313.

Paragraph (b) is repealed.

Chapter 99, DEFINITIONS, is amended as follows:

Section 9901, DEFINITIONS, is amended as follows:

The following terms and their ascribed meanings are amended to read as follows:

Reserved on-street car-sharing company – a company with a basic business license to operate in the District that provides access to car-sharing vehicles to the general public for short-term reservations.

Reserved on-street car-sharing program – DDOT's program authorizing the permitting of public space for the exclusive use of car-sharing vehicles.

Chapter 33, PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS, of Title 24, PUBLIC SPACE AND SAFETY, of the DCMR is amended as follows:

A new Section 3313 is added to read as follows:

3313 RESERVED ON-STREET CAR SHARING

3313.1 No person shall use the public right-of-way for the parking of its car-sharing vehicles in designated spaces in the public space without a public space permit issued by the Director.

3313.2 The Director shall issue an annual public space permit for a reserved on-street car sharing program only to a reserved on-street car-sharing company ("company").

3313.3 A public space permit issued pursuant to this section shall be subject to the following conditions, in addition to such other conditions as may be imposed by law, regulation, or the Director:

(a) The company must indemnify the District against legal liabilities associated with the use of public space for car-sharing operations;

(b) All company car-sharing vehicles parked in the District, regardless of whether they are located on private or public space, must be registered in the District and display District license plates;

(c) The company must reserve at least one (1) on-street space in each ward;

(d) The company must have at least as many vehicles available to members in private parking locations as in public parking locations, including at least one (1) in each ward; and

(e) The company shall provide DDOT with data to help evaluate the impact of the reserved on-street car-sharing program.

3313.4 The fee for a permit issued pursuant to this section shall be assessed, for each parking space covered by the permit, at an annual cost of two thousand eight hundred and ninety dollars ($2,890).

3313.5 The fee may be increased annually by the lesser of the Consumer Price Index or five percent (5%).

3313.6 The permit may be renewed annually.

Section 3399 is amended as follows:

Three new definitions are added in alphabetical order to read as follows:

Car-sharing vehicle – any vehicle available to multiple users who are required to join a membership organization in order to reserve and use such a vehicle for which they are charged based on actual use as determined by time and/or mileage.

Reserved on-street car-sharing company – a company with a basic business license to operate in the District that provides access to car-sharing vehicles to the general public for short-term reservations.

Reserved on-street car-sharing program – DDOT's program authorizing the permitting of public space for the exclusive use of car-sharing vehicles.

Any person interested in commenting on the subject matter in this proposed rulemaking action may file comments, in writing, no later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Sam Zimbabwe, Associate Director, Policy, Planning, and Sustainability Administration, 55 M Street, S.E., 5th Floor, Washington, DC 20003. Comments may also be sent electronically to publicspace.policy@dc.gov. Additional copies of this proposal are available, at cost, by writing to the above address, and are available electronically, at no cost, on the Department's web site at www.ddot.dc.gov.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EMERGENCY AND 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, 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 create a new Chapter 16 (Dispatch Services) of the District of Columbia Municipal Regulations (DCMR).

This Emergency and Proposed Rulemaking is necessary for the immediate preservation and promotion of the public peace, safety, and welfare of the residents of and visitors to the District of Columbia by updating the regulatory framework to implement the modern taximeter system (MTS), preventing legal incongruities that will halt the implementation of the MTS, and providing the residents and visitors the consumer and safety improvements intended by the D.C. Council.

This emergency and proposed rulemaking was adopted on May 24, 2013 and will take effect on May 31, 2013. Any regulation that governs digital dispatch service of sedan service will take effect upon the effective date of any rulemaking that establish rules in Chapter 14 of Title 31 of the DCMR. Any regulation that becomes effective pursuant to this emergency rulemaking will remain in effect for up to one hundred twenty (120) days after the date of adoption (expiring September 21, 2013), or upon earlier amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first.

Additionally, the proposed rules supersede the Chapter 16 second notice of proposed rulemaking published at 60 DCR 6723 on May 10, 2013.

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 in the *D.C. Register*.

The Commission intends to add Chapter 16, DISPATCH SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, to read as follows:

CHAPTER 16 DISPATCH SERVICES

1600 APPLICATION AND SCOPE

1600.1 This chapter establishes substantive rules governing dispatch services for public vehicles-for-hire, including rules to ensure the safety of passengers and operators, for consumer protection, and to collect a passenger surcharge.

1600.2 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*.).

1600.3 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.

1601 GENERAL REQUIREMENTS

1601.1 No person shall provide telephone or digital dispatch, or digital payment, for public vehicles-for-hire in the District, except in compliance with this chapter, all applicable provisions of this title, and other applicable laws.

1601.2 Nothing in this chapter shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

1601.3 Implementation of regulations applicable to dispatch services and associated owners and operators. Beginning on September 1, 2013, each dispatch service shall:

(a) Operate in compliance with § 1603; and

(b) Maintain current operating authority from the Office under § 1604 that extends to all services it provides in the District;

1601.4 No person regulated by this title shall associate with, integrate with, or conduct a transaction in cooperation with, a dispatch service that does not have current operating authority for the public vehicle-for-hire service in which the dispatch service is engaged.

1602 RELATED SERVICES

1602.1 A person may operate a dispatch service and one or more affiliated businesses, provided each affiliated business is operated in compliance with all applicable provisions of this title and other applicable laws.

1602.2 All provisions of this title applicable to digital dispatch services (DDS) shall apply equally to each DDS regardless of whether such DDS receives payment from the passenger or the operator in connection with dispatch services.

1603 OPERATING REQUIREMENTS FOR ALL DISPATCH SERVICES

1603.1 No dispatch service shall operate in the District except in compliance with all provisions of this section.

1603.2 Each dispatch service that provides digital services for sedans shall operate in compliance with this chapter and Chapter 14 of this title.

1603.3 Each dispatch service that participates in providing taxicab service shall operate in compliance with this chapter and Chapters 6 and 8 of this title.

1603.4 Each dispatch provided by a dispatch service shall comply with the definition of "dispatch".

1603.5 Each gratuity charged by a dispatch service shall comply with the definition of "gratuity".

1603.6 Each digital dispatch service that processes digital payments shall—

(a) Comply with the requirements for passenger rates and charges set forth in § 801 for taxicab service and § 1402 for sedan service;

(b) If the payments are processed for taxicab service, comply with the integration, payment, and passenger surcharge requirements of § 408;

(c) Provide receipts as required by § 803 for taxicab service and § 1404 for sedan service;

(d) Use technology that meets Open Web Application Security Project ("OWASP") security guidelines, complies with current standards of the PCI Security Standards Council ("Council") for payment card data security, if such standards exist, and, if not, then with current guidelines of the Council for payment card data security, and, for direct debit transactions, complies with the rules and guidelines of the National Automated Clearing House Association; and

(e) Promptly inform the Office of a security breach requiring a report under the 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.

1603.7 Each dispatch shall clearly provide the person seeking service with the option to request an available wheelchair-accessible vehicle.

1603.8 Each dispatch service shall maintain a bona fide administrative office or a registered agent authorized to accept service of process, provided, however, a dispatch service operated by a taxicab company required to maintain such an office pursuant to Chapter 5 of this title shall operate its dispatch service at that location or another bona fide administrative office.

1603.9 Each dispatch service shall maintain a customer service telephone number for passengers with a "202" prefix or a toll-free area code, or an email address posted on its website that is answered or replied to during normal business hours.

1603.10 Each dispatch service shall maintain a website with current information that includes:

(a) The name of the dispatch service;

(b) Contact information for its bona fide administrative office or registered agent authorized to accept service of process;

(c) Its customer service telephone number or email address;

(d) A statement of how the fare is calculated for each class of service it offers, which shall include a statement of the rates and charges allowed by § 1402, and, for sedan service, shall indicate whether the dispatch service uses demand pricing and, if so, how such pricing affects its rates; and

(e) The following statement prominently displayed:

> Public vehicle-for-hire services in Washington, DC
> are 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

1603.11 Each dispatch service shall comply with §§ 508 through 513, to the same extent as if it were a taxicab company.

1603.12 Each dispatch service shall provide its service throughout the entire District.

1603.13 Each dispatch service shall require through its terms of service that each vehicle operator with which it is associated fully perform the service agreed to in a dispatch, including picking up the passenger at the agreed time and location, except for a bona fide reason not prohibited by § 819.5 or other applicable provision of this title.

1603.14 A dispatch service shall not:

(a) Release information to any person that would result in a violation of the personal privacy of the passenger or the person requesting service, or that would threaten the safety of a passenger or an operator; or

(b) Permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized by the dispatch service to receive such information.

This subsection shall not limit access to information by the Office or a District enforcement official.

1603.15 A dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked.

1603.16 Each dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records available for inspection and copying as directed by the Office, and retain its business records for five (5) years.

1603.17 Each dispatch service shall be in compliance with all applicable provisions of this title and other laws applicable to public vehicles-for-hire, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

1603.18 Each DDS that provides digital services for sedans shall:

(a) Maintain with the Office an accurate and current inventory of the vehicles and operators associated with the DDS to use its system in the manner required by § 1403; and

(b) Collect from the passenger and pay to the District the sedan passenger surcharge in the manner required by § 1403.

1604 CERTIFICATE OF OPERATING AUTHORITY

1604.1 No dispatch service shall participate in providing a public vehicle-for-hire service in the District without a current certificate of operating authority issued by the Office pursuant to this section that expressly includes all services it offers, except for a taxicab company with existing operating authority under Chapter 5 of this title, which, as of the effective date of this rulemaking, is operating a telephone dispatch service.

1604.2 An applicant seeking an initial certificate of operating authority from the Office shall provide the following information (including such documentation as required by the Office):

(a) Its name and contact information;

(b) The name of and contact information for each public vehicle-for-hire business or service associated with, or operated by an owner of, the

dispatch service, including any payment service provider (PSP), and any business or service operated or offered outside the District,

(c) A technical description of the dispatch or payment solution, digital payment system, or both, offered by the DDS, including the trade names and software applications, platforms, and operating systems used;

(d) A sample of each agreement or policy, including any user agreement or privacy policy, applicable to the DDS's association with vehicle owners and operators, and with persons seeking public vehicle-for-hire services;

(e) An indication by the applicant of whether the dispatch service intends to offer dispatch of sedans, and whether it intends to offer dispatch services or digital payments for taxicabs, or both;

(f) If it will be dispatching sedans, its initial operator and vehicle inventory pursuant to § 1403;

(g) A certification by the applicant that the DDS owns the right to, or holds licenses to, all the intellectual property used by the dispatch service for all technology used for the dispatch or payment solution or the digital payment system it provides; and

(h) Such other information and documentation as the Office may require to determine that the dispatch or payment solution (for taxicabs), or digital payment system (for sedans), meets all applicable requirements.

1604.3 Each application under § 1604.2:

(a) Shall be provided under penalty of perjury;

(b) Shall be accompanied by the surcharge bond required by § 403.3 (if the dispatch service is a DDS is required to collect a passenger surcharge for taxicab service), or by § 1403, if the dispatch service is a DDS that will be dispatching sedans, provided, however, that a DDS shall not be required to deposit a more than one (1) surcharge bond if the DDS collects and pays passenger surcharges for both taxicabs and for sedans; and

(c) Shall be accompanied by a fee of five hundred dollars ($500), except that the fee for an application to amend an existing certificate of operating authority under § 1604.5, regardless of the number of services proposed to be added to the existing certificate, shall be three hundred dollars ($300).

1604.4 Each certificate of operating authority shall continue in force and effect for twenty four (24) months, during which time no substantial change may be made to a DDS's dispatch or payment solution for taxicabs, or digital payment system for sedans, without written approval from the Office. A DDS shall inform the Office

of a proposed substantial change to its dispatch or payment solution or digital payment system for sedans, that would require written approval at least thirty (30) days prior to the change, and shall notify the Office of any other change in the information contained in the certification or its supporting documentation, such as contact information, within seven (7) days of the change.

1604.5 Each DDS with current operating authority under this section may at any time file an application to amend its operating authority to include additional services it wishes to market to public vehicle-for-hire owners and operators.

1604.6 Each DDS with current operating authority under this section shall file to renew its operating authority at least sixty (60) days prior to the expiration thereof, by providing the information or documentation required for an initial application to the extent required by the Office. Operating authority shall continue in force and effect beyond its expiration period during such time as an application to renew is pending acceptance in proper form.

1604.7 A DDS that maintains current operating authority under this section shall annually provide, beginning on the first (1st) day of the thirteenth (13th) month after its operating authority was issued:

(a) A report on the wait times and fares charged to passengers seeking wheelchair-accessible service in the prior twelve (12) months; and

(b) A list of incidents in the prior twelve (12) months involving an allegation or dispute concerning:

(1) A payment, where the dispute involved fifty dollars ($50) or more;

(2) Fraud or criminal activity; or

(3) Violations of the anti-discrimination rules of Chapter 5 of this title.

1604.8 The Office may arrange one (1) demonstration for each of the DDS's dispatch or payment solutions for taxicabs, or its digital payment system for sedans, where the Office's technical staff may examine and test the equipment and ask questions of the DDS's technical staff, who shall attend the demonstration.

1604.9 The Office shall determine whether to grant or deny an application within fourteen (14) days after it is filed, provided however, that such period may be extended by the Office for no more than ten (10) days with notice to the DDS.

1604.10 If the Office grants an application, it shall provide notice to the DDS in writing.

1604.11 If the Office denies an application, it shall state the reasons for its decision in writing. A decision to deny 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 within thirty (30) days. A timely appeal of a denial shall extend an existing certificate 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 filing shall extend an existing certificate pending the final decision of the Office.

1604.12 The name of each DDS with current operating authority, and the name of each service included in such authority, including any dispatch or payment solutions for taxicabs, or a digital payment system for sedans, shall be listed on the Commission's website.

1604.13 Operating authority may be temporarily or indefinitely suspended by the Office with reasonable notice and an opportunity to be heard if the Office learns that any of the DDS's services, or the persons using it, are not it in substantial compliance with this title, or if a DDS's digital payment system, or its dispatch or payment solution, is being used in a manner that poses a significant threat to passenger or operator safety, or consumer protection.

1605 PROHIBITIONS

1605.1 No person shall dispatch a public vehicle-for hire or process a digital payment for a public vehicle-for-hire in the District except as provided in this chapter.

1605.2 No person shall operate a dispatch service without a valid and current certificate of operating authority that extends to all the services it provides in the District.

1605.3 No dispatch service shall dispatch or process digital payments except as provided in this chapter and Chapter 8 (for taxicabs), and this chapter and Chapter 14 (for sedans), and all other applicable provisions of this title and other applicable laws.

1605.4 No dispatch services shall dispatch or process payments of sedan service in the District unless the payment, and the fare, including the rates, charges, and gratuity, if any, comply with the applicable provisions of § 1603.6, and the DDS collects the sedan passenger surcharge and received by the District.

1605.5 No dispatch service may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person or limit the rights of any person in a manner that is contrary to public policy or that threatens passenger or operator safety or consumer protection.

1605.6 A DDS shall not provide digital dispatches to a taxicab operator who provides service with a vehicle that displays on its exterior the name, color scheme, or other unique branding of a taxicab fleet or association, if such fleet or association does not agree to the operator's association with the DDS, and—

(a) For thirty (30) days following the effective date of this rulemaking, such fleet or association is operating a dispatch service limited to its associated vehicles; or

(b) After thirty (30) days following the effective date of this rulemaking, such fleet or association has filed for or received registration for a DDS limited to its associated vehicles.

1605.7 No DDS shall provide digital payment for taxicabs except as provided in Chapter 4.

1605.8 No DDS shall provide digital payment for taxicabs which allows the operator to manually enter fare information into any device except as permitted by § 801.

1605.9 No fee charged by a DDS in addition to a taximeter fare shall be processed by a payment service provider, or displayed on or paid using any component of an MTS unit.

1606 ENFORCEMENT

1606.1 The enforcement of any provision of this chapter shall be governed by the procedures set forth in Chapter 7 of this title. If, at the time of violation, the procedures in Chapter 7 do not extend in their terms to DDSs, violations of this chapter shall be enforced as if such DDS were a taxicab owner or operator..

1607 PENALTIES

1607.1 A dispatch service that violates this chapter shall be subject to:

(a) A civil fine of five hundred dollars ($500) for the first violation of a provision, one-thousand dollars ($1,000) for the second violation of the same provision, and one-thousand five-hundred dollars ($1,500) for each subsequent violation of the same provision;

(b) Suspension, revocation, or non-renewal of a Certificate of Registration or Certificate of Operating Authority;

(c) Any penalty available under Chapter 6 in connection with the service and support of an MTS for the operation of taxicabs or under Chapter 14 in connection with the service and support of a sedan payment system (SPS) for the operation of sedans; or

(d) Any combination of the sanctions listed in this Subsection.

1699 DEFINITIONS

1699.1 The terms "cashless payment," "modern taximeter system," "MTS," "MTS unit", "payment service provider", "PSP", and "taximeter fare" shall have the meanings ascribed in Chapter 4 of this title.

1699.2 The term "sedan" shall have the meaning ascribed to it in Chapter 12 of this title.

1699.3 The terms "sedan payment system," and "SPS" shall have the meanings ascribed to them in Chapter 14 of this title.

1699.4 The term "person" and "license" shall have the meanings ascribed to them in the D.C. Administrative Procedure Act, D.C. Official Code § 2-502.

1699.5 The following words and phrases shall have the meanings ascribed:

"Affiliated" - common ownership.

"Associated" - a voluntary relationship of employment, contract, joint venture, or agency. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

"Booked" - agreed and accepted by the customer.

"Customer" - a person that requests public vehicle-for-hire service, including a passenger, or any other person that requests service on behalf of a passenger.

"Dispatch" - booking public vehicle-for-hire service through an advance reservation consisting of a request for service from a person seeking service, an offer of service by the dispatch service, an acceptance of service by the person seeking service, and an acknowledgement by the dispatch service that includes an estimated time of arrival of a booked vehicle.

"Dispatch or payment solution" - any reasonable technology solution that allows a DDS to provide taxicabs with digital dispatch service, digital payment service, or both.

"Digital dispatch" - dispatch via computer, mobile phone application, text, email, or Web-based reservation.

"Digital dispatch service" or "DDS" - a business that provides digital dispatch of taxicabs, sedans, or both.

"Digital payment" - a non-cash payment processed by a digital dispatch service and not by the vehicle operator, such as a payment by a payment card (a credit or debit card), processed through a mobile- or Web-based application. A digital

payment does not mean a "cashless payment" as such term is defined in Chapter 6 of this title.

"Digital services" - digital dispatch or digital payment for a public vehicle-for-hire.

"Dispatch service" - a business that offers telephone or digital dispatch.

"District enforcement official" - a public vehicle enforcement inspector or other authorized official, employee, or general counsel of the Office, or a law enforcement official authorized to enforce a provision of this title.

"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; 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.

"Passenger surcharge" - the passenger surcharge required to be collected from passengers and remitted to the District for each trip in a taxicab or sedan, as required by Chapters 4, 6, and 8, for taxicabs, and by this chapter and Chapter 14 for sedans.

"Surcharge bond" - a security bond of fifty-thousand dollars ($50,000) payable to the D.C. Treasurer that is effective throughout the period when the dispatch service has operating authority and for one (1) year thereafter.

"Telephone dispatch" - dispatch via telephone.

"Telephone dispatch service" - a business that provides telephone dispatch for taxicabs.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques 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 should submit written comments via e-mail to dctc@dc.gov or by postal mail or hand delivery to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, D.C. 20020, Attn: Jacques Lerner, General Counsel and Secretary to the Commission. Comments should be filed within thirty (30) days after publication of this notice in the *D.C. Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EMERGENCY AND 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, 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 (Taxicab Payment Service Providers) of the District of Columbia Municipal Regulations (DCMR).

This Emergency and Proposed Rulemaking is necessary for the immediate preservation and promotion of the public peace, safety, and welfare of the residents of and visitors to the District of Columbia by updating the regulatory framework to implement the modern taximeter system (MTS), preventing legal incongruities that will halt the implementation of the MTS, and providing the residents and visitors the consumer and safety improvements intended by the D.C. Council.

This emergency rulemaking was adopted by the Commission on May 24, 2013, will take effect on May 31, 2013, and will remain in effect for up to one hundred twenty (120) days after the date of adoption (expiring September 21, 2013), or upon earlier amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first.

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 in the *D.C. Register*.

Chapter 4, TAXICAB PAYMENT SERVICE PROVIDERS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended to read as follows:

CHAPTER 4 TAXICAB PAYMENT SERVICES

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, and for the integration of MTSs with registered dispatch services, including rules applicable to both PSPs and dispatch services, 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 person interested in being licensed by the Office of Taxicabs (Office) as a PSP to market an MTS to taxicab owners pursuant to § 603 shall apply for and obtain approval of its proposed MTS under this chapter.

401.2 Each person interested in providing digital payment service to taxicab companies and independent owners shall apply for and obtain a certificate of operating authority that includes such service pursuant to Chapter 16.

401.3 Each PSP and each digital dispatch service (DDS) that are not affiliated businesses shall comply with the integration requirements of § 408.16 for the processing of digital payment, not later than the implementation date set forth in § 603.2. Prior to the implementation date, each DDS shall be permitted to process digital payments without integration.

401.4 Beginning on the implementation date set forth in § 603.2, no PSP shall fail or refuse to participate in processing digital payments in the manner required by this chapter, where the taxicab company or independent owner that uses an MTS unit provided by the PSP chooses to offer digital payment its passengers.

401.5 All costs associated with an MTS shall be the responsibility of the PSP, but may be allocated by a written agreement among the PSP, the taxicab companies and independent owners to whom the PSP markets its MTS units, or any other person, including costs for:

(a) Development (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));

(b) Integration, pursuant to § 408.16;

(c) Service and support;

(d) Upgrade or modification (including costs to remain in compliance with any amendment to a provision of this title);

(e) Installation;

(f) Repair and maintenance; and

(g) Compliance with an Office order.

401.6 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 person may operate a PSP and one or more affiliated businesses, provided each affiliated business is operated in compliance with all applicable provisions of this title and other applicable laws.

403 PROPOSED MODERN TAXIMETER SYSTEMS – APPLICATIONS BY PSPs

403.1 No person shall operate as a PSP, process an in-vehicle payment for a taxicab trip, market MTS units, or allow another person to use its MTS units, unless such person is a PSP with current approval of its MTS under this chapter. The approval of a PSP's modern taximeter system under this chapter shall constitute the PSP's operating authority under this title.

403.2 Each person seeking approval of a proposed MTS shall file with the Office an application that includes the following information (including such documentation as required by the Office):

(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 of each affiliated business;

(c) A brief narrative describing the proposed MTS and demonstrating that it would meet:

(1) 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 § 603.8(n)(3) that a safety feature be incorporated not later than June 1, 2014; and

(2) The MTS service and support requirements of § 603.9;

(d) A certification that the PSP owns the rights to, or holds licenses to use, all the intellectual property used by the proposed MTS;

(e) The forms of in-vehicle payment that the PSP proposes to offer, in addition to cash (such as near-field communications);

(f) Information showing 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, information 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, and an indication of whether a place of business would be shared with an affiliated business;

(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 MTS and for each service offered by an affiliated business;

(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 showing the PSP will collect from the passenger and pay to the District the passenger surcharge for each taxicab trip, as required by § 408.15;

(o) A sample agreement used by the PSP to associate with taxicab companies, independent owners, and operators;

(p) The name of each dispatch service with which the PSP is associated, if any;

(q) Information showing the PSP will be in compliance with the integration requirements of § 408.16; and

(r) Such other information related to establishing compliance with this chapter 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, and shall be accompanied by an application fee of one-thousand dollars ($1,000) and by a surcharge bond.

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 thirty (30) 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. A PSP's integration with a DDS, including the submission of a proposed integration agreement, shall not constitute a substantial change.

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 are not it in substantial compliance with this title, or if that the MTS is being used in a manner that poses a significant threat to passenger or operator safety, or consumer protection.

408 OPERATING REQUIREMENTS APPLICABLE TO PSPs and DDSs

408.1 Each PSP shall operate in compliance with this chapter and Chapters 6 and 8 of this title, and other applicable laws.

408.2 Each DDS that provides dispatch or digital payment for taxicabs shall operate in compliance with this chapter and Chapters 8 and 16 of this title, and other applicable laws.

408.3 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.

408.4 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. Each PSP may share a place of business its affiliated businesses provided 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.

408.5 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.

408.6 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.

408.7 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.

408.8 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.

408.9 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.

408.10 Each PSP shall notify the Office if it learns of a security breach as to which a report must be made pursuant to the 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.

408.11 Each PSP shall allow each passenger to make his or her choice of in-vehicle payment or digital payment, to the extent required by this chapter, and no minimum payment shall be required.

408.12 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.

408.13 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.

408.14 PSP inventory requirements.

(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).

408.15 Passenger surcharge collection and payment by PSPs and DDSs.

(a) Each PSP shall comply with paragraph (c) of this subsection.

(b) Each DDS that is required to collect the taxicab passenger surcharge pursuant to § 408.16 shall comply with paragraph (c) of this subsection.

(c) Each person required to comply with this subsection shall:

(1) If it is a DDS, it shall provide a surcharge bond to the Office at the time of its application for a certificate of operating authority under Chapter 16 that includes processing digital payments for taxicabs;

(2) Collect the surcharge as an authorized additional charge under § 801.7(b)(2) for each taxicab trip;

(3) Remit to the District, at the end of each seven (7) day period, a payment to the D.C. Treasurer in the amount of all the surcharges it has collected during such period; and

(4) Send via email at the time of its payment a report to the Office certifying its payment to the District and providing a basis for the amount of such payment.

(d) Each person that participates in providing service for a taxicab trip, regardless of whether it is required by paragraph (a) or (b) to collect and pay the passenger surcharge, shall cooperate with the Office to resolve any discrepancy concerning a passenger surcharge owed or paid to the District by any person, and, if the Office is unable to resolve such discrepancy within thirty (30) days, the Office may, in its discretion, make a claim against the surcharge bond deposited by any person that participated, as necessary and appropriate to satisfy the amount of the discrepancy.

(e) A surcharge bond provided to the Office by a PSP or by a DDS shall be returned within thirty (30) days following an event that causes such business to lose its operating authority under this title, provided, however, that the surcharge bond shall not be returned while there remains a discrepancy concerning a passenger surcharge owed or paid to the District by any person.

408.16 Digital payment requirements. Each PSP and each DDS shall comply with the following requirements for integration of their services, except that this section shall not apply to a digital payment where the PSP and the DDS are affiliated businesses.

(a) Integration mandated.

(1) Each PSP shall:

(A) Allow each taxicab company and independent owner to which it provides its MTS to associate with one or more DDSs with current operating authority under Chapter 16 that extends to providing digital payment;

(B) Integrate as provided in this section with each DDS that has existing operating authority under Chapter 16 for digital payment, within sixty (60) days of receiving approval of its MTS under this chapter, and, thereafter, shall remain integrated while both businesses continue to have operating authority; and

(C) Integrate as provided in this section with each DDS that obtains new operating authority under Chapter 16 for digital payment, within sixty (60) days of when the DDS obtains such authority and, thereafter, shall remain integrated while both businesses continue to have operating authority.

(2) Each DDS shall:

(A) Integrate as provided in this section with each PSP that has approval for its MTS under this chapter, within sixty (60) days of receiving operating authority under Chapter 16 for digital payment and, thereafter, shall remain integrated while both businesses continue to have operating authority; and

(B) Integrate as provided in this section with each PSP that obtains approval of a new MTS under this chapter, within sixty (60) days of such approval and, thereafter, shall remain integrated while both businesses continue to have operating authority.

(3) Prior to a deadline by which a PSP or DDS is required to integrate under by paragraph (a)(1) or (a)(2) of this subsection, each digital

payment shall be processed by the PSP and any DDS participating in a transaction may charge a separate booking or dispatch fee as permitted by § 801;

(4) Each PSP and each DDS required to integrate under paragraph (a)(1) or (a)(2) of this subsection shall integrate and maintain integration at its own cost and expense, but may allocate such cost and expense as provided in an integration agreement; and

(5) Any PSP or DDS that fails to integrate or to maintain integration as required by this subsection shall be subject to civil penalties, including the modification, suspension, or revocation of its operating authority as provided in this chapter.

(b) Integration requirements.

(1) Each PSP and each DDS may execute an integration agreement pursuant to paragraph (b)(3) of this subsection.

(2) Minimum requirements for integration. Where a PSP and a DDS have not executed an integration agreement pursuant to paragraph (b)(3), they shall integrate in a manner that allows them to do the following for each taxicab trip where a digital payment is selected by the passenger, in the following order:

(A) At the end of the trip, the operator shall indicate through the MTS unit that the trip is complete and the method of payment is digital payment;

(B) The PSP shall transmit to the DDS through an application program interface:

(i) The amount of the taximeter fare and any gratuity amount; and

(ii) The same data required to be transmitted to the TCIS for the trip, pursuant to § 603.9 (c), including the unique trip number assigned by the PSP ;

(C) The PSP shall transmit to the TCIS the data required by § 603.9;

(D) The DDS shall process the total charge for the digital payment;

(E) The DDS shall collect the passenger surcharge and make a payment to the District, in the manner required by § 408.15(c);

(F) The owner of the vehicle shall pay the integration service fee to the PSP; and

(G) The DDS shall transmit to the TCIS the same data required to be transmitted by the PSP under § 603.9 (c).

(3) Alternative requirements for approved integration agreements. In lieu of complying with paragraph (b)(2) of this subsection, any DDS and any PSP may negotiate an integration agreement that allocates the obligations set forth in paragraph (b)(2) in any reasonable, reliable, verifiable, and commercially reasonable manner that meets the following requirements:

(A) The parties shall submit the integration agreement to the Office for its review. Approval of the agreement shall be granted where the Office determines that all of the following requirements are met:

(i) The passenger surcharge will be collected from the passenger and paid to the District for every trip, which shall require a DDS to comply with § 408.15 if the agreement requires the DDS to collect the surcharge from passengers and make the payments to the District;

(ii) The MTS requirements in Chapter 6 will be met, including those for the collection and reporting of trip data and validation of the operator;

(iii) Each party will be in compliance with all applicable provisions of this title, except for those in paragraph (b)(2) of this subsection; and

(iv) The agreement and its implementation will not threaten the safety of passengers, operators, or the public, or consumer protection.

(B) Each integration agreement shall be reviewed and a decision to approve or reject the agreement shall be made within ten (10) business days, and, in the event of a denial, shall be subject to the appeal procedures in § 405

applicable to MTS review, and, thereafter, shall constitute final decisions of the Office.

(C) If an integration agreement is approved, the parties to such agreement shall comply with its terms while both parties continue to have operating authority, and shall immediately notify the Office in the event the agreement has been terminated, nullified, or rendered void or unenforceable, providing to the Office the date and time at which such event occurred, and, thereafter, the parties shall comply with the provisions of paragraph (b)(2) of this subsection.

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 with a vehicle that displays on its exterior the name, logo, insignia, or other unique branding of a taxicab fleet or association, if such fleet or association does not agree to the operator's association with the PSP, and:

(a) For thirty (30) days following the effective date of this rulemaking, such fleet or association is providing credit card processing services to its associated operators; or

(b) After thirty (30) days following the effective date of this rulemaking, such fleet or association has filed an application for approval as a PSP under this chapter or has been approved as a PSP under this chapter.

409.9 A PSP shall not allow its associated taxicab companies, independent owners, or taxicab operators to associate with a dispatch service that is not a licensed dispatch service.

409.10 No PSP or DDS shall participate in processing a payment or otherwise providing service to a passenger who chooses to pay by digital payment, except in the manner required by all applicable provisions of this chapter.

409.11 No PSP or DDS shall fail or refuse to participate in processing a digital payment in the manner required by all applicable provisions of this chapter, including, without limitation, a failure to maintain integration as required by § 408.16.

409.12 No PSP or DDS shall associate with or integrate with a PSP or DDS that does not have the operating authority required by a provision of this title, or that is operated in violation of this title.

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 or DDSs, such procedures shall be applied to a PSP or a DDS as if such PSP or DDS were a taxicab owner or operator.

410.2 If, at the time of a violation, the procedures in Chapter 7 do not extend in their terms to a person regulated by this chapter, violations of this chapter shall be enforced as if such person were a taxicab owner or operator.

411 PENALTIES

411.1 A PSP or DDS 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 (if a PSP) or modification, suspension, revocation, or non-renewal of its certificate of operating authority under Chapter 16 (if a DDS);

(d) Any combination of the sanctions listed in (a)-(c) of this subsection.

499 DEFINITIONS

499.1 The terms "digital dispatch," "digital dispatch service or DDS," "dispatch," and "telephone dispatch" shall have the meanings ascribed in Chapter 16 of this title.

499.2 When used in this chapter, the following words and phrases shall have the meanings ascribed:

"Affiliated" - common ownership.

"Approved MTS" - an MTS that has been approved for use by the Office under this chapter.

"Associated" - a voluntary relationship of employment, contract, joint venture, or agency. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

"Association" - 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" - a business authorized by the Office under this title to install one or more approved MTSs.

"Cash payment" - a payment to the operator by the passenger inside the vehicle using cash. A cash payment is a form of in-vehicle payment.

"Cashless payment" - a payment to the operator by the passenger inside the vehicle other than by cash, which shall include a payment by payment card, and may include another form of non-cash payment that a PSP is approved to provide to passengers pursuant to § 403.2(e) (such as near-field communication and voucher). A cashless payment is not a "digital payment," as such term is defined in this section.

"Clean Hands Act" - the Clean Hands Before Receiving a License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118, D.C. Official Code § 47-2862).

"Commission" or **"DCTC"** - the District of Columbia Taxicab Commission.

"Digital payment" - a payment processed outside the vehicle using a payment card, which may include a payment card on file, or using a direct debit transaction. A digital payment is not a "cashless payment," as such term is defined in this section.

"District" - the District of Columbia.

"District of Columbia Taxicab Commission (DCTC) License" - the taxicab vehicle license issued pursuant to D.C. Official Code § 47-2829(d).

"Face Card" or **"DCTC Identification Card"** or **"Identification Card"** - the taxicab or public vehicle-for-hire operator license issued pursuant to D.C. Official Code § 47-2829(e).

"Fleet" - a group of twenty (20) or more taxicabs having a uniform color scheme and having unified control by ownership or by association.

"Gratuity" - a voluntary payment by the passenger after service is rendered, which, if made, shall be included as part of the total charge under § 801.9, in the amount determined only by the passenger.

"Group Riding" - 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" - a taxicab operated by an individual owner.

"Independently operated taxicab" - 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" - the transportation of a single passenger for an entire trip.

"Integration" - a commercial arrangement between a PSP and a DDS for the real-time sharing of electronic information between such businesses that complies with industry best practices and allows each of them to meet all obligations imposed by this chapter.

"Integration Agreement" - an agreement between a PSP and a DDS to allocate the rights and obligations pertaining to integration under this chapter.

"Integration service fee" - a one dollar ($1) fee paid by the taxicab company or independent owner to the PSP for the use of the MTS when a digital payment is made.

"In-Vehicle Payment" - a payment made to the operator by the passenger inside the vehicle, consisting only of a cash payment or a cashless payment.

"License" shall have the meaning ascribed to it in the D.C. Administrative Procedure Act, D.C. Official Code § 2-502.

"License Act" - D.C. Official Code § 47-2829.

"Limousine" shall have the meaning ascribed to it by § 1299.1.

"Loitering" - 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"** - a technology solution that combines taximeter equipment and PSP service and support in the manner required by this chapter and § 603.

"MTS unit" - the MTS equipment installed in a particular vehicle.

"Notice" - notice of transfer under § 507.

"Office" - Office of Taxicabs.

"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; 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.

"Operator" - a person who operates a public vehicle-for-hire.

"Owner" - 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.

"Passenger surcharge" - the passenger surcharge required to be collected from passengers and remitted to the District for each trip in a taxicab, in an amount established by § 801.

"Payment card" - any major credit or debit card including Visa, MasterCard, American Express, and Discover.

"Payment information on file" - any payment card, direct debit, or pre-paid account that allows a person authorized to process a recurring payment, to process such payment without requiring the person authorizing the payment to present the original payment information.

"Payment service provider" or **"PSP"** - 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" - assistance or service requested by a passenger that requires the taxicab operator to leave the vicinity of the taxicab.

"Public vehicle-for-hire" - 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"** - 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" - 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" - a roadway designated on the Permanent System of Highways of the District as a public thoroughfare.

"Surcharge Account" - an account established and maintained by the PSP with the Office for the purpose of processing the Passenger Surcharge.

"Surcharge Bond" - a security bond of fifty-thousand dollars ($50,000) payable to the D.C. Treasurer for the purpose of securing a person's payment of a passenger surcharge to the District, which remains effective throughout the period when such person has operating authority under this title and for one (1) year thereafter.

"Taxicab" - 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"** - the information system operated by the Office.

"Taxicab company" - a taxicab company that operates pursuant Chapter 5 and other applicable provisions of this title.

"**Taximeter fare"** - the fare established by § 801.7.

"Washington Metropolitan Area" - 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.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel, 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, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EMERGENCY AND 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, 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 6 (Taxicab Parts and Equipment) of the District of Columbia Municipal Regulations (DCMR).

This Emergency and Proposed Rulemaking is necessary for the immediate preservation and promotion of the public peace, safety, and welfare of the residents of and visitors to the District of Columbia by updating the regulatory framework to implement the modern taximeter system (MTS), preventing legal incongruities that will halt the implementation of the MTS, and providing the residents and visitors the consumer and safety improvements intended by the D.C. Council.

This emergency rulemaking was adopted on May 24, 2013, will take effect on May 31, 2013, and will remain in effect for up to one hundred twenty (120) days after the date of adoption (expiring September 21, 2013), or upon earlier amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first.

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 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 600, APPLICATION AND SCOPE, is amended to read as follows:

600.5 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

600.6 If, at the time of a violation, the procedures in Chapter 7 do not extend in their terms to a person regulated by this chapter, violations of this chapter shall be enforced as if such person were a taxicab owner or operator.

Section 603, MODERN TAXIMETER SYSTEMS, is amended as follows:

Section 603.4 is amended to read as follows:

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 has operating authority under Chapter 16. Each taxicab company and independent owner may associate with one or more digital dispatch services to provide digital payment, provided the digital dispatch service is in compliance with Chapters 4, 8, and 16. It shall be the responsibility of each taxicab company and independent owner to report to the Office any occasion when they have personally observed a PSP or DDS failing or refusing to comply with the integration requirements of Chapter 4 for the processing of digital payments.

Section 603.6 is amended to read as follows:

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, the PSP that provides it, or any other person.

Section 603.9 is amended to read as follows:

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 Taxicab Commission Information System (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, in a manner 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 PSP-assigned tour ID number and 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, which may be generalized to census tract level;

(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), and, if a digital payment, the name of the DDS;

(12) The time at the end of each tour of duty;

(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; and

(e) Allow the PSP to comply with the integration and other requirements for processing digital payments pursuant to § 408.16.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel, 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, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EMERGENCY AND 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, 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 8 (Operation of Taxicabs) of the District of Columbia Municipal Regulations (DCMR).

This Emergency and Proposed Rulemaking is necessary for the immediate preservation and promotion of the public peace, safety, and welfare of the residents of and visitors to the District of Columbia by updating the regulatory framework to implement the modern taximeter system (MTS), preventing legal incongruities that will halt the implementation of the MTS, and providing the residents and visitors the consumer and safety improvements intended by the D.C. Council.

This emergency rulemaking was adopted on May 24, 2013, will take effect on May 31, 2013, and will remain in effect for up to one hundred twenty (120) days after the date of adoption (expiring September 21, 2013), or upon earlier amendment or repeal by the Commission, or the publication of final rulemaking, whichever occurs first.

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 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 801, PASSENGER RATES AND CHARGES, is amended to read as follows.

801 PASSENGER RATES AND CHARGES

801.1 No person regulated by this title shall charge a rate, charge, or fare for taxicab service in the District in excess of the amounts established by this section.

801.2 No person regulated by this title shall charge any amount for a taxicab trip before service is rendered.

801.3 No person regulated by this title shall participate in providing taxicab service where any person regulated by this title manually enters any amount into any device, other than an authorized additional charge under § 801.7(b), or a gratuity, if any.

801.4 Each taxicab company, independent owner, and taxicab operator shall charge the taximeter fare, except for hourly contracts pursuant to § 801.7(a)(4), and shall accept only cash, cashless payments, and vouchers.

801.5 A dispatch fee of not more than two-dollars ($2) may be charged by a licensed telephone dispatch service, which shall be included in the taximeter fare as an authorized additional charge.

801.6 A dispatch, booking or similar fee may be charged by a licensed digital dispatch service, which shall not be included in the taximeter fare.

801.7 Taximeter fare. Each taximeter fare shall consist only of the following charges based on time and distance charges under paragraph (a) of this subsection and the authorized additional charges, if any, under paragraph (b) of this subsection.

(a) Time and distance charges. The time and distance charges that shall be automatically generated by each taximeter for a 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.

(4) The rate for an hourly contract in a taxicab 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.

(b) Authorized additional charges. The only charges that may be included in taximeter fare are the following:

(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)); and

(6) A snow emergency fare when authorized under § 804.

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 Total charges. The total charges to a passenger for a taxicab trip shall not exceed the following:

(a) Where the passenger chooses to make an in-vehicle payment: the taximeter fare plus a gratuity, if any; and

(b) Where the passenger chooses to make a digital payment: the taximeter fare, any gratuity, and any fee charged by a DDS pursuant to § 801.6.

801.10 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.

801.11 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 taxicab name and telephone number;

(b) The date of the trip;

(c) The taxicab number;

(d) The operator's DCTC operator Identification (Face Card) number;

(e) The trip number;

(f) The start and end time of the trip;

(g) The mileage of the trip;

(h) The total charges established by § 801.9, itemized to show the taximeter fare, any authorized additional charges, the passenger surcharge and gratuity, if any;

(i) The form of payment, including whether the payment was made by cash payment, credit card (and type), digital payment, mobile payment, voucher or account;

(j) Last four digits of any applicable payment card number and the transaction authorization code;

(k) The following information:
DCTC COMPLAINTS LINE AND WEBSITE ADDRESS
PH: 855-484-4967, TTY 711
www.dctaxi.dc.gov

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 813, [RESERVED], is amended to read as follows:

813 ASSOCIATION OR FLEET CONSENT

813.1 An operator who provides service with a vehicle that displays on its exterior the name, logo, insignia, or other unique branding of a taxicab fleet or association shall obtain the consent of such taxicab fleet or association prior to the operator's association with:

(a) A PSP, for thirty (30) days following the effective date of this rulemaking, if such fleet or association is providing credit card processing services to its associated operators; or after thirty (30) days following the effective date of this rulemaking, such fleet or association has filed an application or been approved as a PSP under Chapter 4; and

(b) A DDS, for thirty (30) days following the effective date of this rulemaking, if such fleet or association is operating a dispatch service limited to its associated vehicles; or after thirty (30) days following the effective date of this rulemaking, such fleet or association has filed an application or received operating authority as a DDS under Chapter 16.

Section 825, TABLE OF CIVIL FINES AND PENALTIES, is amended as follows:

Section 825.2 is amended as follows:

825.2	**INFRACTION**	**FINE/PENALTY($)**
	Animals	
	Failure to comply with § 801.10(b)	$50
	Service Animals	
	Failure to comply with § 801.10(a)	$100

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel, 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, 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 2013-100
May 29, 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-101
May 29, 2013

SUBJECT: Designation of Special Events Area – Canal Park

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(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(11) (2012 Supp.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. Notwithstanding any prior Order delegating the authority to designate an area of the District as a Special Events Area to a District agency, the following area is hereby designated as a Special Events Area to which the provisions of 19 DCMR § 1301 shall not apply:

    a. Lot 823 in Square 769 bounded by Second Place, S.E. to the east; M Street, S.E., to the south; Second Street, S.E., to the west; and L Street, S.E. to the north;
    b. Lot 811 in Square 768 bounded by Second Place, S.E., to the east; L Street, S.E., to the south; Second Street S.E., to the west; and K Street, S.E., to the north;
    c. Lot 830 in Square 767 bounded by Second Place, S.E., to the east; K Street, S.E., to the south; Second Street, S.E., to the west; and I Street, S.E., to the north (collectively known as "Canal Park").

2. The above named Special Events Area shall be operated and overseen by the Office of the Deputy Mayor for Planning and Economic Development or any entity designated by the Office of the Deputy Mayor for Planning and Economic Development.

3. This Order is authorization for the Special Events Area designation only, and shall not apply to other licenses and permits applicable to activities associated with the operation of special events. All building, health, life, safety, street closure or use of public space requirements shall remain applicable to the Special Events Area designated by this Order.

4. **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 2013-102
June 4, 2013

SUBJECT: Appointment - District of Columbia Real Property Tax Appeals 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 2(b)(3) of the District of Columbia Real Property Tax Appeals Commission Establishment Act of 2010, effective April 8, 2011, D.C. Law 18-363, D.C. Official Code § 47-825.01a (a)(l) (2012 Supp.), it is hereby **ORDERED** that:

1. **ALVIN L. JACKSON**, who was nominated by the Mayor on January 30, 2013, and approved by the Council of the District of Columbia, pursuant to Resolution 20-0111, on May 7, 2013, is appointed as a part-time member of the Real Property Tax Appeals Commission for a term to end April 30, 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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CHANGE OF HOURS AGENDA

WEDNESDAY, JUNE 12, 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 (Sunday Only). Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Saturday 9:00 am – 10:00 pm. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday through Saturday 9:00 am – 10:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 5E. SMD 5E06. ***Giant MJ Corporation T/A Best One Liquor***, 322 Florida Avenue, NW. Retailer's Class A. License No. 086168.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JUNE 12, 2013
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On June 12, 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#13-251-00031 Fur Factory, 33 PATTERSON ST NE Retailer C Nightclub, License#: ABRA-060626

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2. Case#13-CMP-00205 Columbia Lodge #85 I.B.P.E.O. Of Wo, 1844 3RD ST NW Retailer C Club, License#: ABRA-000237

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3. Case#13-CC-00024 Rhode Island Liquor, 914 Rhode Island AVE NE Retailer A Retail - Liquor Store, License#: ABRA-078927

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, JUNE 12, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Requests dated May 29 and 29, 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 Request dated May 30, 2013 from Washington Wholesale Liquor Company, License No. 060518, for approval to provide retailers with products valued at more than $50 and less than $500 (tickets).

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3. Review of Request dated May 30, 2013 from Washington Wholesale Liquor Company, License No. 060518, for approval to provide retailers with products valued at more than $50 and less than $500. .

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4. Manager's License: Franklin M. Ramirez. **

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5. Manager's License: Augusto Campo. **

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6. Review of letter, dated May 30, 2013, requesting that the Board allow reinstatement of the license for ABRA-060084. ***KW Little Store,*** 3133 Connecticut Avenue NW Retailer B, Lic.#: 60084.

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7. Review of Motion for Reinstatement, dated May 21, 2013, from the Shaw DuPont Citizens Association. The SDCA was dismissed at the Roll Call Hearing for failure to appear. ***Dukem Ethio Market & Restaurant,*** 1114 U Street NW Retailer CR02, Lic.#: 72469.

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8. Review of Motion for Reinstatement, dated May 31, 2013, from the Kalorama Citizens Association. The KCA was dismissed at the Roll Call Hearing for failure to appear. ***The Blaguard,*** 2003 18th Street NW Retailer CR01, Lic.#: 86012.

Board's Agenda – June 12, 2013 - Page 2

9. Review of Settlement Agreement, dated March 14, 2012, between Lime Fresh Mexican Grill #6312 and ANC 1A. ***Lime Fresh Mexican Grill #6312,*** 3100 14th Street NW Retailer CR02, Lic.#: 88850.*

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10. Review of Settlement Agreement, dated May 13, 2013, between Il Capo Di Capitol Hill and ANC 6B. ***Il Capo Di Capitol Hill,*** 1129 Pennsylvania Avenue NW Retailer CR01, Lic.#: 84571.*

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11. Review of Settlement Agreement, dated May 14, 2013, between La Plaza Mexican Restaurant and ANC 6B. ***La Plaza Mexican Restaurant,*** 629 Pennsylvania Avenue SE Retailer CR01, Lic.#: 60614.*

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12. Review of Settlement Agreement, dated May 19, 2013, between Bullfeathers and ANC 6B. ***Bullfeathers,*** 410 1st Street SE Retailer CR03, Lic.#: 85100.*

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13. Review of Settlement Agreement, dated April 24, 2013, between La Lomita Restaurant and ANC 6B. ***La Lomita Restaurant,*** 1330 Pennsylvania Avenue SE Retailer CR01, Lic.#: 16357.*

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14. Review of Settlement Agreement, dated May 19, 2013, between Pound the Hill and ANC 6B. ***Pound the Hill,*** 621 Pennsylvania Avenue SE Retailer DR01, Lic.#: 88067.*

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15. Review of Settlement Agreement, dated May 8, 2013, between Folger Theatre Group and ANC 6B. ***Folger Theatre Group,*** 201 East Capitol Street SE Retailer CX, Lic.#: 1792.*

*** 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

Painting Services
Mecho Manual Shades
Repair and Maintenance Services
Door Magnet Installation
IT Support Services
Transportation Services
Security Services
Window Cleaning Services
Office Supplies

Capital City Public Charter School is advertising the opportunity to bid on **Interior and Exterior Painting Services, Mecho Manual Shades, Repair and Maintenance Services, Magnetic Lock Installation, IT Support Services, Transportation Services, Security Services, Window Cleaning Services, and Office Supplies.** Bids will be accepted until 5:00 PM on Friday, June 21, 2013.

Additional specifications outlined in the Request for Proposals (RFP) may be obtained from:

Elle Carne
Operations Manager
100 Peabody Street, NW, Washington, DC 20011
ecarne@ccpcs.org
202-808-9725

All bids not addressing all areas as outlined in the RFP will not be considered.

CENTER CITY PUBLIC CHARTER SCHOOLS, INC.

REQUEST FOR PROPOSALS

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

MacBook Pro Laptops: Center City Public Charter School seeks to provide its teaching staff with MacBook Pro laptop computers and software. Laptops will be used to create and access school curriculum; generate, record, and review student performance data; and other uses.

Contact person:

Scott Burns
sburns@centercitypcs.org

Fiscal Services: Center City PCS would like to engage a finance and accounting services Firm (the "Firm") to assist the organization with finance, accounting, and compliance services for a period of time beginning July 1, 2013 and ending December 31, 2013. The goal is to enter into a contract with a professional and dynamic company that is able to meet all requirements identified in the RFP.

Contact person:

Cristine Doran
cdoran@centercitypcs.org

Food Services: Center City PCS would like to engage one meal service provider for 6 charter schools located in the District of Columbia. The goal is to enter into a contract with a dynamic company that is able to meet all requirements identified in the RFP.

Contact person:

Perelini Vega
pvega@centercitypcs.org

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SPECIAL MEETINGS

The Construction Codes Coordinating Board will be holding a special meeting on Tuesday, June 25, 2013 at 9:30 am.

The meeting will be held at 1100 Fourth Street, SW, Fourth Floor Conference Room, Washington, D.C. 20024. The location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

Draft board meeting agendas and Technical Advisory Group meeting schedules and agendas are available on the website of the Department of Consumer and Regulatory Affairs at dcra.dc.gov, under the Permits/Zoning tab on the main page.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PUBLIC MEETING

Community Schools Advisory Committee

The Community Schools Advisory Committee will meet on **Tuesday, June 11th from 4:00-6:00 pm at OSSE, 810 1st Street, NE, 4th Floor, Room 4002**. The Community Schools Advisory Board was appointed by the Honorable Mayor Vincent Gray to assist with implementation of the Community Schools Incentive Initiative and advise the Mayor on expanding the community schools model district wide. The public is invited to attend this event and provide input on the Community Schools Incentive Initiative.

For more information, please contact Nancy Brenowitz Katz, Project Manager, Office of the State Superintendent of Education, 810 1st Street, N.E., Washington, DC, 4th Floor. Telephone: 202-724-7983, Email: nancy.katz@dc.gov.

Agenda

4:00-4:30 pm Update on RFA
- Question Sessions June 6th and 11th
- Review Panel

4:30-5:45 pm Recommendations for Mayor
- Format of report (2 options)

5:45-6:00 pm Final Thoughts and Adjourn

Final Meeting Date and Time (all meetings will be held at the Office of the State Superintendent of Education, 810 First Street, NE, Washington DC, Conference Room 4002).

July 23 4:00-6:00 pm

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there is a vacancy in one (1) Advisory Neighborhood Commission office, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 5C06

Petition Circulation Period: **Monday, June 10, 2013 thru Monday, July 1, 2013**
Petition Challenge Period: **Friday**, **July 5, 2013 thru Thursday, July 11, 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**.

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

GRANTS for the
Green building fund grant program

The District of Columbia District Department of the Environment ("DDOE") is seeking nonprofit organizations or educational institutions to support innovative projects to "green" the built environment in the District.

Beginning Friday, June 7, the full text of the Request for Applications ("RFA") will be available online at DDOE's web site. It will also be available for pick-up. A person may obtain a copy of this RFA by any of the following:

Download by visiting the DDOE's website, www.ddoe.dc.gov. Look for the following title/section, "Resources", click on it, cursor over the pull-down "Grants and Funding", click on it, then, on the new page, cursor down to the announcement for this RFA. Click on "read more." Then choose this document, and related information, to download in PDF format;

Email a request to 2013greenbldgRFA.grants@dc.gov with "Request copy of RFA 2013-OPS-10" in the subject line;

In person by making an appointment to pick up a copy from DDOE's offices at the 5th floor reception desk at the following street address (call Bill Updike at 202-535-1337 and mention this RFA by name); or

Write DDOE at 1200 First Street, N.E., 5th Floor, Washington, DC 20002, "Attn: Request copy of RFA 2013-OPS-10" on the outside of the letter.

The deadline for application submissions is June 21, 2013, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2013greenbldgRFA.grants@dc.gov

Eligibility: A nonprofit organization or educational institution may apply for these grants.

Period of Awards: The end date for the work of this grant program will be September 30, 2013.

Available Funding: The total amount available for this RFA is approximately $135,000**.** The amount is subject to continuing availability of funding and approval by the appropriate agencies.

For additional information regarding this RFA, please contact DDOE as instructed in the RFA document, or after reviewing the document, at 2013greenbldgRFA.grants@dc.gov.

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 permit #6281-R1 to the Architect of the Capitol to operate one (1) existing 1250 kW diesel-fired emergency generator set at U.S. Capitol Police Headquarters, located at 119 D Street NE, Washington DC 20510. The contact person for the facility is Kenneth Eads, Director, Security Programs, at (202) 228-1820.

The permit application and supporting documentation, along with the draft permit are all 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 public 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 postmarked after July 8, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – Redacted - 016-13

VIA EMAIL TO:

May 23, 2013

[Name]
[Title], [Ward Number]
State Board of Education
Office of the State Superintendent of Education
[Email Address]

Dear [Name]:

This responds to your request, at our meeting on February 6, 2013, and in your February 28, 2013, email for guidance regarding whether you are permitted to serve as the [Title] of the State Board of Education ("SBOE") while also employed by [Company Name], a non-profit organization that helps states, including the District of Columbia, raise academic standards and strengthen accountability, given that SBOE receives updates about and discusses various matters on which [Company Name] has worked. You state you initially were appointed to the SBOE by Mayor Adrian Fenty, but since have been re-elected twice. [Company Name] was selected through a competitive bidding process run by the Kentucky Department of Education, but it is funded by a U.S. Department of Education grant and administered by the Florida Department of Education. Your concern is that while serving in your dual roles - - SBOE [Title] and [Company Name] employee - - situations will arise that present conflicts of interest and you seek guidance on the appropriate precautionary measures to take to avoid an ethics violation.

As Project Lead at [Company Name], you helped launch Next Generation Science Standards ("NGSS") in 2010, but have had minimal involvement since then because the project no longer falls under your purview at [Company Name]. You do, however, hear updates about the project every quarter in [Company Name] Executive Team meetings. You state that the standards will be finalized in Spring 2013 and the Office of the State Superintendent of Education ("OSSE") has indicated interest in having the SBOE adopt them. Based on your past SBOE experience, OSSE will review the standards, recommend adoption to the SBOE, and the SBOE will vote on the standards. At the very least, this presents the *appearance* of a conflict of interest because you sit on a Board charged with approving standards you helped create and about which you still receive updates. As precautionary measures, you fully have disclosed to the SBOE your

employer's role in the development of standards and avoided participating in SBOE discussions on standards developed by [Company Name] throughout 2012.

You also state that Partnership for the Assessment of College and Careers ("PARCC"), a consortium of 22 states working together to develop a common set of K-12 assessments, also may present a conflict of interest for you in your dual roles as SBOE [Title] and [Company Name] employee. The District of Columbia is a member of the consortium. The consortium is developing assessments for standardized tests for member-states, including the District of Columbia. The PARCC assessments, however, are not funded either by the consortium or the District of Columbia.

Finally, you asked whether you, as part of SBOE, can recommend to OSSE that District of Columbia schools (this designation includes both public and charter schools) immediately update their technology infrastructure, including providing adequate bandwidth and access to the "right" computers, to implement the PARCC standardized tests. You argue that the infrastructure needs to be improved, regardless of whether PARCC assessments are implemented, because it is what is needed to ensure quality education. You want to know if the Board can advocate for the need for technology as an important tool for District of Columbia schools and advise OSSE and District of Columbia schools accordingly. No computer equipment, software, or related items would be purchased from [Company Name].

In 2010, you received an advisory opinion regarding your joint roles from the OSSE General Counsel, but as your duties have changed since then, you have requested a formal opinion. Your dual roles present four issues that are addressed below. As a member of the SBOE, you have responsibilities, codified in Chapter 18, Title 6B of the D.C. Municipal Regulations,[1] to which you must adhere as a District employee.

The first three issues are governed by DPM § 1804, Outside Employment and Other Outside Activities. DPM §1804.1 states:

1804.1 An employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following:

> *(a) Engaging in any outside employment, private business activity, or other interest which may interfere with the employee's ability to perform his or her job, or which may impair the efficient operation of the District of Columbia government.*

As [Title] of the SBOE, you may be asked to vote to approve the NGSS standards. This is an issue because you, as an [Company Name] employee, helped launch the NGSS standards in 2010 and currently participate in matters involving NGSS standards and implementation during [Company Name] staff meetings, although your participation is non-substantive. As a member of the SBOE, you are prohibited by DPM § 1804.1(d)

[1] Hereinafter, Title 6b of the D.C. Municipal Regulations will be referred to as the District Personnel Manual or DPM.

from voting to approve the NGSS standards.[2] In addition, DPM § 1804.1(e), prohibits you, as an [Company Name] employee, and [Company Name] itself, from benefitting, from votes taken or decisions made by you as SBOE [Title].[3] You must recuse yourself from any votes taken regarding the District's implementation of the NGSS standards, meaning you must disclose the conflict, in writing, to the other SBOE members and fully remove yourself from any NGSS-related discussions and/or votes.

You also are prohibited from participating in any actions leading up to the vote regarding the implementation of NGSS standards. You state that as SBOE [Title], you will question the District of Columbia schools regarding the District's readiness to administer tests that integrate NGSS standards. As stated above, you are prohibited by DPM § 1804.1(e), from benefitting, as an [Company Name] employee, from information you obtain by virtue of serving as SBOE [Title]. In addition, DPM § 1804.1(f) prohibits you from sharing information with other [Company Name] personnel that you obtained as SBOE [Title] and is not publicly available.[4] During our initial conversation, you suggested that the SBOE create a committee to handle questions related to the District's readiness to implement the NGSS standards to avoid a violation of these provisions. You would not be on the committee, thus, effectively recusing yourself from these questions. We agree that this action is an effective means of recusing yourself from possible conflicts arising from your role as SBOE [Title] as it relates to the District's readiness to implement NGSS standards, thus reducing the opportunity for you to learn non-public information as SBOE [Title] that may be beneficial to you as an [Company Name] employee, to [Company Name] itself, or to other [Company Name] personnel.

The second issue involves the PARCC assessments as they relate to the District of Columbia. You state that the District will be ready to implement the assessments by the start of the 2014-2015 school year. Therefore, PARCC-related issues increasingly will be discussed among SBOE members beginning in August/September 2014. You state that your SBOE term will end December 31, 2014, and you do not plan to seek re-election. Based on the information you have provided to the Office of Government Ethics ("OGE"), you intend to fully recuse yourself from all PARCC-related discussions. Recusal is an appropriate remedy unless such recusal becomes necessary so frequently that it interferes with your ability to perform your duties as SBOE [Title]. In that situation, recusal no longer will be the appropriate remedy and another, more suitable remedy, will have to be found. We note that there is minimal overlap between the majority of the period in which the PARCC assessments will be administered by District of Columbia schools, beginning in August/September 2014, and the end of your SBOE term on December 31, 2014, a period of approximately four months.

The third issue involves District of Columbia schools providing updates to the SBOE about implementation of Common Core standards. You state that between 2009 and 2010, [Company Name] was involved in the development of the Common Core standards for the states, including the District of Columbia. You state that you fully recused

[2] DPM § 1804.1(d) prohibits District government employees from, "maintaining financial or economic interest in… an outside entity if there is any likelihood that such entity might be involved in an official… decision taken or recommended by the employee."

[3] DPM § 1804.1(e) prohibits District government employees from, "engaging in any outside employment… which permits an employee… to capitalize on his or her official title or position."

[4] DPM § 1804.1(f) prohibits District government employees from, "divulging any official government information to any unauthorized person… or otherwise making use of or permitting others to make use of information not available to the general public."

yourself from any SBOE discussions related to PARCC at the time. In addition, the District's implementation of PARCC assessments is not within the purview of the SBOE. The SBOE does not have any policy-making authority over the assessments, and OSSE, alone, approves the assessments that the District administers. A conflict may arise because the SBOE does, in fact, ask District of Columbia schools to provide updates at hearings from time-to-time. The hearings are public, however, and you, as [Title], are not required to ask for the updates. An effective remedy for this scenario is to have a different member of the SBOE ask the District of Columbia schools for an update regarding PARCC-related matters. Please note, however, that any activity that requires decision-making will require you to fully disclose and recuse yourself immediately.

Finally, with regard to the fourth issue, advocating for an updated technology infrastructure, you state that, regardless of whether the PARCC assessments are implemented by District of Columbia Schools, adequate technology is necessary for the District of Columbia schools to deliver quality education to its students. The Conflicts of Interest provision in the Ethics Act may be implicated here. The provision states:

D.C. Official Code § 1-1162.23 (a) No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise . . . request for a ruling or other determination . . . other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.

Here, neither you nor [Company Name] are supplying District of Columbia schools with the extra computers or the updates to the bandwidth or other aspects of the technology infrastructure. You will not benefit financially, either directly or indirectly, if all of the District of Columbia schools update their technology infrastructure. In addition, it is likely that the District of Columbia schools will need to update their technology infrastructure if they select other standardized tests to administer to students. An update to the District of Columbia schools technology infrastructure would be beneficial to District of Columbia schools and all students regardless of whether District of Columbia schools implement the PARCC assessments. Accordingly, you are not prohibited by D.C. Official Code § 1-1162.23(a) from advocating for an updated technology infrastructure as part of SBOE. I caution you to limit your discussion of the PARCC assessments while advocating for an updated technology infrastructure as it may be perceived as advocating for the PARCC assessments.

As general guidance, you must not devote District government time or resources to work that you perform for [Company Name] (See, DPM § 1804.1(b)) and you cannot order other SBOE members or subordinate staff to work on matters related to your responsibilities at [Company Name]. (See, DPM § 1804.1(c)).

Based upon the information you provided, your proposed outside activity is permissible if you adhere to the remedial measures discussed herein. With regard to issues one and two, disclosure and recusal serves as an effective remedy for potential conflicts. Again, you are prohibited from engaging in any NGSS-related discussions and/or votes. With regard to issue three, having a different member of the SBOE ask OSSE and/or the District of Columbia schools for updates regarding PARCC-related matters will suffice

unless SBOE is required to make a decision, in which case you will again be required to fully disclose and recuse yourself immediately. With respect to issue four, you are not prohibited from advocating for an updated technology infrastructure, but are cautioned to limit your discussion of the PARCC assessments so that you are not perceived as advocating for them. Finally, it is important to note, however, that recusal is not the appropriate remedy for every conflict that may arise during your tenure as the SBOE [Title], and it may be necessary for you to seek additional guidance in the future as new issues arise.

Please be advised that this advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq*., which empowers me to provide such guidance. As a result, no enforcement action for violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion. It must be stressed that this advisory opinion only provides protection for prospective conduct, not past conduct.

Finally, you are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that identifying information will not be disclosed unless and until you consent to such disclosure in writing, should you wish to do so.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at (202) 481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

AA-016-13

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PUBLIC MEETING

District of Columbia Health Information Exchange Policy Board

The District of Columbia Health Information Exchange Policy Board, pursuant to the requirements of Mayor's Order 2012-24, dated February 15, 2012, hereby announces a public meeting of the Board. The meeting will be held **Wednesday, June 19, 2013** at 2:00 pm in the **6th Floor Conference Room 6130** at 899 North Capitol Street, NE, Washington, DC 20002.

The District of Columbia Health Information Exchange Policy Board meeting is open to the public. The topics to be discussed on the agenda include a Welcome and Introduction, Approval of the Minutes from the May 15, 2013 Meeting, DC HIE Next Steps, New Business, and Reports.

If you have any questions, please contact Cleveland Woodson at (202) 724-7342.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Marriage and Family Therapy ("Board") hereby gives notice of its regular meetings pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2001) ("Act").

The Board's regular meetings during the remainder of 2013 and in 2014 will be held on the following dates:

July 3, 2013
September 4, 2013
December 4, 2013
March 5, 2014
June 4, 2014
September 3, 2014
December 3, 2014

The Board's regular meetings are conducted on the first Wednesday of each quarter starting in July 2013 and will be held from 11:00AM to 1:00PM. The Board will consider and discuss a variety of matters including proposed regulatory changes pertaining to the practice of occupational therapy and practices by occupational therapy assistants and occupational therapy aides. The meeting will be open to the public from 11:00AM until 12:00PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 12:00PM until 1:00PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

In addition to the regular meetings as noted above, the Board will also hold a special meeting on Wednesday, June 12, 2013 from 11:00AM to 3:00PM to discuss revisions to the marriage and family therapy regulations.

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at http://doh.dc.gov/events for additional information.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION
CHILD, ADOLESCENT AND SCHOOL HEALTH BUREAU

Notice of Funding Availability (NOFA)
Request for Applications (RFA)
RFA# CHA_SBHC_06.21.2013

School Based Health Centers

The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) is soliciting applications from qualified not-for-profit organizations located and licensed to conduct business within the District of Columbia to improve access to care for high school students in grades 9-12 by operating a school-based health center. The overall goal is to help address the primary and urgent care needs of students in the school that will house the school-based health center. This includes assuring appropriate confidentiality and coordination of care, making referrals for specialty care, and serving as a model medical home.

DOH is working with DC Public Schools (DCPS) and the Department of Government Services (DGS) as the construction of the health center is completed. The school-based health center will be approximately 2,500 square feet and will include practice space for the school nurse. There will be two awards of up to $675,000.00 each. Approximately $1,350,000 in local appropriated funds is anticipated to be available for these two year grants. The second year is contingent upon performance and continued availability of funds.

The release date for RFA # CHA_SBHC_06.21.2013 is Friday, June 21, 2013. The Department of Health, Community Health Administration will have the complete RFA available on the DC Grants Clearinghouse website at www.opgs.dc.gov on **Friday, June 21, 2013**. The RFA will also be available for pickup at CHA located at 899 North Capitol Street, NE, on the 3rd Floor.

The Request for Application (RFA) submission deadline is 4:45 pm Monday, July 15, 2013. The Pre-Application conference will be held in the District of Columbia at 899 North Capitol Street, NE, 3rd Floor Conference Room, Washington, DC 20002, **on Thursday, June 27, 2013, from 10:00am – 12:30pm**.

If you have any questions please contact Luigi Buitrago via e-mail luigi.buitrago@dc.gov or by phone at (202) 442.9154.

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 13-04: Grace Evangelical Lutheran Church
4300 16th Street NW (Square 2646, Lot 807)

Designation Case No. 13-07: District of Columbia War Memorial
West Potomac Park, north side of Independence Avenue SW between 17th Street and West Basin Drive (U.S. Reservation 332)

Designation Case No. 13-11: General Baking Company Bakery
2146 Georgia Avenue NW (Square 2877, Lot 930)

Designation Case No. 13-12: Washington Railway and Electric Company Garage
2112 Georgia Avenue NW (Square 2877, Lot 933)

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY

BOARD OF DIRECTORS MEETING
June 11, 2013
815 Florida Avenue, NW
Washington, DC 20001

5:30 pm

AGENDA

I. Call to order and verification of quorum.

II. Vote to close meeting to discuss the approval of a Final Bond Resolution for the Tyler House Apartments project and bond transaction.

Pursuant to the District of Columbia Administrative Procedure Act, the Chairperson of the Board of Directors will call a vote to close the meeting in order to discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of the Tyler House Apartments project and bond transaction. An open meeting would adversely affect the bargaining position or negotiation strategy of the public body. (D.C. Code §2-405(b)(2)).

III. Re-open meeting.

IV. Consideration of DCHFA Final Bond Resolution No. 2013-07 for the approval of the Tyler House Apartments project and bond transaction.

V. Vote: Agency's 2013 Travel Policy.

VI. Discussion: Parkway Overlook Update and Plan of Execution including Disposal Dates.

VII. Discussion: Agency's Credit Card Policy.

VIII. Executive Director's Report.

IX. Other Business.

X. Adjournment.

INGENUITY PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

FOOD SERVICE MANAGEMENT SERVICES

Ingenuity Prep PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2013-2014 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposals (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on June 7, 2013 from:

Will Stoetzer, Director of Business and Operations
4600 Livingston Rd. SE
Washington, DC 20010
Tel: (202) 818 -8686 or (202) 491-3279
Email: wstoetzer@ingenuityprep.org

Proposals will be accepted at the above address on Friday, June 28, 2013 no later than 3:30 P.M.

All bids not addressing all areas as outlined in the RFP will not be considered.

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Review Of Judge James A. Belson

This is to notify members of the bar and the general public that Judge James A. Belson of the District of Columbia Court of Appeals has requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

> "…A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.
>
> (2) The Commission shall submit a written report of its recommendation and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.
>
> (3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations and members of the public to submit any information bearing on the qualifications of Judge Belson which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed, or faxed, by **July 8, 2013**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718

The members of the Commission are:

Hon. Gladys Kessler, Chairperson
William P. Lightfoot, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Noel J. Francisco, Esq.
Shirley Ann Higuchi, Esq.
Jeannine C. Sanford, Esq.

BY: /s/ Gladys Kessler
Chairperson

KIPP DC

REQUEST FOR PROPOSALS: CLEANING

KIPP DC is soliciting proposals from qualified vendors for cleaning services. The competitive Request for Proposal can be found on KIPP DC's website at www.kippdc.org/procurement.

Proposals are due no later than 5:00 P.M., EST, June 24, 2013. No proposals will be accepted after the deadline. Questions can be addressed to jsalsbury@pmmcompanies.com.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

New Communities Initiative Comprehensive Case Management Services

The District's Office of the Deputy Mayor for Planning and Economic Development (ODMPED) invites the submission of applications for the New Communities Initiative, Comprehensive Case Management Services Grants pursuant to "Economic Development Liaison Office Establishment Act," effective August 16, 2008 (D.C. Law 17-219; D.C. Official Code § 2-1203.01 et seq.) (as amended) and Mayor's Order 2008-165, dated December 31, 2008. There is up to $2,000,000 dollars available for this round of funding.

The New Communities Initiative Human Capital Plan requires grantee organizations to provide comprehensive case management services to single residents and head of households and their families that are guided by a strengths-based plan jointly developed by the case manager and consumer(s). The case management plan will be tailored to the particular requirements and preferences of each consumer and will address immediate needs that may affect stability, as well as the achievement of self-sufficiency goals.

The target populations for this initiative are heads of households and their families residing in the designated New Communities areas: Park Morton (Ward 1), Northwest One (Ward 6), Lincoln Heights / Richardson Dwellings (Ward 7) and Barry Farm (Ward 8). The Human Capital Team in the ODMPED will work with grantees to verify that clients are eligible for New Communities funded programs/services. The goal of the grant is to fund programs that will improve the quality of life of New Communities residents.

Eligible entities include nonprofits, private/public entities, and faith-based organizations that can demonstrate a commitment to New Communities sites through a successful track record of offering and operating programs, projects, services, and facilities. Eligible projects must also be able to demonstrate an ability to successfully perform the following: (1) identify and refer consumers in need, to mental health and substance addiction treatment programs, (2) link consumers to literacy/educational programs, (3) provide and link consumers to workforce

development (job readiness) training, link to employment opportunities; and, (4) should have experience with utilizing an online case management database for documenting services. Proposed case management programs should preferably be located within the boundaries of the New Communities target areas in which the applicant is applying. Proposed projects that leverage other resources shall be given special consideration. Additional applicant and project eligibility requirements and evaluation criteria are detailed in the Request for Applications (RFA).

The Request for Applications will be released on **Monday, June 24, 2013 and the deadline for submission is Thursday, August 8, 2013 at 6:00 pm.** The RFA will be available online via DMPED's website @ www.dmped.dc.gov or OPGS District Grants Clearinghouse at www.opgs.dc.gov. All inquiries should be directed to the New Communities Human Capital Team at (202) 724-8111.

A Pre-Application Conference will be held on Tuesday, July 9, 2013 at 1:00pm – 2:30pm. 1100 4th Street, SW, Washington, D.C. 20024. Conference Room 200

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

New Communities Initiative Comprehensive Youth Development and Community Wellness Programs

The District's Office of the Deputy Mayor for Planning and Economic Development (ODMPED) invites the submission of applications for the New Communities Initiative, Youth Development and Community Wellness Grants pursuant to "Economic Development Liaison Office Establishment Act," effective August 16, 2008 (D.C. Law 17-219; D.C. Official Code § 2-1203.01 et seq.) (as amended) and Mayor's Order 2008-165, dated December 31, 2008. There is up to $500,000 dollars available for this round of funding.

The New Communities Initiative Human Capital Plan requires grantee organizations to provide Community Health and Wellness and Youth Development programs. Community Health and Wellness programming shall include a focus on healthy living, and making smart choices related to health and wellness. The program targets seniors (55 years and older) as well as youth (up to age 24). Examples include: health education programs, health screenings and testing, outreach and activities (i.e.: treatment and prevention; food selection and food preparation, etc.).

Youth Development and/or Senior oriented programming focus on improving the lives and economic opportunities for seniors (55 years and older) and youth (up to age 24). Examples include: financial literacy programs, youth enrichment programs, pre-retirement planning, youth parenting classes, and higher education mentoring programs (i.e. SAT prep., application and financial aid instruction etc.).

The target populations for this initiative are heads of households and their families residing in the designated New Communities areas: Park Morton (Ward 1), Northwest One (Ward 6), Lincoln Heights / Richardson Dwellings (Ward 7) and Barry Farm (Ward 8). The Human Capital Team in the ODMPED will work with grantees to verify that clients are eligible for New Communities funded programs/services. The goal of the grant is to fund programs that will improve the quality of life of New Communities residents.

Not-for-Profit organizations that meet all of the following criteria are eligible to apply:

1. Have a federal 501 (c) (3) tax-exempt status and must be organized under the District of Columbia Non-profit Corporation Act (DC Code, sec.29-501 et seq.). ***Eligible applicants must have tax exempt status for two consecutive years prior to application submission***.
2. Have a principal place of business located within the District of Columbia.
3. Demonstrate a commitment to the NCI target area where the project is proposed through a successful track record of offering and operating programs, projects, services, or facilities.
4. Be a registered organization in good standing with the DC Department of Consumer and Regulatory Affairs, Corporation Division, the Office of Tax and Revenue, and the Internal Revenue Service (IRS).
5. Cannot be classified as an ineligible applicant listed below.
6. Be a community-based organization(s), defined as: non-profit agency with an active board of directors that is familiar with the community served.

NOTE: For organizations that are former and current NCI grantees, NCI staff will evaluate performance under their previous and/or current grant agreement. This includes timely submission of monthly and final close-out reports, site visit reports, and implementation of the program in accordance with the executed grant agreement. ***If your organization has not completed or submitted a final close-out report for a prior year's grant for which programming has ended.**

****Applicants must be current and in good standing with all other funding received from any other District of Columbia agency.***

The Request for Applications will be released on **Monday, June 24, 2013 and the deadline for submission is Thursday, August 8, 2013 at 6:00 pm.** The RFA will be available online via DMPED's website @ www.dmped.dc.gov or OPGS District Grants Clearinghouse at www.opgs.dc.gov. All inquiries should be directed to the New Communities Human Capital Team at (202) 724-8111.

A Pre-Application Conference will be held on Tuesday, July 9, 2013 at 10:00am – 11:30am. 1100 4th Street, SW, Washington, D.C. 20024. Conference Room 200

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: Skyland Shopping Center and Neighboring Parcels
Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, & 214/196; Lots 1, 3, 4, 5, & 802 in Square 5632; Lots 800 & 801 in Square 5633; Lots 10, 11, 12, 13 & 819 in Square 5641; and Lots 12 – 31 & 33 in Square 5641-N

Date: Wednesday, June 26th, 2013
Time: 6:30 p.m.
Location: Francis A. Gregory Neighborhood Library (FGR Meeting Room)
3660 Alabama Avenue S.E.
Washington, DC 20020
Contacts: Nimita Shah, Nimita.Shah@dc.gov

D.C. CORRECTIONS INFORMATION COUNCIL

NOTICE OF PUBLIC MEETING

The DC Corrections Information Council (CIC), in accordance with the D.C. Official Code §1-207.42 and § 2-575, hereby gives notice that it has scheduled the following meeting **June 11, 2013** from **6:30 pm to 8:00 pm**. The Meeting will be held at **One Judiciary Square** located 441 Fourth Street NW, Washington, DC 20001. For additional information, 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 draft agenda for this meeting. A final agenda will be posted on the CIC's website, available at https://sites.google.com/a/dc.gov/cic/.

DRAFT AGENDA

I. Call to Order (Board Chair)
II. Roll Call (Board Chair)
III. Hope Village – report release on May 24, 2013
IV. Update on: FCI Fairton, Video Visitation at DC Jail, FCI Manchester, & USP McCreary
V. CIC Upcoming Tour Schedule
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)

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF INQUIRY

FORMAL CASE NO. 766, IN THE MATTER OF THE COMMISSION'S FUEL ADJUSTMENT CLAUSE AUDIT AND REVIEW PROGRAM;

FORMAL CASE NO. 982, IN THE MATTER OF AN INVESTIGATION INTO POTOMAC ELECTRIC POWER COMPANY REGARDING AN INTERRUPTION TO ELECTRICAL ENERGY SERVICE;

FORMAL CASE NO. 991, AN INVESTIGATION INTO EXPLOSIONS OCCURRING IN OR AROUND THE UNDERGROUND DISTRIBUTION SYSTEM OF THE POTOMAC ELECTRIC POWER COMPANY; AND

FORMAL CASE NO. 1002, IN THE MATTER OF THE JOINT APPLICATION OF PEPCO AND THE NEW RC, INC. FOR AUTHORIZATION AND APPROVAL OF MERGER TRANSACTION

1. In this Notice of Inquiry ("NOI"), the Public Service Commission of the District of Columbia ("PSC" or "Commission") continues its inquiry into whether to establish restoration benchmarks for electric utility service after a Major Service Outage ("MSO"). In this NOI, the Commission requests comments, first, on proposed alternatives for a definition of MSO, and, second, on the structure of proposed benchmarks for service restoration in the event of an MSO within the District. After consideration of the comments and replies, including comments previously filed in response to Order Nos. 16249 and 16262,[1] and the Commission's Notice of Inquiry dated April 27, 2012,[2] the Commission will determine whether and to what extent further modification of its rules is warranted.

[1] *Formal Case No. 766, In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program; Formal Case No. 982, In the Matter of an Investigation into Potomac Electric Power Company Regarding an Interruption to Electrical Energy Service*, and *Formal Case No. 991, In the Matter of an Investigation into Explosions Occurring In or Around the Underground Distribution Systems of the Potomac Electric Power Company*, Order No. 16249 (rel. March 11, 2011) ("Order No. 16249") and Order No. 16262 (rel. March 18, 2011) ("Order No. 16262").

[2] *Formal Case No. 766, In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program; Formal Case No. 982, In the Matter of an Investigation into Potomac Electric Power Company Regarding an Interruption to Electrical Energy Service*, and *Formal Case No. 991, In the Matter of an Investigation into Explosions Occurring In or Around the Underground Distribution Systems of the Potomac Electric Power Company*, 59 DCR 17 (rel. April 27, 2012) ("April 2012 NOI").

I. DEFINITION OF MAJOR SERVICE OUTAGE

2. The Commission is seeking comments on whether to change its present definition of "Major service outages" ("MSO") and if so, which of three alternative changes should be adopted. The Commission's present definition reads:

> **Major service outages** – customer interruption occurrences and durations during time periods when 10,000 or more of the electric utility's District of Columbia customers are without service and the restoration effort due to this major service outage takes more than twenty-four (24) hours.[3]

Under the current interpretation of this definition, a MSO occurs whenever the number of customers without power as a result of an interruption event at a given time reaches 10,000, and the electric utility's restoration effort as measured from the time of the first customer outage to the time of the last customer restoration from the interruption event lasts more than 24 hours.

3. The first of the alternative definitions under consideration (Option A) is not intended to depart from the interpretation currently given to MSO under 15 DCMR § 3699.1. It is only meant to clarify the ambiguity in the current definition as to the relationship between the number of customers without service and the measurement of the 24 hour restoration period. The current definition has been interpreted to mean a MSO is an event when 10,000 customers are without power at a given time, and the electric utility's restoration effort as measured from the time of the first customer outage to the last customer restoration from the event lasting at least 24 hours. Option A would change the definition to read:

> **Major service outage** – an event when 10,000 or more of the electric utility's District of Columbia customers have sustained interruptions and are without service simultaneously due to an interruption event and the restoration effort takes more than twenty-four (24) hours, measured from when the first sustained interruption occurred to the restoration of the last customer. A group of customers who are all without power at the same time during an interruption event are said to be without service simultaneously.

4. The second alternative definition (Option B) represents a change in both language and meaning when compared to the current definition. It requires that the number of customers without power during an interruption event remains at or above 10,000 for a period of at least 24 hours:

> **Major service outage** – an event when 10,000 or more of the utility's District customers have sustained interruptions and are without service simultaneously due to an interruption event for a period of 24 hours or more. A group of customers who are all without power at the same time during an interruption event are said to be without service simultaneously.

[3] 15 DCMR § 3699.1 (2008).

5. To illustrate the differences between these two alternative definitions, consider the thunderstorm that occurred in the District on June 22, 2012, where a total of 19,561 customers were without service at the peak of the storm; 10,000 or more customers were without service for nine hours; the time between the first outage and the last restoration was 51 hours with 90% of the customer restored within 29 hours from the first outage. The storm was on the system for 3 hours and 36 minutes and the outages began while the storm was still on the system. Under the current definition, the June 22, 2012 storm and its aftermath was characterized as a MSO because the number of District customers without power reached 10,000 and outage restoration efforts took more than 24 hours from the first outage to the last restored customer. Under the Option B definition, the June 22, 2012 storm and its aftermath would not have been characterized as a MSO because the number of District customers without power reached 10,000 but only stayed above that number for nine hours.

6. Like Option B, the third alternative definition (Option C) represents a change in meaning from the current definition of MSO, Option C defines a MSO based on the total number of customer hours of interruption experienced over the course of the event, without reference to: i) the number of customers that must be simultaneously without power; ii) a minimum time period for the utility's restoration effort; or iii) a specified time period over which a particular number of customers experience a loss of power:

> **Major service outage** – a major service outage is an event that occurs when the number of the utility's District customers simultaneously without power, when combined with the durations of those outages, equals or exceeds 240,000 customer hours of interruption. A group of customers who are all without power at the same time during the interruption event are said to be without service simultaneously.

Again, for illustrative purposes, using the Option C alternative, the June 22, 2012 storm would not be deemed a MSO because the number of customer hours of interruption was 234,319 and therefore did not exceed 240,000 customer hours. However, to further illustrate the difference between Option C and Options A and B, an interruption event that results in 6,700 customers being simultaneously without power for 36 hours or an interruption event that results in 25,000 customers being simultaneously without power for 10 hours would both be considered a MSO under Option C, but not under Options A or B.

II. MAJOR SERVICE OUTAGE RESTORATION BENCHMARKS

7. The reasonableness of a major service outage restoration benchmark comes from balancing the work to be performed, the resources available, and the timing and manner in which those resources are to be deployed. For this reason, we are considering a two-tiered structure to set Major Service Outage restoration benchmarks, as shown in illustrative subsections 36xx.xx(a) and (b) below:

36xx.xx **Benchmarks for Major Service Outages.** In the event of a Major Service Outage within the District, the utility shall complete service restoration to the following percentage of affected District customers, within the following number of hours:

(a) For a Major Service Outage affecting AA% or fewer of the utility's District customers, electric service to no less than ZZ% of the affected customers shall be restored within ## hours.

(1) For a Major Service Outage caused by weather, the earliest date and time determined for when the weather event departed the District, by the utility, the National Weather Service's Northeast Regional Climate Center or by any other federal or District government agency qualified to make such determination, respectively; or

(2) For a Major Service Outage due to a cause other than weather (such as equipment failure, fire, natural disaster, or civil disturbance) the date and time that the utility was first capable of gaining safe and lawful physical access to assess damage to its infrastructure, where that damage contributed to the loss of electric service in the District.

(b) For a Major Service Outage affecting more than BB% of the utility's District customers, electric service to no less than YY% of the affected customers shall be restored within ## hours.

(1) For a Major Service Outage caused by weather, the earliest date and time determined for when the weather event departed the District, by the utility, the National Weather Service's Northeast Regional Climate Center or by any other federal or District government agency qualified to make such determination, respectively; or

(2) For a Major Service Outage due to a cause other than weather (such as equipment failure, fire, natural disaster, or civil disturbance) the date and time that the utility was first capable of gaining safe and lawful physical access to assess damage to its infrastructure, where that damage contributed to the loss of electric service in the District.

III. COMMENTS

8. The Commission requests comments on the following questions:

a) Whether the existing definition of Major Service Outage should remain as is, be clarified as stated in Option A or some other alternative language, or be replaced with a new definition?

b) If a new definition is to be supplied for Major Service Outage, should the Commission adopt Option A, Option B, Option C, or some other definition of Major Service Outage?

c) Whether it would be productive, for purposes of reaching consensus on the definition of "Major Service Outage" and identifying potential issues

associated with that definition, for the Commission to convene an informal conference in which interested persons may engage in a dialog among themselves and with our staff?

d) Should Major Service Outage restoration benchmarks be structured in multiple tiers and as a percentage (%) of customers restored within a specified time period, in the manners shown above?

e) Whether it would be productive, for purposes of reaching consensus on the structure of Major Storage Outage restoration benchmarks for the Commission to convene an informal conference in which interested persons may engage in a dialog among themselves and with our staff?

f) To what extent would the adoption of the definition of Major Service Outage depicted in either Option B or Option C cause the number of sustained outages characterized as non-major service outages to increase or decrease; based on that increase or decrease, should the outage restoration deadline applicable to non-major service outage increase or decrease?

9. All persons interested in commenting on the questions and discussion above may submit written initial comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after publication of this NOI in the *D.C. Register*. Comments may be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005 or at the Commission's website at **www.dcpsc.org**. Persons with questions concerning this notice should call 202-626-5150.

RICHARD WRIGHT PUBLIC CHARTER SCHOOL

REQUEST FOR BIDS

Design Build Services for Existing Space

The Richard Wright Public Charter School is soliciting bids for general construction services. Bid package may be obtained beginning on Monday, June 10, 2013 by sending a request via email to acharles@richardwrightpcs.org. No phone calls. Bids must be delivered via email to acharles@richardwrightpcs.org by 5:00 PM on Friday, June 21, 2013.

Design Build Services for Existing Space - General Construction and Renovation Services - The work will include:

- Tile
- Paint
- General construction of 9 classrooms, 2 multi-stall bathrooms, and nurse suite

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMEND FOR 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 July 1, 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: July 1, 2013**
Recommended for appointment as a DC Notaries Public **Page 2**

Abebe	Blen	Fannie Mae 3900 Wisconsin Avenue, NW	20008
Achbezef	Nebel	ABC Visa and Passport Services, Inc. 2144 California Street, NW	20008
Aguilar	Ana E.	Capital One Bank, NA 700 14th Street, NW, Suite 750	20005
Aguilera	Jeniffer	Union Station Investco, LLC 2W/40 Massachusetts Avenue, NE	20002
Anderson	Shirley L.	Wiley Rein, LLP 1750 K Street, NW	20006
Apps	Lisa A.	The Israel Project 2020 K Street, NW, Suite 7600	20006
Askew	Elizabeth	Mission First Housing Development Corporation 1330 New Hampshire Avenue, NW, Suite 116	20036
Atwood	Kylie	CBS News 2020 M Street, NW	20036
Bell	Taylor Steven	Abdo Development 1404 14th Street, NW	20005
Bennani	Achraf B.	Capital One Bank 1545 Wisconsin Avenue, NW	20007
Bennett	Jamila K.	Legal Services Corporation (LSC) 3333 K Street, NW	20007
Boddie	Monika	Bank of America 3401 Connecticut Avenue, NW	20008
Brittingham	Tatiana	Capital One Bank, NA 1545 Wisconsin Avenue, NW	20007
Brown	Joanna Fraser	Kuder, Smollar & Friedman PC 1350 Connecticut Avenue, NW	20006

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Recommended for appointment as a DC Notaries Public **Page 3**

Brown	Yolanda	Acon Investment LLC 1133 Connecticut Avenue, NW, Suite 700	20036
Burley-Marshall	Sandra M.	Premium Title & Escrow, LLC 1534 14th Street, NW	20005
Capozzoli	Casey	Morality in Media 1100 G Street, NW, Suite 1030	20005
Chacko	Elizabeth	Citibank 2221 I Street, NW, Suite 400	20037
Chung	Craig A.	Worldwide Settlements, Inc 1425 K Street, NW, Suite 350	20005
Clarke-Koonce	Pamela R.	Paul Hastings, LLP 875 15th Street, NW	20005
Crowley	Nancy T.	Wiley Rein, LLP 1776 K Street, NW	20006
Dakheel	Bassam	Bank of America 3 Dupont Circle, NW	20036
Davis	Annette M.	TEFCU 2000 Bladensburg Road	20018
Davis	Wanda Annette	U.S. Department of Education 400 Maryland Avenue, SW, Room 2W119	20202
Davis	Debra	Self 1308 27th Street, SE	20020
Dieguez	Cristopolis A.	Export Import Bank of the United States 811 Vermont Avenue, NW, Room 529	20571
Diene	Dieynaba	Agriculture FCU 14th Independence Avenue, SW, Suite SM2	20250

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Djate	Lizzet C.	Self 2330 Good Hope Road, SE, Suite 1222	20020
Dudley	Laura L.	Amideast 1730 M Street, NW, Suite 1100	20036
Edley	Kimberly K.	Law Office of Kimberly K. Edley 3192 Westover Drive, SE	20020
Erdman	Rebecca	The Washington Institute for Near East Policy 1828 L Street NW, Suite 1050	20036
Felder	Corlis B.	The Morris & Gwendolyn Cafritz Foundation 1825 K Street, NW, Suite 1400	20006
Feng	Yan	Capital One Bank 5714 Connecticut Avenue, NW	20015
Flake	Cathaleen I.	Tax Executives Institute, Inc. 1200 G Street, NW, Suite 300	20005
Fludd	Aishia D.	C.B. Harris & Company, Inc. 900 2nd Street, NE, Suite 308B	20002
Franklin	Wanda	Self 5015 South Dakota Avenue, NE	20017
Gaymon	Crystal V.	Akerman Senterfitt LLP 750 9th Street, NW, Suite 750	20001
Goode	Demetria	Pact, Inc 1828 L Street, NW	20036
Grant	DeJuana	Self (Dual) 2013 Alabama Avenue, SE	20020
Graves	Evangeline L.	NOVO Development Corporation 519 11th Street, SE	20003
Gray	LaCretia D.	Wiley Rein, LLP 1776 K Street, NW	20006

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Hall	Quiyana	Department of Parks and Recreation 1250 U Street, NW	20009
Harris	Carolyn Jacobs	George Washington University Law School 2000 H Street, NW	20052
Hertzberg	Rebecca J.	RTKL Associates, Inc 2101 L Street, NW, Suite 200	20037
Hobson	Frances A.	Spiegel & MCDiarmid LLP 1333 New Hampshire Avenue, NW	20036
Inman	Reginald	Self 5205 Just Street, NE	20019
Jackson	Vanessa L.	Self 509 Jefferson Street, NW	20011
Jarrett	Lawrence	Bank of America 888 17th Street, NW	20006
Johnson	Julius G.	Self 1160 Owens Place, NE	20002
Johnson	Cynthia M.	American Wind Energy Association 1501 M Street, NW	20005
Kabre	Jean R.	Lincoln Property Company 101 Constitution Avenue, NW, Suite L140	20001
Khan	Farhat	Bank of America 201 Pennsylvania Avenue, SE	20003
Kim	Connie	Caplin & Drysdale Chartered One Thomas Circle, NW, Suite 1100	20005
King	Ruth H.	Ermer Law Group, LLC 1413 K Street, NW, Suite 600	20005
Lane	Cynthia L.	Self 4008 First Place, SW	20032

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Recommended for appointment as a DC Notaries Public **Page 6**

Lee	Melisa Sook	NIH Federal Credit Union 5255 Longboro Road, NW	20016
Lomax	Shantese	Specialty Hospital of Washington-Hadley 4601 Martin Luther King, Jr., Avenue, SW	20032
Lynch	Renee D.	District of Columbia Child and Family Services 200 I Street, SE	20003
Mack	Theresa Marie	Lockheed Martin Corporation 300 M Street, SE	20003
Maggiolo	Luciana	Capital City Public Charter School 100 Peabody Street, NW	20011
Massey	Anna M.	Cardinal Bank 1776 K Street, NW	20006
Mattingly	Joan H.	Bryan Cave, LLP 1155 F Street, NW	20004
McCleary	Michael S.	The Willard InterContinental Hotel 1401 Pennsylvania Avenue, NW	20004
McGuire	Ellen	Wiley Rein, LLP 1776 K Street, NW	20006
McKenzie	Marcus	DC Water & Sewer Authority 80 M Street, SE, Suite 720	20003
Messinger	Rebecca	Price Benowitz LLP 409 7th Street, NW	20004
Metcalf	Linda D.	For The Record, Inc 1100 H Street, NW	20005
Mimms	Karen Denise	Self 1717 Stanton Terrace, SE	20020
Moore	Carolina R.	Kutak Rock LLP 1101 Connecticut Avenue, NW, Suite 1000	20036

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Moutraji	Niveen	Stern Investment Advisory 4401-A Connecticut Avenue, NW	20008
Moy	Angie O.	Washington Drama Society t/a Arena Stage 1101 6th Street, SW	20024
Muse	Agnes M.	Gallaudet University 800 Florida Avenue, NE	20002
Nelson-Warren	Simone	Council for Advancement and Support of Education 1307 New York Avenue, NW, Suite 1000	20005
Nettles	Sarina A.	The Clearing, Inc. 1250 Connecticut Avenue, NW	20036
Orshoski	Curtis A.	Lee & McShane, PC 1211 Connecticut Avenue, NW, Suite 425	20036
Panizo	Randolph B.	Capitol Paving of DC, Inc. 2211 Channing Street, NE	20018
Perez	Gloria	Self 4322 Kansas Avenue, NW, Suite B	20011
Phifer	Renee	Self 4542 Eads Street, NE	20019
Pickering	Scott D.	Merrill LAD 1325 G Street, NW	20005
Politis	Nicholas John	Starwood Capital Group 1255 23rd Street, NW, Suite 675	20037
Poole	Connie	Accenture 800 Connecticut Avenue, NW, Suite 600	20006
Potts	Terri	Wiley Rein, LLP 1776 K Street, NW	20006

Powell	Catherine	Wiley Rein, LLP 1776 K Street, NW	20006
Prather	Stephanie L.	U.S. Department of Education 400 Maryland Avenue, SW	20202
Rodriguez	Lori J.	Economists Incorporated 2121 K Street, NW, Suite 1100	20037
Seasholtz	Silvia	The George Washington University, Office of the Senior Vice President & General Counsel 2100 Pennsylvania Avenue, NW, Suite 250	20052
Seawright	Tina M.	Quarles & Brady, LLP 1700 K Street, NW, Suite 825	20006
Simmons	Vanassa	Self 4306 12th Place, NE	20017
Sirna	Lawrence P.	People For The American Way Foundation 1101 15th Street, NW, Suite 600	20005
Smith	Tamara A.	Federal Aviation Administration 800 Independence Avenue, SW	20549
Southall	Kelly Moss	Scout Properties LLC 3620 12th Street, NE	20017
Stapleton	Lauren Jessica	Branch Banking and Trust Company 1730 Rhode Island Avenue, NW	20036
Stokes	Gail E.	UDR 1400 N Street, NW	20005
Stroh	Tracy Jean	Derenberger & Page Reporting, Inc. 1430 S Street, NW	20009
Suliman	Salih	Sonet Net Telecommunications, Inc. 3500 18th Street, NE	20018

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Taylor	Karen R.	DC Water & Sewer Authority 80 M Street, SE, Suite 720	20003
Tebebe	Berhane	ES & Associates, LLC 1214 Franklin Street, NE	20017
Thompson	Marc	Office of the US Attorney for the District of Columbia 555 4th Street, NW	20001
Trumbo	Rehanah	Beasley Real Estate, LLC 2020 K Street, NW, Suite 600	20006
Vactor	Brenda J.	WC Smith 1100 New Jersey Avenue, SE, Suite 1000	20003
Wang	Jesse	Office of General Counsel, Smithsonian Institution 1000 Jefferson Drive, SW, Room 302, MRC 012	20560
Ward	Ellen Brewster	Cornerstone, Inc 1400 20th Street, NW, G3	20036
White	Dina	Tribune Company 1090 Vermont Avenue, Suite 1000	20005
Wicks, II	Joe Nathan	Capital Tax, Accounting and Business Services 6230 3rd Street, NW, Suite 15	20011
Wilkins	Ann	U.S. Court of Appeals, DC Circuit 333 Constitution Avenue, NW	20001
Williams	Teresa	Sidley Austin, LLP 1501 K Street, NW	20005
Williams	Wendy D.	Self (Dual) 1511 Crittenden Street, NW	20009
Willitts	Kelley Marie Campoy	Barquin International 1707 L Street, NW, Suite 570	20036

THE SEED PUBLIC CHARTER SCHOOL OF WASHINGTON DC

Request for Proposals

Copier Equipment Services and Supplies

The SEED Public Charter School of Washington DC is inviting firms to submit proposals for lease or rental of approximately 11 multifunction copiers and associated removal of existing copiers, installation of new copiers, preventive and scheduled maintenance service, repairs, parts, all supplies (except paper) and training to key personnel. Additional specifications outlined in the Request for Proposal (RFP) may be obtained between the hours of 8 am – 4pm from:

Vita Makle
Executive Assistant to the Head of School
THE SEED PUBLIC CHARTER SCHOOL of Washington, D.C.
4300 C Street, SE
Washington DC 20019
202-248-3007

The deadline for submitting bids is June 17, 2013 at 2:00pm.

All bids not addressing all areas as outlined in the RFP will not be considered.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Sewerage Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Sewerage Services Committee will be holding a meeting on Thursday, June 20, 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

I.	**Call to Order**	Committee Chairperson
II.	**AWTP Status Updates** BPAWTP Performance	Assistant General Manager Plant Operations
III.	**Status Updates**	Chief Engineer
IV.	**Project Status Updates**	Director, Engineering & Technical Services
V.	**Action Items** - Joint Use - Non-Joint Use	Chief Engineer
VI.	**Emerging Items/Other Business**	Chief Engineer
VII.	**Adjournment**	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, June 20, 2013, at 11:30 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 linda.manley@dcwater.com.

DRAFT AGENDA

I.	**Call to Order**	Committee Chairperson
II.	**Water Quality Monitoring**	Assistant General Manager, Consumer Ser.
III.	**Fire Hydrant Upgrade Program**	Assistant General Manager, Consumer Ser.
IV.	**Action Items**	Assistant General Manager, Consumer Ser.
V.	**Emerging Issues/Other Business**	Assistant General Manager, Consumer Ser.
VI.	**Adjournment**	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18543 of Yves Balcer, pursuant to 11 DCMR § 3104.1, for a special exception to allow an addition to a one-family detached dwelling under § 223, not meeting the rear yard (§ 404), and side yard (§ 405) requirements, in the R-1-A District at premises 5063 Overlook Road, N.W. (Square 1430, Lot 6).

HEARING DATE: April 30, 2013
DECISION DATE: May 21, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 14, 2012, from the Zoning Administrator, which stated that Board of Zoning Adjustment ("Board" or "BZA") approval is needed for a special exception, pursuant to 11 DCMR §§ 3104.1 and 223.1. (Exhibit 5.)

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 3D and to owners of property within 200 feet of the site as well as to the Office of Planning ("OP"). The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. ANC 3D submitted a timely report opposing the application. That report, dated April 21, 2013, indicated that a properly noticed public meeting on April 3, 2013, at which a quorum was present at all times, the ANC voted 10:0:0 to oppose the application after hearing presentations from the Applicant and adjoining neighbors who opposed the project. Commissioner Nan Wells was designated as the ANC's representative and authorized to speak on its behalf. The ANC expressed concern that the detached structure could be increased in height, up to 40 feet, once it has been connected to the main dwelling.[1] (Exhibit 30.)

Commissioner Wells is also an adjoining neighbor and part of a group of neighbors who opposed the project. During deliberations on May 21st and in response to the Board's inquiries as to where the ANC's position currently stood, given the withdrawal of opposition by all the opposing neighbors (including Commissioner Wells), the representative of the Applicant and the opposing neighbors testified on the record that it

[1] The objection and concerns raised by the opposing parties and ANC regarding what could happen to the detached structure, which is a pool house, have been addressed through a covenant agreed to with those neighbors and which shall be executed and recorded with the Recorder of Deeds pursuant to this Order before any building permit may be issued.

was their belief that the ANC would not continue to oppose the project in light of the withdrawal of all the opposing parties' objections due to agreement to the terms of the covenant that is referenced herein and where its execution and recordation with the Recorder of Deeds is made a condition in this Order.

The Office of Planning ("OP") submitted a timely report, dated April 23, 2013, and a supplemental report dated April 24, 2013, in support of the application. (Exhibits 26 and 34.)

The District Department of Transportation ("DDOT") submitted a letter dated March 4, 2013, with a recommendation of "no objection". (Exhibit 22.)

Two letters of support from nearby neighbors, Lloyd and Ann Hand, both of 3519 Overlook Lane, N.W., were submitted for the record. (Exhibit 27.)

There were four party status requests in opposition from neighbors L. Palmer Foret, 5069 Overlook Road, N.W.; Mari Tuna Foret, 5069 Overlook Road, N.W.; Gary B. Garofalo, 5132 Rockwood Parkway, N.W.; and Mark P. Leone, 5057 Overlook Road, N.W. (Exhibits 23, 24, 25, and 26.) On May 21st, the attorneys representing Mr. Garofalo and Mr. Leone submitted letters withdrawing their respective clients' opposition, each expressing that the proposed covenant, the execution and recordation of which are made a condition to this Order, would satisfy their clients' concerns and objections. (Exhibits 41 and 42.) Mr. Foret attended and testified, both on his own behalf and as the representative of the party-opponents, on the record as to his and the other party-opponents' withdrawal of their opposition now that there is an agreed-upon covenant.

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 § 3104.1, for special exception relief under § 223 (§§ 404 and 405) of the Zoning Regulations. No parties continued to appear at the public hearing in opposition to this application once the parties in opposition withdrew their opposition. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223 (§§ 404 and 405), that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 the application is hereby **GRANTED, SUBJECT TO the revised plans at Exhibit 28 AND THE FOLLOWING CONDITION:**

1. The DECLARATION OF COVENANTS AND RESTRICTIONS contained in Exhibit 40 in the record shall be executed and recorded with the Recorder of Deeds prior to any building permit being issued.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to Approve; the third Mayoral appointee seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

FINAL DATE OF ORDER: May 29, 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 ORDER NO. 02-26B
Case No. 02-26B
The George Washington University – Lerner Health and Wellness Center
(Minor Modification to Permit One Year Extension of Approval)
April 22, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on April 22, 2013, and approved an application from The George Washington University ("University") for a minor modification to Z.C. Order No. 02-26A, which approved certain categories of users of the Lerner Health and Wellness Center (the "Lerner Center").

FINDINGS OF FACT

In Application No. 16276 (order issued March 31, 1998), the Board of Zoning Adjustment approved the construction and use of the Lerner Center by students, faculty and staff of the University's Foggy Bottom Campus. In Z.C. Order No. 02-26 (June 14, 2004), the Commission conditionally expanded the category of users to include students, faculty and staff of the University's Mount Vernon Campus, members of the University's Board of Trustees, and students of the School Without Walls in organized activities under the supervision of school faculty (together, these additional users are the "2004 Additional Users"). The Commission authorized the use by the 2004 Additional Users for a period of three years and stated that, absent a new special exception approval at the end of that period, the use of the Lerner Center would revert to those authorized under the 1998 order.

In Z.C. Order No. 02-26A (order issued November 15, 2007), the Commission granted the University's request to continue the use by the 2004 Additional Users, and also authorized the use of the Lerner Center by persons residing in St. Mary's Court or the Remington Condominiums, or belonging to St. Mary's Church (limited to a total of 50), and alumni of the University who reside in the Foggy Bottom/West End Area as defined in the approved 2007 Foggy Bottom Campus Plan (limited to a total of 250) (together, these 300 additional users are the "2007 Additional Users"). The Commission limited the use by the 2004 Additional Users and the 2007 Additional Users for a period of five years from the effective date of the order, or until February 8, 2013.

By letter dated February 6, 2013, counsel for the University requested an extension of the authorization allowing the 2004 Additional Users and the 2007 Additional Users to continue to use the Lerner Center for a period of one year. A hearing was held on this application on April 22, 2013 at which Deputy General Counsel Charles Barber and Director of Campus Planning Susi Cora testified on behalf of the University. The University representatives testified that the University was currently in compliance with Z.C. Order No. 20-26A, and that the University needed the one year extension to review its use of its athletic facilities generally and consider possible additional users of the Lerner Center specifically, including the possibility of use by other members of the Foggy Bottom/West End community.

By resolution dated February 27, 2013, which was adopted at a regularly scheduled and duly noticed public meeting, with a quorum present, Advisory Neighborhood Commission 2A ("ANC 2A") voted to support the University's request for a one year extension. ANC 2A expressed its desire that the University consider greater use of the Lerner Center by community residents.

By letter dated March 12, 2013, the Policy, Planning and Sustainability Administration of the Department of Transportation submitted a report that concluded that the Applicant's request would have no adverse impacts on the travel conditions of the District's transportation network.

By letter dated April 12, 2013, the Office of Planning submitted a report recommending approval of the one year extension.

At the conclusion of the hearing, the Commission voted to approve the one year extension.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's requested one year extension for use of the Lerner Center by the 2004 Additional Users and the 2007 Additional Users would not present an objectionable impact on the surrounding community. The Commission concludes that the extension is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan. The Commission also notes that the request is supported by both the Office of Planning and ANC 2A, who are each entitled to "great weight."

DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request for a one year extension of the user groups identified in Conditions 1(b), 1(c) and 1(d) of Z.C. Order 02-26A. This approval shall be effective for one year from the effective date of 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.

VOTE: 5-0-0 (Peter G. May, Marcie I. Cohen, Anthony J. Hood, Robert E. Miller, and Michael G. Turnbull to approve).

BY ORDER OF THE D.C. ZONING COMMISSION
The majority of the Commission members approved the issuance of this Order.

FINAL DATE OF ORDER: May 29, 2013.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-20
Z.C. Case No. 12-20
13th and U Lessee, LLC
(Consolidated Planned Unit Development and Related Zoning Map Amendment @ Square 237, Lots 198-202)
May 13, 2013

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 4, 2013 to consider an application by 13th and U Lessee, LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related amendment of the Zoning Map of the District of Columbia from ARTS/C-2-A to ARTS/CR for Square 237, Lots 198-202 (the "Application"). The Commission considered the application pursuant to Chapter 24 and Chapter 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the Application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Square 237, Lots 198-202 (the "Property") and is located at the southwest corner of the intersection of 13th Street N.W. and U Street N.W.

2. On September 21, 2012, the Applicant filed the Application for consolidated review and approval of a PUD and related Zoning Map Amendment from ARTS/C-2-A to ARTS/CR. (Exhibit ["Ex."] 2.)

3. During its public meeting on December 10, 2012, the Commission unanimously voted to set down the Application for a public hearing. Notice of the public hearing was published in the *D.C. Register* on January 18, 2013 and was mailed to Advisory Neighborhood Commission ("ANC") 1B and to owners of property within 200 feet of the Property. (Ex. 17.)

4. The Application was further updated by pre-hearing submissions filed on December 21, 2012 and February 12, 2013. (Ex. 12, 19.)

5. A public hearing was conducted on March 4, 2013. The Commission accepted Michael Swartz as an expert in the field of architecture and Michael Workosky as an expert in the field of traffic engineering. The Applicant provided testimony from these experts as well as from Kai Reynolds, partner at The JBG Companies and Caitlin Leary, project manager at The JBG Companies.

6. In addition to the Applicant, ANC 1B was automatically a party in this proceeding and submitted a report in support of the Application. (Ex. 16.) The Commission received no other requests for party status.

7. At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and received written evidence from ANC 1B in support of the Application. (Ex. 16, 20, 21.) The Commission also heard testimony from persons in support of and in opposition to the Application.

8. At the close of the hearing, the Commission asked the Applicant to address certain design issues and concerns. The Applicant addressed these issues and concerns in a post-hearing submission dated March 18, 2013. (Ex. 31.)

9. At its public meeting on April 8, 2013, the Commission took proposed action to approve the Application and plans that were submitted into the record.

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC, by action dated April 25, 2013, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests. (Ex. 44.)

11. The Commission took final action to approve the Application on May 13, 2013.

THE MERITS OF THE APPLICATION

Overview of the Property

12. The Property consists of approximately 25,230 square feet of land area at the southwest corner of the intersection of 13th Street N.W. and U Street N.W. The Property is currently improved with a one-story building with approximately 18,804 square feet of retail space, including a Rite-Aid drug store and other street-level retail, as well as approximately two dozen surface parking spaces. The rear of the Property is bounded by a 10-foot-wide public alley. (Ex. 2.)

13. The entrance to the U Street Metrorail Station is located across 13th Street from the Property. The U Street and 14th Street corridors are also well-served by multiple Metrobus lines as well as the D.C. Circulator. (Ex. 2, 25.)

14. The Property is located within the boundaries of the U Street Historic District. (Ex. 2.)

15. To the north of the Property, across U Street, is the Ellington, an eight-story mixed-use residential and retail project. To the west of the Property are three- and four-story commercial properties occupied with retail and service uses. To the south of the

Property, across the public alley, are two-story townhouses that front on Wallach Place, N.W. (Ex. 2.)

16. Approximately one block west of the Property is the eight-story Reeves Center, a District of Columbia administrative office building, and the Louis, a nine-story mixed-use residential and retail development that is currently under construction. One block east of the Property is 2020 12th Street, an eight-story mixed-use residential and retail project. (Ex. 2.) As identified in evidence submitted by the Applicant, tall multi-family residential buildings are located throughout the neighborhood adjacent to two-and three-story residential and commercial properties. (See page A32 of Ex. 19, Tab A.)

17. The Property is located in the ARTS/C-2-A Zone District. Property to the east and west is also located in the ARTS/C-2-A Zone District. Property to the north, across U Street, is located in the ARTS/CR Zone District. Property to the south is located in the R-4 Zone District.

18. The Future Land Use Map designates the Property in the Mixed-Use Medium-Density Residential Medium-Density Commercial Land Use Category. Property to the west, east and north is also located in the Mixed-Use Medium-Density Residential Medium-Density Commercial Land Use Category. Property to the south is located in the Moderate-Density Residential Land Use Category.

The Project

19. The Applicant requested approval to construct an eight-story building with approximately 134-138 residential units and approximately 15,241 square feet of ground-floor retail uses (the "Project"). (Ex. 2, 25.)

20. The design of the Project incorporates a series of setbacks and other design features to modulate the height and scale of the building. (Ex. 2, 25.) All four building elevations have been fully designed to incorporate details and elements that reference the scale, character and materials of the historic district. The building design was reviewed by the D.C. Historic Preservation Office ("HPO") and the Historic Preservation Review Board ("HPRB") each of which found the concept design to be compatible with the character of the historic district and consistent with historic preservation law. (See Ex. 21, Attachment 3.)

21. Except for the end bays, the Project's rear elevation along the alley is set back approximately 9'9" to widen the existing 10'3" alley and increase the amount of open space between the Project and property to the south. (Ex. 2, 25.) Setbacks at the seventh and eighth floors predominantly respect the 45-degree setback requirement under the

ARTS Overlay and further reduce the apparent height and mass of the Project. (See page A34 of Ex. 19, Tab A.)

22. The Project includes a minimum of approximately 48 parking spaces, accessed from a widened alley curb cut off 13th Street. Loading is also accessed from the public alley, and consists of two internal loading berths. The widened alley is able to accommodate truck turnaround movements so that trucks are able to enter and exit the alley front-first. (Ex. 2, 25.)

23. The Project will include a series of sustainable design features. (Ex. 19, Tab C.) Most importantly, the Project's front door is located approximately 330 feet from the entrance to the U Street Metrorail station, which will encourage transit use and reduces the likelihood of vehicle trips. The Project also includes a green roof as shown on the plans, among other features.

24. Streetscape improvements will be constructed along the U Street and 13th Street frontage. (Ex. 2, 25.) The Applicant agreed to storefront design guidelines that would further contribute to the pedestrian experience. (Ex. 31, Tab D.)

25. The total gross floor area for the Project is approximately 172,820 square feet for a total floor area ratio ("FAR") of approximately 6.85 and a lot occupancy of approximately 86.4%. The building will reach a maximum height of approximately 86.4 feet. (Ex. 2, 25.)

Zoning Map Amendment

26. The Property is located in the ARTS/C-2-A Zone District. The maximum height allowed in the ARTS/C-2-A Zone District is 50 feet, and the maximum density is 2.5 FAR (3.0 FAR for residential developments that trigger inclusionary zoning).

27. Property to the east and west is also located in the ARTS/C-2-A Zone District. Property to the north, across U Street, is located in the ARTS/CR Zone District. Property to the south is located in the R-4 Zone District.

28. The Applicant requested a PUD-related Zoning Map amendment to the ARTS/CR Zone District to permit the structures to reach the requested height and density. The maximum height permitted in the ARTS/CR Zone District under the PUD guidelines is 110 feet, and the maximum density permitted is 8.0 FAR.

PUD Flexibility Requested

29. The Applicant requested approval to construct a building to a maximum height of 86.4 feet and density of 6.85 FAR, which are within the PUD standards set forth in 11 DCMR § 2405, as well as a PUD-related Zoning Map amendment for the Property to the ARTS/CR Zone District. The Applicant requested flexibility from the lot occupancy, rear yard, ARTS overlay setback, public space at ground level, parking, loading, and roof structure requirements in order to accommodate the proposed design of the Project, as detailed in the Applicant's written submission and the OP Final Report. (Ex. 2, 21.)

30. No other flexibility from the Zoning Regulations was sought or granted.

31. The Applicant also requested flexibility to modify the design and materials selection in response to HPO and HPRB. DDOT requested flexibility for the Applicant and DDOT to modify improvements in public space subject to final review and approval by DDOT.

Project Amenities and Public Benefits

32. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:

    a. Exemplary urban design, architecture, and landscaping, including high-quality materials, pedestrian-oriented streetscape improvements, clear separation of pedestrian and vehicular entrances and circulation patterns, and sustainable features. (Ex. 2.) The Applicant also agreed to abide by certain storefront guidelines, including art display windows for the portions of the pharmacy that could not accommodate transparent glass windows; (Ex. 31, Tab D.)

    b. Site planning and efficient land utilization, through the redevelopment of a strategic underutilized site located along U Street N.W. across the street from a Metrorail station; (Ex. 2.)

    c. Effective and safe vehicular and pedestrian access and transportation management measures. Specific features include:

        i. TDM plan as set forth in the Applicant's traffic study; (Pages 36-37 of Ex. 2, Tab J.)

        ii. Agreement to restrict residents and tenants of the Project from participating in the residential parking permit ("RPP") program; (Ex. 12.)

iii. Approximately 48 bicycle parking spaces within the garage and an additional 12 parking spaces on the ground floor, as shown on the approved plans; and (Ex. 19, Tab A and page 3 of Ex. 31.)

iv. Transportation and streetscape infrastructure improvements, including:

1. $55,000 toward a new Capital Bikeshare station in the vicinity of Garrison Elementary;

2. $30,000 toward 60 custom bike racks on north-south streets off U Street;

3. $30,000 toward 20 new street lights focused on crosswalks on north-south streets off of U Street; and

4. $10,000 toward new or enhanced pedestrian crosswalk markings;

(Ex. 26.) The Capital Bikeshare and streetscape improvements listed above will be funded through donations to DDOT. DDOT testified that the Capital Bikeshare and public space improvements set forth above will require coordination with DDOT and requested flexibility to accommodate modifications based on DDOT's final review and approval; (Ex. 20.)

d. Historic preservation, through a design, street orientation, and materials selection that was found to be compatible with the character of the historic district by HPO and HPRB. (Ex. 2, 21.) The Applicant requested flexibility to continue to refine the design and materials selection to respond to comments from HPO and HPRB;

e. Housing and affordable housing, through the creation of 134-138 residential units, many of which consist of larger units that differentiate from other typical apartment buildings along the U Street corridor, including 12 affordable units set aside for households earning up to 80% of the area median income. (Ex. 2, 19, 25.) The gross floor area of the 12 affordable units shall be not less than the amount required to be set aside pursuant to 11 DCMR § 2603.[1] In its report, OP explained that a by-right project under the existing zoning would have generated five affordable units, and the PUD and related rezoning results in 12 affordable units, or seven additional affordable housing units above what would have been provided as a matter of right and which constitute a public benefit of the PUD; (Ex. 21 at page 12.)

[1] Nothing in this Order shall be construed as granting a waiver of the requirements of the Inclusionary Zoning regulations set forth in Chapter 26 of the Zoning Regulations.

f. Environmental benefits, including a green roof as shown on the approved plans and specific building systems and design features that will reduce the overall stormwater impact, energy demands and water usage as set forth in the Applicant's prehearing statement; and (Ex. 19, Tab C.)

g. Uses of special value, including:

i. $150,000 to the Friends of Harrison Recreation Center for improvements to the Harrison Recreation Center that may include, but are not limited to, expansion of the current building, improvement of the playing field, basketball court, or other elements not covered under DPR's current renovation;

ii. $150,000 to D.C. Public Schools, Garrison Elementary School or an affiliate for improvements to the publicly accessible areas of the Garrison Elementary[2] Field Improvement project, which may include but is not limited to engineering design, field turf installation, or playground equipment;

iii. $150,000 to a to-be-formed non-profit entity, for funding to enable due diligence and the start-up of a Business Improvement District ("BID"). The funds will be used primarily toward hiring a consultant to conduct the required research such as collecting property records, hosting community meetings, vetting the cost of services, or defining the boundaries of the BID itself;

iv. $15,000 to the Westminster Neighborhood Association for a resilient play surface and painting of the fence at the Westminster Playground; and

v. $10,000 to Cultural Tourism DC for a Camp Barker Memorial Plaque.

(Ex. 26.) At the hearing, the Applicant's representative stated that the above benefits will all be delivered prior to the issuance of a certificate of occupancy for the Project. (Ex. 25.) Finally, the Applicant agreed to a Small/Local Business Tenant Relocation Plan that will address the tenant's concerns about the potential impact of relocation. (Ex. 31, Tab B.)

[2] Garrison Elementary School is not located within the boundaries of ANC 1B, but serves the residents and children who reside within ANC 1B's boundaries. Therefore the "benefit" inures to the ANC 1B as required by 11 DCMR § 2403.13.

Transportation Issues

33. The Project is located near several modes of transportation, including the nearby U Street Metrorail station, Metrobus and D.C. Circulator lines, bicycle facilities, a connected and developed urban network of pedestrian sidewalks and paths, and a connected network of arterial, collector, and local streets. (Ex. 2, Tab J.)

34. The Applicant's traffic expert submitted a detailed transportation impact analysis that concluded that the proposed Project would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts in the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic consultant also concluded that the number of parking and loading spaces as well as the location of the parking and loading entrances would accommodate the parking and loading needs for the Project and not generate adverse or objectionable impacts on neighboring property. (Ex. 2, Tab J.)

35. DDOT submitted a report recommending approval of the Project. DDOT concurred that the Project would have minimal impact on the surrounding roadway network and supported the Project's proposed plans for vehicles, bicycles, and loading. In its report, DDOT also noted a number of positive transportation features of the PUD, including the widened alley to accommodate head-in, head-out loading, the funding for transportation and streetscape infrastructure improvements, and the Applicant's proposed TDM plan. (Ex. 20.)

36. At the request of ANC 1B, the Applicant agreed to restrict residents and tenants of the Project from participating in the RPP program. In its report and in testimony, DDOT agreed to honor this request. In its post-hearing submission, the Applicant provided additional information regarding similar RPP restrictions in other projects. (Ex. 31.)

37. The Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT:

    a. The Commission finds that the Project will not impose adverse impacts on the surrounding transportation network. The Commission credits the findings of the Applicant's traffic expert that the Project will not create any adverse impacts when compared with future background conditions;

    b. The Commission finds that the number of vehicular parking spaces will not result in adverse conditions and is appropriate given the transit-oriented location. The Commission concludes that the Applicant's agreement to restrict residents and

tenants from participating in the RPP program will ensure that the Project does not adversely impact on-street parking in the surrounding neighborhood;

c. The Commission finds that the location of the parking and loading entrances will not generate adverse conditions;

d. The Commission finds that the elimination of the 55-foot-deep loading berth and related platform will not result in adverse impacts; and

e. The Commission finds that the Project will not impose adverse impacts on the surrounding pedestrian network. The Commission also credits DDOT's acceptance of the pedestrian and related streetscape measures proffered by the Applicant subject to final approval by DDOT. The Commission recognizes that DDOT will determine the final measures to be installed through the public space approval process.

Construction Impacts

38. Persons in opposition raised concerns regarding excavation, environmental, and safety impacts of the proposed PUD on property to the west and south.

39. The District's Construction Code and environmental regulations are intended to control and mitigate the safety and environmental impacts of construction activity. The Commission cannot deny an application because a person thinks more stringent standards should apply. Furthermore, the Applicant has proffered a Construction Management Plan that will address concerns about construction impacts. (Ex. 31, Tab A.)

Impact on Commercial Tenants

40. An existing commercial tenant located on the Property raised concerns about the impact of the PUD on its ability to remain on the Property.

41. The Applicant's decision to renew an existing tenant's lease is a matter of private contract, and the Commission cannot deny an application because the Applicant may or may not retain the tenant in the proposed development. Furthermore, the Applicant has proffered a Small/Local Business Tenant Relocation Plan that will address the tenant's concerns about the potential impact of relocation. (Ex. 31, Tab B.)

Historic Preservation

42. The Commission received evidence that the building design was reviewed by HPO and HPRB, each of which found the concept design to be compatible with the character of the historic district and consistent with District of Columbia historic preservation law. (See

Ex. 21, Attachment 3.) The Commission finds that the final design and construction of the Project will be implemented pursuant to the District of Columbia's historic preservation law, which will ensure that the Project remains compatible with the character of the historic district and consistent with the historic preservation law, and that this process will protect the character of other buildings within the historic district.

Project Height and Density

43. A commercial tenant in the property located to the west of the Property raised concerns about the impact of the PUD on its light and air.

44. The Commission has found that the PUD's height and density is appropriate given the Project's location across the street from a Metrorail station. The Commission notes that the Applicant included a solar study that demonstrates the Project will not cast shadows on the adjacent properties to the west in the afternoon hours. (See page A35 of Ex. 19, Tab A.)

Notice of the Proposed PUD

45. Notice of filing of the proposed Project was published in the *D.C. Register* on October 5, 2012. (Ex. 7.) Notice of the public hearing was published in the *D.C. Register* on January 18, 2013 (Ex. 15.) and was mailed to ANC 1B and to owners of all property located within 200 feet of the Property. (Ex.17.)

46. Notice of the public hearing was also provided by posting of the Property pursuant to § 3015.4 of the Zoning Regulations. By affidavit, the Applicant submitted evidence that the Property was posted on January 17, 2013 in accordance with the Regulations. (Ex. 18.)

47. At the hearing, a resident of property located at 1319 Wallach Place, N.W. and a commercial tenant of property located at 1328 U Street, N.W. raised concerns regarding notice of the proposed PUD. The Commission finds that notice was mailed to the owner of 1319 Wallach Place, N.W. and to the owner of 1328 U Street, N.W. in accordance with the Regulations. (Ex. 17.) Furthermore, notice was published in the *D.C. Register* and the Property was posted in accordance with the Regulations, and the Commission received an affidavit stating that the posting was maintained every seven days. (Ex. 15, 18, 23.) In addition, as noted in the ANC 1B report and in testimony from the Applicant and persons in support of the Application, there was extensive outreach and discussion of the Project prior to the public hearing, including 22 well-attended public meetings. Finally, the persons in opposition had actual notice of the hearing, as evidenced by their presence at the public hearing. For these reasons, the Commission concludes that sufficient notice was provided in accordance with the Regulations.

Compliance with PUD Standards

48. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects." The Commission finds that the development incentives for the height, density, flexibility and related rezoning to ARTS/CR are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant. The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant's statement and the OP report. (Ex. 2, 21.)

49. The Commission credits the testimony of the Applicant and its architectural experts as well as OP, DDOT, and ANC 1B, and finds that the superior design, site planning, streetscape, sustainable design features, transportation infrastructure improvements, housing and affordable housing, historic preservation, uses of special value (including improvements for Garrison Elementary School, Harrison Recreation Center, and a new business improvement district) and tax revenue features of the Project all constitute acceptable project amenities and public benefits.

50. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, historic preservation, site planning, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.

51. The Commission disagrees with the testimony of persons in opposition that the proposed amenities and benefits are insufficient for the Project. The Commission credits the testimony of the Applicant regarding the community-based planning effort that guided the development of the Project, and finds that the process resulted in amenities that reflect community preferences and priorities. The Commission credits the testimony of persons in support as well as OP and ANC 1B that the PUD provides significant and sufficient public benefits and project amenities.

52. The Commission finds that the character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. Specifically, the Commission credits the testimony of the Applicant and the Applicant's architectural and transportation planning experts that the PUD represents a strategic use of a transit-oriented parcel across the street from a Metrorail station entrance.

53. The Commission credits the testimony of OP and the Applicant regarding the Property's designation as Mixed-Use Medium-Density Commercial/Medium-Density Residential on the Future Land Use Map of the District of Columbia. The Framework Element lays out "interpretation guidelines" for the Future Land Use Map, and many of these guidelines are reprinted on the map itself. The Interpretation Guidelines state that the Future Land Use Map is not a zoning map and does not specify allowable uses or dimensional standards. The Guidelines also indicate that the typical building heights and densities included in the land use category simply describe the "general character" of the area, and state that the "granting of density bonuses [through PUDs] may result in heights that exceed the typical ranges cited here." Finally, the Guidelines indicate that the Future Land Use Map designations are not parcel-specific and should be interpreted in conjunction with the text of the Plan:

    a. The Future Land Use Map identifies the Property as appropriate for mixed-use development supporting Medium-Density Commercial and Medium-Density Residential uses. The Medium-Density Commercial category defines shopping and service areas that draw from a citywide market area, with buildings that are taller than moderate density areas but generally do not exceed eight stores. The Medium-Density Residential category defines similarly sized buildings in neighborhoods where mid-rise (four to seven stories) apartment buildings are the predominant use. The Framework Element lists certain corresponding zone districts for each category that include the C-2-B, C-2-C, C-3-A, and C-3-B zones (for Medium-Density Commercial) and R-5-B and R-5-C zones (for Medium-Density Residential), but notes that "other districts may apply"; and

    b. The proposed rezoning to the ARTS/CR Zone District is consistent with the Future Land Use Map. The Zoning Regulations define the CR Zone District as a zone that should be applied to areas where "a mixture of uses and building densities is intended to carry out elements of the District of Columbia development plans, including goals in employment, population, transportation, [and housing . . . ." (11 DCMR § 600.4.) The proposed Project's height, at eight stories, is consistent with the upper limits listed in the definitions in the Medium-Density Residential and Medium-Density Commercial areas. Furthermore, the Future Land Use map notes that "heights may exceed the typical ranges" when bonuses are granted through a PUD.

54. The Commission finds that the proposed map amendment to the ARTS/CR Zone District is not inconsistent with the Comprehensive Plan or the character of the surrounding area. The Commission notes that the proposed zoning is consistent with the Property's location at a Metrorail station and along a major urban corridor, and property across the street is located in the same zone district. The rezoning is necessary to permit the mix and density

of uses appropriate for this strategic, transit-oriented site. Further, the rezoning is part of a PUD application, which allows the Commission to review the design, site planning and provision of public benefits and amenities against the requested zoning flexibility.

55. The Commission credits the testimony of OP and ANC 1B that the Project will provide benefits and amenities of substantial value to the community and the District commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP's testimony that the impact of the PUD on the level of services will not be unacceptable.

56. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD.

57. For the reasons detailed in this Order, the Commission credits the Applicant's proposed construction management and tenant relocation plans as reasonable efforts to mitigate the impacts of the construction of the Project.

58. The Commission credits the testimony of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide and area elements of the Plan, including:

    a. Designation of the Property as Mixed-Use Medium-Density Residential/Medium-Density Commercial use on the Future Land Use Map as well as provisions of the Framework Element that explicitly state that density and height gained through the PUD process are bonuses that may exceed the typical ranges listed in the Plan;

    b. Land Use Element policies promoting redevelopment around Metrorail stations, mitigation of commercial development, and creative parking management;

    c. Housing Element policies promoting the even distribution of mixed-income housing across the city;

    d. Other policies in the Economic Development, Transportation, Historic Preservation and Urban Design Elements related to the Land Use policies and goals stated above; and

    e. Policies in the Mid City Area Element regarding transit-oriented, mixed-use and mixed-income development.

Agency Reports

59. By report dated February 21, 2013 and by testimony at the public hearing, OP recommended approval of the Application and concluded that the Project's design, including the proposed massing, articulation, and use of materials, was exemplary. (Ex. 21.) OP determined that the Applicant had provided additional information and made significant improvements regarding Project design and historic preservation, street level design, sustainable design features, parking, and affordable housing. OP concluded that the PUD and related rezoning was not inconsistent with the Property's Policy Map and Future Land Use Map designations in the Comprehensive Plan and would further the Land Use, Housing, Economic Development, Historic Preservation, Urban Design, and Mid-City Elements. OP evaluated the PUD and related rezoning under the evaluation standards set forth in Chapter 24 of the Zoning Regulations and concluded that the Project's benefits and amenities package was appropriate given the size and nature of the PUD and related requests for rezoning and flexibility. OP requested that the Applicant provide additional detail regarding the proposed benefits. The Applicant provided this detail at the public hearing. (Ex. 26.) Finally, OP recognized HPO and HPRB's approval that the Project is compatible with the character of the historic district and consistent with the historic preservation law. (Ex. 21.)

60. OP submitted a supplemental report dated April 5, 2013. The report stated that in response to the Commission's request, the Zoning Administrator determined that the proposed interior accessory rooftop recreation space could comply with § 411.1 of the Zoning Regulations. The report stated that the Applicant reduced the size of the rooftop recreation space, and that OP supported this revision. The report also addressed the Applicant's proposed storefront treatment along U Street. OP expressed concern that the Applicant's proposal to infill some of the windows with a rotating arts display was contrary to the intent of § 1903.4(a) of the Zoning Regulations, which requires that no less than 50% of the surface area of the street walls at ground level fronting on a pedestrian street to be devoted to display windows and entrances to commercial uses or to the building, and that windows shall use clear or low-emissivity glass. OP's concern was that the art displays would not allow complete visual access to activated interior retail space. OP further stated that if the Commission was willing to consider the Applicant's art display proposal, it should include conditions in this Order to ensure the art exhibit space would be a benefit. (Ex. 35.)

61. OP submitted a second supplemental report dated April 22, 2013. The report recommended additional language for the conditions suggested in its April 5 report. The report stated that the Applicant was converting some of the space devoted to bicycle parking on the ground floor to a bicycle shower facility, and that OP supported this change. (Ex. 39.)

62. By report dated February 22, 2013 and by testimony at the public hearing, DDOT recommended approval of the PUD noting the PUD's positive transportation features, including the widened public alley, funding for transportation and streetscape benefits, and transportation demand management plan. (Ex. 20.) DDOT found that the Project would have minimal impact on the existing roadway network and agreed that the proposed amount of vehicle and bicycle parking was sufficient given the Project's location and other features. DDOT noted that it would be able to honor the request of the Applicant and ANC 1B to restrict the property and its tenants from RPP eligibility. Finally, DDOT concluded that the Project's loading plan would minimize conflicts and promote safe loading activities. At the hearing, DDOT requested that the Commission grant the Applicant flexibility to continue to refine and modify the location and design of elements located in public space.

ANC 1B Report

63. At a regularly scheduled and duly noted public meeting on December 6, 2012, with a quorum present, ANC 1B voted to support the proposed PUD and related rezoning. (Ex. 16.) The ANC noted the Applicant's extensive community outreach, changes to the Project design in response to community comments, and proposed benefits package, which was developed through a community benefits task force convened by the Applicant. The ANC also noted that its Design Review Committee had voted to support the PUD as well. ANC 1B conditioned its support on the Applicant's agreement to prohibit tenants from applying for RPP permits.

Testimony in Support

64. At the hearing, the Commission heard testimony from nearby residents and business owners in support of the Application. Supporters lauded the design, amenities, and the Applicant's community outreach.

Testimony in Opposition

65. At the hearing, the Commission heard testimony from two nearby residents, a commercial tenant in an adjacent commercial property, and a commercial tenant located on the Property in the existing building. The Commission also requested and received updates from the commercial tenants regarding their continued discussions with the Applicant after the Commission took proposed action to approve the Project. (Ex. 40, 41.) The individuals raised concerns about notice regarding and the impact of the construction of the Project, which have been addressed as detailed in this Order.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this Application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

4. Proper notice of the proposed PUD and related rezoning was provided in accordance with the requirements of the Zoning Regulations.

5. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right standards. Here, the height, character, scale, mix of uses and design of the proposed PUD are appropriate, and the proposed construction of an attractive mixed-use building that capitalizes on the Property's transit-oriented location is compatible with the citywide and area plans of the District of Columbia.

6. The Applicant seeks a PUD-related zoning map amendment to the ARTS/CR Zone District as well as flexibility from the lot occupancy, rear yard, ARTS overlay setback, requirement for public space at ground level, parking, loading, and roof structure requirements. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted for the reasons detailed below.

7. The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties,

are consistent with the height and density of surrounding and nearby properties, and will create a more appropriate and efficient utilization of land across the street from an entrance to a Metrorail station. The mix of residential and retail uses are also appropriate for the site's location.

8. The Project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, housing and affordable housing, historic preservation, ground-floor retail, and uses of special value are all significant public benefits. The impact of the project is acceptable given the quality of the public benefits of the Project.

9. The impact of the Project on the surrounding area and the operation of city services is not unacceptable. The Commission agrees with the conclusions of the Applicant's traffic expert and DDOT that the proposed Project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community. The Application will be approved with conditions to ensure that any potential adverse effects on the surrounding area for the Project will be mitigated.

10. Approval of the PUD and rezoning is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed Project is consistent with the Property's Mixed-Use Medium-Density Commercial/Medium-Density Residential Designation on the Future Land Use Map and furthers numerous goals and policies of the Comprehensive Plan in the Land Use Element, Housing Element, and other citywide elements and policies as well as policies in the Mid-City Area Element as delineated in the OP Report.

11. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the Property from the ARTS/C-2-A to the ARTS/CR Zone District is not inconsistent with the Comprehensive Plan, including the Property's designation as Mixed-Use Medium-Density Commercial/Medium-Density Residential on the Future Land Use Map, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

12. The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

13. The Commission is required under § 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. OP recommended approval, provided that the Applicant supply additional information regarding the proposed public benefits and project amenities. The Commission concludes that the Applicant has addressed this condition. Through supplemental reports dated April 5, and April 22, OP expressed concern about the Applicant's proposed storefront art display windows, and if the Commission was willing to consider the display proposal, recommended conditions to ensure the displays were a public benefit. The Commission considered the advice and included the conditions in this Order.

14. In accordance with § 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)), the Commission must give great weight to the written issues and concerns of the affected ANC, as stated in its written report. The Commission accorded the issues and concerns raised by ANC 1B the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 1B holds with respect to the impact of the proposed Application on the ANC's constituents. ANC 1B recommended approval, provided that the Applicant agree to prohibit tenants from participating in the RPP program. The Commission concludes that the Applicant has addressed this condition, which is a condition of this Order.

15. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the Application for consolidated approval of a PUD and related rezoning from the ARTS/C-2-A Zone District to the ARTS/CR Zone District for property consisting of Square 237, Lots 198-202 ("Property"). This approval is subject to the following guidelines, conditions, and standards of this Order.

A. Project Development

1. This Project shall be developed in accordance with the plans marked as Exhibit 19, Tab A and Exhibit 31, Tab F of the Record, as modified by guidelines, conditions, and standards herein.

2. The Property shall be rezoned from ARTS/C-2-A to ARTS/CR.

3. The Applicant shall have flexibility from the lot occupancy, rear yard, ARTS overlay setback, requirement for public space at ground level, parking, loading,

and roof structure requirements of the Zoning Regulations as shown on the approved plans.

4. The Property shall be used for residential and commercial uses as shown on the approved plans.

5. The project shall provide vehicular parking as shown on the approved plans, provided that the Applicant shall be permitted to make alterations to the size and design of the underground parking garage, provided that the garage contains a minimum of approximately 48 parking spaces, which requirement may be satisfied with any combination of handicapped, full-sized, compact, valet, and tandem spaces.

6. The Project shall provide a total of approximately 54 bicycle parking spaces, including approximately 42-48 bicycle parking spaces in the garage, approximately six to 12 bicycle parking spaces on the ground floor, as well as a shower for cyclists on either the ground floor or in the garage.

7. The Project shall provide loading consistent with the approved plans.

8. The Applicant shall have flexibility with the design of the PUD in the following areas:

    a. To make minor adjustments and refinements to the exterior design of the Project in response to direction received from the Historic Preservation Office or Historic Preservation Review Board;

    b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;

    c. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction or in response to direction received from the Historic Preservation Office or the Historic Preservation Review Board;

    d. To vary the final streetscape design and materials subject to review and approval by the appropriate District permitting authorities;

    e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim,

or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;

f. To vary the number, size, location, and design features of retail entrances and windows, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design, provided, that the storefront design is consistent with the guidelines included in Exhibit 31, Tab D of the Record; and

g. To vary the number, size, location, and other features of proposed building signage, provided that such signage is otherwise permitted under the applicable provisions of the District of Columbia Municipal Regulations and is consistent with the guidelines included in Exhibit 31, Tab D of the Record.

B. Public Benefits

1. Prior to the issuance of a building permit, the Applicant shall implement a construction management plan similar in form and content to the plan included as Exhibit 31, Tab A of the Record.

2. Prior to the issuance of a building permit, the Applicant shall demonstrate compliance with the Local/Small Business Retail Tenant Relocation plan included as Exhibit 31, Tab B of the Record.

3. Prior to the issuance of a certificate of occupancy, the Applicant shall demonstrate that it has provided the following public benefits:

a. Contribute $150,000 to the Friends of Harrison Recreation Center, or its successor or equivalent, for improvements to the Harrison Recreation Center. Such improvements may include but are not limited to the expansion of the current building, improvement of the playing field, basketball court, or any other elements not covered under the Department of Parks and Recreation's planned renovation;

b. Contribute $150,000 to the District of Columbia Public Schools, Garrison Elementary School or an affiliate organization (such as the Garrison Elementary Parent Teacher Association) for improvements to publicly accessible areas of the Garrison Elementary Field Improvement Project.

Such improvements may include but are not limited to engineering, design, field turf installation, or playground equipment;

c. Contribute $150,000 to a non-profit entity to be established for the purposes of a new Business Improvement District ("BID") in the U Street neighborhood, for due diligence and start-up costs related to the establishment of the BID. Such funds may include but are not limited to hiring of a consultant to conduct the required research such as collecting property records, hosting community meetings, vetting the cost of services, or defining the boundaries of the BID;

d. Contribute $15,000 to the Westminster Neighborhood Association for a resilient play surface and painting of the fence at Westminster Playground; and

e. Contribute $10,000 to Cultural Tourism DC to sponsor a Camp Barker memorial plaque.

Compliance with the above conditions shall be demonstrated by letters from the recipients listed above stating that the funding has been received and used towards the public benefits set forth above.

4. Prior to the issuance of a certificate of occupancy, the Applicant shall make the following contributions to DDOT:

a. $55,000 for the installation of a new Capital Bikeshare station in the vicinity of Garrison Elementary School;

b. $30,000 for the installation of up to sixty (60) custom bicycle racks on the north-south streets off of U Street NW;

c. $30,000 for the installation of up to twenty (20) new street lights focused on crosswalks on the north-south streets off of U Street NW; and

d. $10,000 for new or enhanced pedestrian crosswalk markings.

The final design and installation of any such improvements shall be subject to review and approval by the appropriate District permitting authorities, and the Applicant shall have flexibility to modify such improvements and reallocate the amount of funding for each improvement among the four proposed improvements in response to DDOT direction.

5. Prior to the issuance of a certificate of occupancy, the Applicant shall implement the following sustainable design features:

a. Green roof of approximately 6,200 square feet;

b. Bike storage to hold 54 bikes;

c. High efficiency (SEER 15) HVAC units;

d. Electric car charging station in the parking garage;

e. Purchase of 100% green electricity for a period of one year;

f. 10% recycled content in building products;

g. 10% regional materials within 500 miles of the site in building products;

h. Low-emitting materials for adhesives and sealants per SCAQMD Rule #1168;

i. Low-emitting materials for paints and coatings;

j. Energy efficient lighting and appliances;

k. Trash recycling facilities in the building including trash chutes on each residential floor with separate lines for trash and recycling. The community trash room will include separate receptacles for larger recyclable materials such as cardboard;

l. Mass transit education and Metrocard incentives to residents, in an effort to maximize the benefits of this transit oriented development, at the time of their initial occupancy including a designated area with information on transit, including schedules and maps, car sharing, and Capitol Bikeshare information. Each new resident will receive a $30.00 SmarTrip Card upon moving into the building;

m. Use 20% less water than the water use baseline calculated for the building after meeting the Energy Policy Act of 1992 ("Act") fixture performance requirements; water use will be metered for the residents on a monthly basis and measured against the Act's fixture performance requirements; the applicant will strive to the extent practical to surpass this commitment, and use 30% less water than the water use baseline calculated for the building after meeting the Act's fixture performance requirements; and

n. Divert 75% of the construction waste from disposal in landfills through a provision written into the construction contract making it a requirement of

the contractor; the Applicant will strive to the extent possible to surpass this commitment and divert up to 90% of our construction waste from disposal in landfills.

7. For the life of the Project, the Applicant shall prohibit tenants and residents of the Project from participating in the District's Residential Parking Permit ("RPP") program through a lease provision or similar mechanism and shall request that DDOT remove the Property from the list of properties eligible for RPP participation.

8. For the life of the Project, the Applicant shall adhere to the following storefront design criteria:

   a. Non-transparent windows are only permitted for the four windows shown on page 5 of Exhibit 31, Tab D;

   b. Any storefront windows not dedicated to art exhibits must be kept entirely free of any visual obstruction that would impede views into the store, including the glass entry doors and side windows to the drugstores. All storefront windows shall be transparent glass;

   c. Art exhibit windows shall:

      i. Offer a high level of engagement with the street and passers-by;

      ii. Not be used to display any advertising for the retail tenant, products carried by the retail tenant, or any other business;

      iii. Not be used exclusively to advertise any other art show curated by the Applicant or a non-profit manager of the window exhibit space, although exhibits coordinated with other off-site exhibits are permitted;

      iv. Be maintained by the Applicant with all on-going operating expenses borne by the Applicant;

      v. Be managed by an independent arts-related non-profit;

      vi. Be equipped with electricity, adequate security, and shall be lit all hours from dusk to dawn;

vii. Provide a clear interior depth of 12 inches minimum, to allow display of two-dimensional, three-dimensional, or new media artwork;

viii. Display art completed by professional artists, with a preference for local artists;

ix. Include art which is appropriate for the public realm, although the manager of the exhibit space is encouraged to provide varied art displays including original work and site-specific projects;

x. Without limiting the type of installations, include exhibits which engage passers-by both in daylight and in darkness; and

xi. Have the art rotated with new art every four months;

d. The current art display shall be featured on all websites of the non-profit manager, the Applicant, and the building, updated within three business days each time the art exhibit changes;

e. ANC 1B shall be sent written and electronic notice of each new art display within three business days of art exhibit changes; and

f. There shall be minimal down time as needed for the transfer of one exhibit with another. Non-programmed space for more than two business days, or an art exhibit lasting longer than four months shall be considered contrary to this Order.

9. For the life of the Project, the Applicant shall set aside 12 units as affordable housing for households earning up to 80% of the Area Median Income.[3] The gross floor area of the 12 affordable units shall be not less than the amount required to be set aside pursuant to 11 DCMR § 2603. The affordable housing shall be distributed as set forth on page 2 of Exhibit 19 and page A36 of Exhibit 19, Tab A. The Applicant shall have flexibility to adjust the location of the units over the life of the Project to accommodate changes in occupancy, provided that the replacement units are of a comparable size, unit type and quality.

[3] This set-aside represents at least the minimum amount of square footage required to be reserved under Chapter 26 of the Zoning Regulations for a project of this size. Nothing in this condition or order shall be construed as granting a waiver from the requirements of that Chapter.

C. Miscellaneous

1. No building permit shall be issued for this Project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.

2. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11 DCMR § 2409.1. Construction must commence within three years of the effective date of this Order.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. ("Act") and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial, or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On April 8, 2013, upon the motion of Commissioner Miller, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On May 13, 2013, upon the motion of Vice Chairman Cohen, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on June 7, 2013.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 10, 2013

BY U.S. MAIL

Mr. Daniel L. Lurker
4501 Connecticut Avenue, N.W.
Apt. 305
Washington, D.C. 20008

Re: Freedom of Information Act Appeal 2013-17

Dear Mr. Lurker:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 18, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated October 23, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "all records related to an incident in which I was involved on June 14, 2012." Appellant included details of the incident. In response, by letter dated October 31, 2012, MPD stated that it was granting the FOIA Request in full and provided responsive records.

On Appeal, Appellant challenges the response of MPD as incomplete, contending that "[i]t is implausible that a summary police report, some photographs, and a one page evidence report constitute all 'proper notes and carefully detailed reports' [quoting MPD General Order 201.24] created or compiled by in relation to the June 14 incident which was initially believed by MPD to be a stabbing." Appellant indicates that he spoke to two witnesses who were interviewed by MPD and was interviewed by an MPD detective.

In response, by letter dated December 31, 2012, MPD states, in pertinent part:

> Upon receipt of his appeal the department conducted another search for responsive documents. This second search determined the existence of a supplemental report called the PD 252. The department is withholding the document on the basis of that the

> information contained therein, if released, would constitute an unwarranted invasion of the personal privacy of the persons identified in the document pursuant to D.C. Official Code § 2-534(a)(2). The PD 252 is a document used to close out incidents or investigations. This document contains information gathered from witnesses and other persons contacted by police investigators. This document is being withheld in its entirety as redaction of all information identifying the persons or that could lead one to conclude that who was providing the information would result in a document of no informational value.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The issue presented by Appellant in the Appeal is the adequacy of the search by MPD.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

An agency has the burden to establish the adequacy of its search. *See*, e.g., *Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995); Freedom of Information Act Appeal 2012-48. An administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding. Nevertheless, in its response, MPD is silent as to the manner in which MPD made its search for the records requested by Appellant. Accordingly, we have no basis to conclude that the search of MPD was reasonable and adequate. However, according to the administrative record, MPD has already conducted two searches. Therefore, simply ordering MPD to conduct a new search would not be productive. In lieu of a new search, MPD shall state in writing to Appellant the manner in which the requested records are maintained and the manner in which each of the two searches was conducted. MPD shall state which divisions maintain the records, in what form the records are maintained, e.g., electronic (email, word processing, or PDF files) or paper-based, and how such records were searched.

Based on the foregoing, if Appellant is not satisfied with the search methodology employed by MPD, Appellant may submit a request for reconsideration of this decision. Such request should identify the deficiencies and propose an appropriate order.

As we stated above, Appellant believes that there are additional records which have not been provided. However, Appellant should note that we are not expressing any opinion as to whether or not there are additional responsive records which have not been provided.

As set forth above, subsequent to the filing of the Appeal, MPD made a second search and found an additional record, a form PD-252, for which it is asserting an exemption based on privacy. For administrative efficiency, we will evaluate the claim of exemption by MPD. However, as Appellant has not had an opportunity to respond to the position, Appellant may include any objection in its request for reconsideration.

D.C. Official Code § 2-534(a)(3)(C) provides an exemption from disclosure for "[i]nvestigatory records compiled for law-enforcement purposes . . . to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

Here MPD indicates that the form PD-252 is being withheld based on the fact that individuals who are witnesses are identified in the document and that these witnesses could be identified even if their names were redacted. The latter assertion is credible as Appellant has stated that he has spoken to two witnesses who were interviewed by MPD.

The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). It is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at

[1] In the Appeal, we do not believe that there is any dispute that the records have been compiled for law enforcement purposes. *Cf*. D.C. Official Code § 2-534(a)(2), which applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." While D.C. Official Code § 2-534(a)(2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from D.C. Official Code § 2-534(a)(3)(C). Thus, we believe that MPD is basing its claim of exemption on D.C. Official Code § 2-534(a)(3)(C).

487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest of the witnesses with respect to the withheld form PD-252.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Here, there is nothing in the administrative record which implicates the conduct of MPD in the investigation. Therefore, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved with respect to the disclosure of the information regarding the witnesses.

MPD contends that, after redaction for the identity of witnesses and their testimony, the records would have "no informational value." MPD states that form PD-252, the Supplemental Incident Report, is "used to close out incidents or investigations." In Freedom of Information Act Appeal 2011-55, MPD stated that the PD-252 is "very detailed." We note that Appellant states that an MPD detective interviewed Appellant in addition to two other witnesses. If the PD-252 was used to close out an investigation and the reasons therefor were documented in detail, it would be reasonable to believe that it would discuss the statement of Appellant and would contain an analysis and conclusion regarding the incident by the individual preparing the PD-252. Neither the statement of Appellant himself nor the analysis and conclusion of the individual preparing

the PD-252 implicates a privacy interest. Accordingly, in addition to the statement which MPD will provide to Appellant with respect to the search, MPD shall:

1. If the PD-252 does not contain either the statement of Appellant or an analysis and conclusion regarding the incident by the individual preparing the PD-252, so state the same to Appellant.

2. If the PD-252 does contain either the statement of Appellant or an analysis and conclusion regarding the incident by the individual preparing the PD-252, provide the form PD-252 to Appellant with redaction for the identity and statements of the witnesses.

Conclusion

Therefore, the decision of MPD is remanded for disposition as set forth above.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald Harris, Esq.
Kimberly Robinson

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 10, 2013

BY U.S. MAIL

Deborah Golden, Esq.
Washington Lawyers' Committee for Civil Rights & Urban Affairs
11 Dupont Circle, N.W.
Suite 400
Washington, D.C. 20036

Re: Freedom of Information Act Appeal 2013-18

Dear Ms. Golden:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 19, 2012 (the "Appeal"). You, on behalf of the D.C. Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs ("Appellant"), assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated November 26, 2012 (the "FOIA Request").

Appellant's FOIA Request sought records, including medical records, incident reports, disciplinary reports, and internal investigations, from January 1, 2012 to the date of the FOIA Request relating to a named inmate.

By letter dated November 28, 2011, DOC provided 138 pages of medical records, but stated that it could find no other records. It offered to conduct an additional search if Appellant provided additional information.

On Appeal, Appellant challenges the response to the FOIA Request. Appellant asserts that DOC did not conduct a reasonable and adequate search given the scope of the records requested. Appellant states that it has reason to believe that additional records exist. In particular, Appellant states that the inmate filed grievances alleging sexual harassment, but no records were produced as to the required written reply to the grievance by DOC or any investigation.

In its response, by email dated January 10, 2012, DOC modified its previous response. In summarizing the chronology of events relating to the FOIA Request, DOC notes that it offered to conduct an additional search if Appellant provided additional information, but it did not receive

any additional information prior to the filing of the Appeal. DOC also notes that the named inmate was incarcerated at multiple locations. Upon receipt of the Appeal, and in consideration of the further factual allegations therein, DOC made a subsequent search and found a record at one of such locations, which record is being provided to Appellant. DOC represents that it is continuing to search for additional records and estimates that it will complete its new search by January 25, 2013. DOC also represents that it will respond to Appellant thereafter.

Based upon the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the revised response of DOC.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 18, 2013

BY U.S. MAIL

Alec Karakatsanis, Esq.
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004

Re: Freedom of Information Act Appeal 2013-19

Dear Mr. Karakatsanis:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 18, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated August 10, 2012 and renewed on October 2, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "A list of all property owners whose vehicles the MPD is currently holding for civil forfeiture."

2. "A copy of the public Notice of Intent to Forfeit letter prepared by MPD and sent to each property owner whose property is currently being held by the MPD for forfeiture pursuant to the statutory requirements of D.C. Code 48-905.02(d)(3)(A)."

In response to the August 10, 2012 FOIA Request, by letter dated September 21, 2012, MPD provided "a listing of vehicles currently held by MPD for civil forfeiture," Affidavits of Publication, and copies of each Notice of Intent to Administratively Forfeit Property (the "Notice of Intent") with names and addresses redacted on the ground that the release of the information would constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2).

On October 2, 2012, Appellant renewed the FOIA Request, modifying the request by expanding "vehicles" to "property" and clarifying that the request included "owners of money seized by

MPD." Appellant objected to the redaction in each Notice of Intent to Administratively Forfeit Property on the basis of privacy, "particularly because police seizures and forfeiture of property are public events. Indeed, police are required to publish notice of such seizures and are required to commence actions in Superior Court if the property is claimed."

In response to the October 2, 2012 FOIA Request, by letter dated September 21, 2012, MPD provided Affidavits of Publication[1] with respect to the first item, but reiterated its position as to privacy with respect to the assertion of the personal privacy interest of property owners. MPD stated that the disclosure of the names and addresses "may cause embarrassment or have a stigmatizing effect as the letters state that the properties are subject to forfeiture because they are related to certain crimes, such as prostitution, gambling, or controlled substances. On balance, there is no discernible public interest served by the release of the names and addresses of the property owners."

On Appeal, Appellant challenges the assertion by MPD of the claim of exemption based upon personal privacy claims. Appellant sets forth three main arguments. First, with respect to the privacy interests of the property owners, "the MPD is already required by law to publish the names of these same people in the newspaper prior to forfeiture and, indeed, already sent me lists of those names as part of its response to my FOIA request." In this regard, Appellant states that "MPD also disclosed the unique Vehicle Identification Numbers, from which ownership records can be located, thus revealing identifying information of vehicle owners." Second, also with respect to the privacy interests of the property owners, "the forfeiture and seizure is at all times public information, including the requirement that public cases be filed prior to forfeiture." In this regard, Appellant notes that, pursuant to a similar request, the Office of the Attorney General has provided him with "copies of the libels of information that it has filed in vehicle forfeiture cases, including the identifying information of the property owners involved in those cases." Third, with respect to the existence of a public interest, Appellant advances the existence of constitutional and legal concerns regarding the forfeiture of property as justifying the disclosure.

> [T]he MPD's forfeiture scheme has recently been called into serious constitutional question by a federal judge in *Simms v. District of Columbia*, 12-cv-701 (KEGS). It has also been the subject of several other federal lawsuits that the District has settled. The public, including the many people per month whose property is taken pursuant to a scheme that lacks basic constitutional and practical fairness, has a tremendous interest in learning the scope of the MPD's potentially unconstitutional conduct. It is difficult to imagine a public interest more consonant with the core purpose of the Freedom of Information Act.

In response, dated January 14, 2013, MPD reaffirmed its position. As to the existence of a sufficient individual privacy interest, while acknowledging that MPD publishes the names of property owners in a newspaper, MPD states that "the notices simply name the property owner and the value of the property that is in the custody of MPD. The notices do not indicate how the

[1] The Affidavit of Publication is a sworn statement by a representative of a newspaper of the dates of publication of an attached copy of the notice published in the newspaper.

property came into the possession of MPD and make no reference to any stigmatizing or embarrassing circumstances." In contradistinction, the Notice of Intent "advises the property owner that the withheld property was seized in connection with a crime. . . . identifying the names and addresses of the property owners, some of whom are innocent owners, would connect them to such criminal activity as possessing illegal narcotics, illegal weapons, gambling, illegal dumping, prostitution and counterfeiting." As to the public interest in disclosure, MPD states: "A core function of FOIA is to permit the public to see how government is operating. The release of the names and addresses would not inform the public on the workings of the government. There is no public interest in this information nor has PDS articulated one." MPD submitted representative copies of the Affidavits of Publication and, for confidential review, representative copies of Notices of Intent.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). For the purposes of DC FOIA, law enforcement agencies conduct investigations which focus on acts which could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974).

The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Rugiero v. United States DOJ*, 257 F.3d 534, 550 (6th Cir. 2001). Here, the property seizures were made as a result of criminal enforcement actions and the forfeitures will result in a civil sanction. Therefore, despite the citation by MPD of Exemption (2) as the basis of its assertion, the exemption in this matter will be judged by the broader standard for Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

In the case of the factual circumstances surrounding the Appeal, it appears that the individuals who are identified in the records are suspects in criminal matters. In our past decisions, we have held that there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question. In *Seized Property Recovery, Corp. v. U.S. Customs and Border Protection*, 502 F.Supp.2d 50 (D.D.C. 2007), with respect to a seizure and forfeiture process similar to that of the District, it was held that there was a sufficient privacy interest in the names and addresses of individuals from whom United States Customs and Border Protection had seized property.

Thus, absent any other factors, there would be a sufficient individual privacy interest in the redacted information. Nevertheless, Appellant urges that the requisite privacy interest does not exist because the disclosure is required by law, the seizure and forfeiture proceedings are "public information" under law, or the information is already widely available. As set forth above, in particular, Appellant sets forth two main arguments with respect to the absence of a sufficient privacy interest. First, "the MPD is already required by law to publish the names of these same people in the newspaper prior to forfeiture and, indeed, already sent me lists of those names as part of its response to my FOIA request." In this regard, Appellant states that "MPD also disclosed the unique Vehicle Identification Numbers, from which ownership records can be located, thus revealing identifying information of vehicle owners." Second, "the forfeiture and seizure is at all times public information, including the requirement that public cases be filed prior to forfeiture."

There are two items which are redacted on the Notices of Intent: the names of the property owners and their addresses. As to the first item, Appellant asserts that the names of persons whose property has been seized are required, by law, to be published. However, as we read publication requirement under D.C. Official Code § 48-905.02(d)(3)(A), the applicable statutory authority, only the property seized is required to be identified.[2] Nevertheless, as a matter of practice, the names of persons whose property has been seized and the value of such property is published and, pursuant to the FOIA Request, the published names and property values were furnished to Appellant. While it is true, as MPD argues, that the reasons for the seizure are not identified in the publication notice, the purpose of the publication, i.e., the seizure and forfeiture of property arising from criminal violations, is well known. Therefore, we find that this information is already available in the public domain and, even under the broader standard of Exemption (3)(C), there is not a sufficient privacy interest in the names on the Notices of Intent. Nonetheless, that does not compel the conclusion that the addresses of such persons are available as well. Indeed, it is well established that the address of an individual is the type of identifying information in which there is a personal privacy interest. *See*, e.g., *Associated Press v. U.S. Dept. of Justice*, 549 F.3d 62, 65 (2d Cir. 2008)("Personal information, including a citizen's name, address, and criminal history, has been found to implicate a privacy interest cognizable under the FOIA exemptions."); *Seized Property Recovery, Corp. v. U.S. Customs and Border Protection*, 502 F.Supp.2d 50 (D.D.C. 2007).

As set forth above, Appellant argues that matters related to the seizure and forfeiture process are "public information." However, the term "public information" is imprecise and, in this case, conclusory as the determination as to whether or not it is information which must be disclosed to the public is the subject of the Appeal.[3]

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[2] This is the same as the federal scheme described in *Seized Property Recovery*.

[3] As we stated in Freedom of Information Act Appeal 2012-44 as to the characterization of information as a public record:

> Appellant must be understood to use the term to mean, in its common usage, a record which must be disclosed pursuant to statutory or judicial law or is routinely disclosed as a matter of practice and procedure. For example, D.C. Official Code § 2-536 specifies

The fact that certain portions of a process may be conducted publically does not require that all information connected to such process be disclosed. For instance, the fact that a witness testifies at trial does not waive his or her privacy and make all witness statements in the possession of the government subject to disclosure. *See*, e.g., *Neely v. FBI*, 208 F.3d 461 (4th Cir. 2000); *Burge v. Eastbern*, 934 F.2d 577 (5th Cir. 1991). In Freedom of Information Act Appeal 2013-16, we found that identifying information of criminal defendants was not subject to disclosure, notwithstanding that such information may be available in court records. Here, as was the case in *Seized Property Recovery, Corp. v. U.S. Customs and Border Protection*, 502 F.Supp.2d 50 (D.D.C. 2007), the fact that some portions of the seizure and forfeiture process may be conducted publically does not cause all information arising from the process to be information which must be disclosed to the public.[4]

Nonetheless, Appellant argues that as he has been furnished vehicle identification numbers, he could compile the addresses from ownership records, presumably from the Department of Motor Vehicles. We are not sure that this allegation is accurate. Even assuming, arguendo, that it is correct, we do not believe that it would cause the information to be considered widely available. In reaching our conclusion in Freedom of Information Act Appeal 2013-16, we stated:

> With respect to defendants, applying the "categorical principle" of *Reporters Comm. for Freedom of Press*, quoted above, that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, the federal district court in *Long v. U.S. Dept. of Justice*, 450 F.Supp.2d 42 (D.D.C. 2006), held that "disclosure of fields identifying the subject of the records would implicate privacy interests protected by Exemption 7(C). . . . The categorical principle announced in *Reporters Committee* is particularly applicable here, where the information at issue is maintained by the government in computerized compilations. . . . the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government. . . . the records available at NARA and on PACER are no substitute for the central case management databases at issue in this litigation." *Id*. at 68). While the court did note that "the extent to which the withheld information is publicly available is relevant in determining the magnitude of the privacy interest at stake [and] that information available at the NARA or . . . through PACER is decidedly less obscure than 'public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country,'" *Id*., it nevertheless found that there was a privacy interest in the names of the criminal defendants and the case captions and docket numbers.

> certain categories of information which must be disclosed publicly, that is, 'which are specifically made public information.'

[4] As we read D.C. Official Code § 48-905.02(d), judicial proceedings are required in some, but not all, cases of seizure and forfeiture under such statutory provision.

The foregoing illustrates what is sometimes referred to as "practical obscurity." The fact that information can be compiled if great effort or resources are devoted thereto does not make the information freely available. Indeed, it is the compilation of hard-to-obtain information in a central repository which is critical in this context. As the Supreme Court observed, "if the summaries were 'freely available,' there would be no reason to invoke the FOIA to obtain access to the information they contain." *U.S. Dept. of Justice v. Reporters Committee For Freedom of Press*, 489 U.S. 749, 764 (1989).

Appellant argues that he has requested and received similar records in a prior request from the Office of the Attorney General. However, as we stated in Freedom of Information Act Appeal 2012-15, "the provision of records in another situation does not compel a similar result in this situation."

Thus, we find that there is clearly a personal privacy interest in the addresses which are redacted, but not of the names.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

As stated above, with respect to the existence of a public interest, Appellant advances the existence of constitutional and legal concerns regarding the forfeiture of property as justifying the disclosure. In support of such assertion, Appellant cites the decision of the federal District Court in *Simms v. District of Columbia*. "The public, including the many people per month whose property is taken pursuant to a scheme that lacks basic constitutional and practical fairness, has a tremendous interest in learning the scope of the MPD's potentially unconstitutional conduct." In *Simms*, we note that the issue was the constitutionality of the administration of the existing statutory scheme and not a failure of MPD to apply correctly that scheme. Appellant appears to acknowledge that the problem is the statutory scheme and not misconduct by MPD. However, even if misconduct by MPD is an issue, as MPD argues in its response, the disclosure of the addresses of the individuals whose property was seized would not contribute anything to the public understanding of the operations, activities, or performance of MPD.

> [T]here is no appropriate nexus between this public interest and the names and addresses of individuals whose property has been seized. See *NARFE*, 879 F.2d at 879 (no public interest "unless the public would learn something directly about the workings of the Government by knowing the names and addresses"); *Lepelletier*, 164 F.3d at 47 (no public interest where names associated with unclaimed bank accounts do "not shed light on the FDIC's performance of its duties"); *Hertzberg*, 273 F.Supp.2d at 88 (no disclosure where "the link between the request and the potential illumination of agency action is too attenuated"). Name and addresses information of individuals whose property is subject to forfeiture would not inform the public citizenry of how Customs administers its seizure operations, forfeiture proceedings and notification procedures.

Seized Property Recovery, Corp. v. U.S. Customs and Border Protection, 502 F.Supp.2d 50, 59 - 60 (D.D.C. 2007). *See also United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, there is no public interest which would outweigh the privacy interests of the individuals in the addresses in the Notices of Intent.

Accordingly, MPD shall provide the Notices of Intent to Appellant without redaction for the names of the individuals, but may redact the addresses of such individuals.

Conclusion

Therefore, the decision of MPD is upheld in part and reversed and remanded in part. MPD shall provide the Notices of Intent to Appellant without redaction for the names of the individuals, but may redact the addresses of such individuals.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 15, 2013

BY EMAIL

Ms. Priya Anand
The GW Hatchet
2140 G Street, N.W.
Washington, D.C. 20037
pnanad@gwhatchet.com

Re: Freedom of Information Act Appeal 2013-20

Dear Ms. Anand:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 19, 2012 (the "Appeal"). You assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated November 13, 2012 (the "FOIA Request").

Appellant's FOIA Request sought "records related to complaints made to the Metropolitan Police Department, specifically to the Security Officers Management Branch, regarding George Washington University police officers in the last 10 years. Please include all associated documentation regarding a complaint, including records of the resulting steps or actions." In response, by letter dated December 14, 2012, MPD denied the FOIA Request, stating, "[w]ithout admitting or denying the existence of such records," that release of the records would constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2), (a)(3)(A)(i) and (a)(3)(E).

On Appeal, Appellant challenges the denial of the FOIA Request.

> Regarding MPD's privacy concerns, the department may choose to black out names of specific individuals. But the disclosure of the types of complaints made against police officers at GW is crucial. GW's University Police Department has the arrest and law enforcement powers of a municipal police force and is commissioned by the city. As the force is commissioned by the city, the public should have the right to information regarding complaints against officers and the outcome.

In response, by email dated January 15, 2013, MPD states that it has reconsidered its position and will provide the responsive records to Appellant, subject to redaction for applicable exemptions. Based upon the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the revised response of MPD.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 28, 2013

BY U.S. MAIL

Nadya Maldonado, Esq.
Maldonado & Torres
P.O. Box 39000
Washington, D.C. 20016

Re: Freedom of Information Act Appeal 2013-21

Dear Ms. Maldonado:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated January 14, 2013 (the "Appeal"). You, on behalf of Luis Angelo Gomez ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated November 20, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought copies of the tapes of any telephone calls made to the District's emergency telephone calling system ("911 calls"), as well as any transcripts thereof, in response to a traffic accident involving Mr. Gomez.

In response, by letter dated July 22, 2011, MPD provided a transcript of relevant calls, redacted for personal identifying information that constituted a clearly unwarranted invasion of personal privacy and exempt from disclosure exempt under D.C Official Code § 2-534(a)(2), but withheld the dispatch tape pursuant to the same exemption.

On Appeal, Appellant challenges the withholding of the dispatch tape and the redaction of the transcript, but does not state the basis for the challenge. In addition, Appellant states that redaction for any non-exempt portions of the dispatch tape should be considered.

MPD did not file a response within the period provided for such response.[1]

[1] In cases where an agency does not file a response, we examine the remainder of the administrative record as the basis of our decision.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The circumstances in the Appeal are substantially the same as those in Freedom of Information Act Appeal 2011-60 and Freedom of Information Act Appeal 2012-44. In those decisions, we upheld the decision of MPD to provide a transcript of relevant 911 calls, redacted for personal identifying information that constituted a clearly unwarranted invasion of personal privacy and exempt from disclosure under D.C Official Code § 2-534(a)(2), but to withhold the dispatch tape pursuant to the same exemption. The same reasoning applies here and the same result is warranted. As those decisions have been published at 58 DCR 10514 and 59 DCR 9030, respectively, we will simply summarize the basis for such decisions as it relates to the Appeal.

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. Although the administrative record in the Appeal does not indicate the nature of the caller, that is, whether the caller was a victim or witness regarding the circumstances surrounding the call, there is a sufficient privacy interest in either case. As to the balancing of this individual privacy interest against the public interest, which public interest is to inform the public as to the activities of the government, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD and the withholding of the dispatch tape and the redaction of the transcript was justified. Disclosure is not evaluated based on the identity of the requester or the use for which the information is intended.

As to the question as to whether MPD should have disclosed the tape with redactions, in Freedom of Information Act Appeal 2011-60 and Freedom of Information Act Appeal 2012-44, citing prior decisions, MPD was found not to have the technical capability to modify and redact an audiotape and disclosure was not required.

Therefore, the withholding of the dispatch tape and the redaction of the transcript was proper.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Theresa Quon, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 14, 2013

BY U.S. MAIL

Mr. Paul D. Casey and Ms. Abigail O. Casey
4 Bolling Brook Drive
Clifton Park, New York 12065

Re: Freedom of Information Act Appeal 2013-22

Dear Mr. and Ms. Casey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 6, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated August 21, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "a copy of the MPD Standard Operating Procedures (SOP) for Homicide Investigations."

In response, by letter dated November 16, 2012, MPD provided the record to Appellant, but redacted portions of the record pursuant to the exemption under D.C. Official Code § 2-534(a)(3)(E) as "the information may disclose investigative techniques. Moreover, the redacted procedures may assist in the identification of witnesses that could place witnesses in danger."

On Appeal, Appellant challenges the denial, in part, of the FOIA Request, stating that the record "was significantly and unreasonably redacted" and that "integral forms and documents listed in the Appendix to the SOP were withheld." As to the redactions, Appellant states:

> We question the extent of the redactions to the Homicide SOP and the assertion by MPD management that these redactions are necessary to ensure so many routine investigative techniques are kept secret or restricted; or that disclosure might endanger witnesses. There is simply too much material redacted. We believe that the vast majority of investigative techniques are prevailing practice, common sense in law enforcement and in reality disclosure would have no consequences.

In its response, dated February 6, 2013, MPD reaffirmed its position. In support of its position, MPD states that the Assistant Chief of Police, who is responsible for homicide investigations, "determined that certain portions should be redacted as disclosure of the information would reveal investigative techniques not otherwise known to the public. This high ranking official also determined that some of the redacted information could assist lawbreakers in identifying cooperating witnesses and thereby place them in danger." In addition to the exemption regarding the disclosure of investigative techniques under D.C. Official Code § 2-534(a)(3)(E), MPD asserts that the disclosure of redacted information is exempt pursuant to the law enforcement privilege pursuant to D.C. Official Code § 2-534(a)(4). MPD provided a copy of the unredacted record to this office for confidential, *in camera* review. MPD also stated that, subsequent to the filing of the Appeal, it provided to Appellant the documents listed in the Appendix.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute may be examined to construe the local law.

MPD contends that the portions of the record which are redacted are exempt under D.C. Official Code § 2-534(a)(3)(E) as they would reveal investigative techniques and procedures not generally known outside the government. D.C. Official Code § 2-534(a)(3) provides, in pertinent part, an exemption from disclosure for:

> (3) Investigatory records compiled for law-enforcement purposes, including . . . investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would:
> . . .
> (E) Disclose investigative techniques and procedures not generally known outside the government; . . .

Thus, an agency will not be required to disclose investigative techniques which would allow others to employ measures to neutralize those techniques. *James v. U.S. Customs and Border Protection*, 549 F.Supp.2d 1, 10 (D.D.C. 2008). However, the exemption does not apply to

investigative techniques which would be generally known or are apparent. In this regard, our local federal court has stated:

> we saw nothing exceptional or secret about the techniques it described—namely, the use of wired informants and "bugs" secretly placed in rooms that are under surveillance. Anyone who is familiar with the media, both television and print, is aware that the police use these and similar techniques in the course of criminal investigations. DEA's position in this respect disregards reality. Therefore, the government should avoid burdening the Court with an in camera inspection of information pertaining to techniques that are commonly described or depicted in movies, popular novels, stories or magazines, or on television. These would include, it would seem to us, techniques such as eavesdropping, wiretapping, and surreptitious tape recording and photographing.

Albuquerque Pub. Co. v. U.S. Dept. of Justice, 726 F.Supp. 851, 858 (D.D.C. 1989).

In *Goldstein v. Office of Independent Counsel*, 1999 WL 570862 (D.D.C.1999), among other documents, the FBI withheld a portion of a document which it claimed revealed when and under what conditions it conducts interviews. In ordering disclosure of the document, the court stated that "is simply a 16 year-old statement regarding how this particular interview would be handled. I do not find that this information is a secret or an exceptional investigative technique or procedure, or that disclosure could reasonably be expected to risk circumvention of the law." *Id*. at 14.

In the case of the Appeal, we believe that the many of the redactions represent actions or techniques which are unremarkable and common sense procedures. We do not believe that revealing this information would permit others to employ measures to neutralize those techniques.

By way of example, the redacted information on the first page of the manual is as follows:

> a. Treat all callers as if they are the first and only caller.
>
> b. Attempt to identify all callers and obtain information to assist with future contact. (Ask the caller for their name. **Do not ask**, "Do you want to leave your name?"
>
> d. Ascertain if the caller witnessed the incident.

The foregoing procedures, while prudent, are unremarkable and common sense measures calculated to ensure proper information-gathering for an investigation. Revealing these methods would not permit others to employ measures to neutralize those techniques. The other redacted portions of the manual are frequently in the nature of checklists and are often reminders regarding documentation, interviewing, and handling of victims, families, and potential witnesses. Their disclosure would not affect the successful prosecution and completion of investigations.

There are a few items on which we will err on the side of caution and find that they can remain redacted as it is possible that they may affect successful detection and investigation:

1. Page 3, item 1b.

2. Page 6, item 3j.

3. Page 7, item 4b.

4. Page 9, items1f and i, and third, fourth, and fifth (the last three) sentences of item 1o.

5. Page 11, item d under Office Detectives and items a and c under Suspect Monitor.

6. Page 12, item g under Suspect Monitor.

7. Page 13, item c.

8. Page 29, the third and fourth (last two) sentences under Family Liaison Specialist Vision Statement.

9. Page 35, all redacted items (items 2 and 3) on page.

10. Page 36, items 5 through 8.

In support of its position, MPD also asserts the law enforcement privilege pursuant to D.C. Official Code § 2-534(a)(4). Although recognized as an informer's privilege in *Roviaro v. U.S.*, 353 U.S. 53 (1957), the law enforcement investigatory interrogatory privilege has been expanded to recognize that "there is indeed a public interest in minimizing disclosure of documents that would tend to reveal law enforcement investigative techniques or sources." *Black v. Sheraton Corp. of America*, 564 F.2d 531, 545-546 (D.C. Cir. 1977). The law enforcement investigatory interrogatory privilege has three requirements. *See In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988). As the Circuit Court in *Black v. Sheraton Corp. of America* noted, the privilege was reflected in the adoption of the exemption for law enforcement records in the federal FOIA. MPD merely cites the law enforcement investigatory interrogatory privilege, but does not indicate that it is more extensive than the exemption under D.C. Official Code § 2-534(a)(3)(E). In the absence of such explanation, in the current case, we view those as being coextensive. Accordingly, the privilege does not dictate a different outcome than that set forth above.

As MPD has now furnished to Appellant the documents listed in the Appendix, that portion of the Appeal is moot.

Conclusion

Therefore, the decision, as revised, of MPD is upheld in part, is and reversed and remanded in part, and is moot in part. As set forth above, MPD shall provide the record to Appellant unredacted, except as follows:

1. Page 3, item 1b.

2. Page 6, item 3j.

3. Page 7, item 4b.

4. Page 9, items1f and i, and third, fourth, and fifth (the last three) sentences of item 1o.

5. Page 11, item d under Office Detectives and items a and c under Suspect Monitor.

6. Page 12, item g under Suspect Monitor.

7. Page 13, item c.

8. Page 29, the third and fourth (last two) sentences under Family Liaison Specialist Vision Statement.

9. Page 35, all redacted items (items 2 and 3) on page.

10. Page 36, items 5 through 8.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Theresa Quon, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 12, 2013

BY U.S. MAIL

Bruce S. Deming, Esq.
Law Offices of Bruce S. Deming, Esq.
2300 Clarendon Blvd., Suite 700
Arlington, Virginia 22201

Re: Freedom of Information Act Appeal 2013-23

Dear Mr. Deming:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated January 24, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Fire and Emergency Medical Services Department ("FEMS") improperly withheld records in response to your requests for information under DC FOIA dated September 7, 2012 (the "FOIA Request") by failing to respond to the FOIA Request.

Background

Appellant's FOIA Request sought the "onboard" video and audio from a FEMS ambulance that was driven by a named employee on August 10, 2012, when the ambulance was involved in an accident with a motorcycle at the intersection of 9th Street, N.W., and Constitution Avenue, N.W., at approximately 7:30 A.M. When a response was not received, Appellant initiated the Appeal.

In its response, by email dated February 8, 2013, FEMS states that it has searched for the requested records, but no responsive records exist. FEMS attached a response, also dated February 8, 2013, to Appellant. FEMS states that it contacted its Fleet Services Division and Fleet Services Division managers and information technology personnel searched electronic data records for the requested records. FEMS attached email records indicating that a search was initiated and conducted, but that no records were located.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As stated above, when a response to the FOIA Request was not received, Appellant initiated the Appeal. As the failure to respond to the FOIA Request has been cured by the February 8, 2013 response, the only issue which may be raised is the adequacy of the search.

An agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In the case of the Appeal, FEMS identified the division in which such records would be maintained, the Fleet Services Division, and as video/audio is captured electronically, caused a search of its electronic data records to be made. Thus, FEMS made reasonable determinations as to the location of records requested and the type of records to be searched and made, or caused to be made, searches for the records. However, despite the fact that it was unable to find any responsive records, under the circumstances, this constitutes a reasonable and adequate search.

Conclusion

Based on the foregoing, the decision of FEMS, as reflected in its February 8, 2013 response, is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Andrew Beaton

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 7, 2013

BY U.S. MAIL

Ms. Mary Ursitti
4314 Vermont Avenue
Alexandria, Virginia 22304

Re: Freedom of Information Act Appeal 2013-24

Dear Ms. Ursitti:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated January 6, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA on December 4, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "an unredacted investigative report" regarding a named decedent. Appellant is the sister of the decedent and the personal representative of his estate. In response, by letter dated December 5, 2012, MPD provided an Incident-Based Event Report and a Death Report, but redacted portions of the Death Report based on D.C Official Code § 2-534(a)(2), which exempts the disclosure of information whose release would constitute a clearly unwarranted invasion of personal privacy exempt.

On Appeal, Appellant challenges the redactions, stating that Appellant and her family are seeking more information regarding the investigation.

In response, by email dated February 6, 2013, MPD reaffirms its position. MPD states that the "redacted information consists of the names, addresses, and telephone numbers of persons who provided information to department personnel concerning a death investigation." MPD argues that the disclosure of this information would constitute an unwarranted invasion of personal privacy and that there would not be a public interest in such disclosure as its release "would not inform the public on whether the department's death investigation was handled properly." MPD provided an unredacted copy of the Death Report for *in camera* review.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-534(a)(3)(C) provides an exemption from disclosure for "[i]nvestigatory records compiled for law-enforcement purposes . . . to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and

[1] In the Appeal, it appears that the records have been compiled for law enforcement purposes. *Cf*. D.C. Official Code § 2-534(a)(2), which applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." While D.C. Official Code § 2-534(a)(2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from D.C. Official Code § 2-534(a)(3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under D.C. Official Code § 2-534(a)(3)(C) is broader than under D.C. Official Code § 2-534(a)(2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

> affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

Here, as set forth above, MPD states that the "redacted information consists of the names, addresses, and telephone numbers of persons who provided information to department personnel concerning a death investigation." We have reviewed the unredacted record. The redacted information consists of the identity of witnesses and of the name, address, and telephone number of the mother of the decedent.

The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). It is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest of the witnesses in the nondisclosure of their identities and of the mother of decedent with respect to her name, address, and telephone number.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties

> falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Here, there is nothing in the administrative record which implicates the conduct of MPD in the investigation and, as MPD argues, the disclosure of the redacted information will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Therefore, the redaction of the information in the Death Report was proper.

Conclusion

Therefore, we uphold the decision of MPD. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 12, 2013

BY U.S. MAIL

Mr. Eric Heaps
Mr. Bert W. Buri
The Public Group
P.O. Box 50676
Provo, Utah 84605

Re: Freedom of Information Act Appeal 2013-25

Dear Messrs. Heaps and Buri:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated January 4, 2013 (the "Appeal"). You ("Appellant") assert that the Office of the Inspector General ("OIG") improperly withheld records in response to your request for information under DC FOIA dated October 30, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought all records with respect to a complaint which had been previously filed by Appellant with OIG. In response, by letter dated November 30, 2012, OIG provided records to Appellant, but redacted certain portions of the records based on the exemption under D.C Official Code § 2-534(a)(3)(C) for information whose disclosure would constitute an unwarranted invasion of personal privacy and stated that it was withholding two pages of records exempt under D.C Official Code § 2-534(a)(4) based on the deliberative process privilege.

On Appeal, Appellant challenges "the initial decision by OIG to 'zero' out our complaint," and requests that OIG be ordered to re-open the investigation. Appellant also requests that the Office of Contracting and Procurement be directed to review the allegations raised in the complaint to OIG. With respect to the records provided by OIG, Appellant advances two contentions. First, while appearing to concede the applicability of the deliberative process privilege, Appellant contends that it should be entitled to a "synopsis" of such withheld records. Second, Appellant contests the applicability of the exemption for personal privacy.

In response, dated February 7, 2013, OIG reaffirmed its position. First, OIG states that, in seeking a re-opening of the investigation, Appellant is seeing a remedy which is not available under DC FOIA. Second, OIG states that as to the two pages of records for which the deliberative process privilege was asserted, such records were intended to be withheld, but were inadvertently provided to Appellant with its original response. Therefore, OIG states that the issue is moot. Third, with respect to the assertion of personal privacy under D.C Official Code § 2-534(a)(3)(C), OIG states that it

> redacted the names of those mentioned in the investigation to protect their privacy interests, such as avoiding the stigma of being associated with an investigation and harassing inquiries. We determined that the public interest in disclosure of their identities does not outweigh their privacy concerns because disclosure would not shed light on agency action. [citation omitted].

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-537(a) provides a right of review to "any person denied the right to inspect a public record of a public body" and such review is limited to the determination as to "whether it [the public record] may be withheld from public inspection." The requests by Appellant that that OIG be ordered to re-open the investigation of the complaint of Appellant to OIG and that the Office of Contracting and Procurement be directed to review the allegations raised in the complaint to OIG are beyond the scope of D.C. Official Code § 2-537(a), the basis of the Appeal, and we cannot consider them. However, Appellant does raise two contentions with respect to the records provided by OIG which may be considered.

First, as set forth above, Appellant contends that it should be entitled to a "synopsis" of the records which OIG stated that it was withholding pursuant to the deliberative process privilege. However, OIG states in its response to the Appeal that while the records were intended to be

withheld, they were inadvertently provided to Appellant with its original response. Therefore, as OIG states, the issue raised by Appellant is moot.

Second, Appellant contests the applicability of the exemption for personal privacy.

D.C. Official Code § 2-534(a)(3)(C) provides an exemption from disclosure for "[i]nvestigatory records compiled for law-enforcement purposes . . . to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

Based on our examination of the redacted records which were made part of the administrative record, we have determined that OIG has redacted the names of its employees who were involved in the processing and consideration of the complaint of Appellant to OIG. Applying the

[1] For the purposes of DC FOIA, law enforcement agencies conduct investigations which focus on acts which could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Rugiero v. United States DOJ*, 257 F.3d 534, 550 (6th Cir. 2001). Investigations undertaken by OIG may result in criminal or civil sanctions and the records associated therewith are deemed to have been compiled for law enforcement purposes.

principles set forth above, we find that there is a personal privacy interest in the identity of the employees whose names were redacted.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

While there may be a public interest in revealing the identity of a high-level government official involved in wrongdoing, there is generally not such an interest when lower-level employees are involved, particularly when they are the subjects of an investigation. *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984). In this case, it does not appear that the employees whose names were redacted were final decisionmakers or policy makers. Moreover, none of such employees was involved in the allegations of "Fraud, Waste, and Abuse" in the complaint to OIG. The disclosure of the names of the employees will not contribute significantly to public understanding of the operations or activities of the government or the performance of OIG. See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Accordingly, the public interest in disclosure of the names of the employee does not outweigh the individual privacy interest. The decision of OIG is upheld.

Conclusion

Therefore, the decision of OIG is upheld in part and is moot in part. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Keith Van Croft

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 13, 2012

BY U.S. MAIL

Deborah Golden, Esq.
Washington Lawyers' Committee for Civil Rights & Urban Affairs
11 Dupont Circle, N.W.
Suite 400
Washington, D.C. 20036

Re: Freedom of Information Act Appeal 2013-26

Dear Ms. Golden:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated January 28, 2013 (the "Appeal"). You, on behalf of the D.C. Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs ("Appellant"), assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated November 26, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought records, including medical records, incident reports, disciplinary reports, and internal investigations, from January 1, 2012, to the date of the FOIA Request relating to a named inmate.

By letter dated November 28, 2011, DOC provided 57 pages of records, including medical records.

On Appeal, Appellant challenges the response to the FOIA Request. Appellant asserts that DOC did not conduct a reasonable and adequate search based upon the following:

1. Appellant knew that the named inmate had filed several inmate grievances, so that there should have been "administrative remedy form," but none of the applicable forms was provided.

2. Appellant was aware of a disciplinary matter during 2012, but the only disciplinary records were from 2010, prior to the period specified in the FOIA Request.[1]

In its response, by email dated February 18, 2012, DOC stated that, based upon the additional information provided in the Appeal, it conducted an additional search and found an additional 24-page grievance and disciplinary records, which additional records are being provided to Appellant. DOC provided an Inmate Transfer History and affidavits from the individuals who made the supplemental search on behalf of DOC.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Appellant believes that, based on missing documents which it identifies, the search was not adequate. As DOC has done a supplemental search and located additional records which appear to be those which Appellant has identified as missing, it may be that the matter is moot. Nevertheless, in the event that Appellant does not consider that to be the case, we will consider the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate.

[1] Appellant also contests the photocopying charges assessed by DOC under the FOIA Request because DOC provided records which were outside the time period specified in the FOIA Request. It fixes the overcharge as $6.25. However, as we stated when Appellant raised the issue in Freedom of Information Act Appeal 2012-21, we read our jurisdiction under D.C. Official Code § 2-537(a) to be limited to adjudicating whether or not a record may be withheld and not encompassing fee disputes. This is in accord with prior decisions under D.C. Official Code § 2-537(a). See MCU 406151, 51 DCR 4213 (2004); Matter No. 390592, 51 DCR 1527 (2004); OSEC 102301, 49 DCR 8641 (2002).

Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In this case, the Inmate Transfer History Report provided by DOC indicates that the named inmate was detained in the central detention facility and in a correctional facility operated by Corrections Corporation of America. Supplemental searches were done by, and affidavits of search, were provided by staff members at each facility.

At the correctional facility, the Investigator/Custodian of Records stated that, for the period of incarceration, she caused a supplemental search to be made of the "all files and locations where the requested records could be found, including files in the work locations of the Grievance Coordinator, Segregation Lieutenant, all Shift Supervisors and Assistant Shift Supervisors, Disciplinary Hearing Sergeant, and all pertinent Unit Management staff." In addition, she searched, or caused to be searched, electronic records in the Offender Management System and in the electronic working files of the employees identified above. Thus, having identified the likely locations where responsive paper-based records and where responsive electronic records may be located, a search in such locations for each type of records was made using inmate name and identifying number.

At the central detention facility, the staff member, a correctional officer who works in the Office of Litigation Support, identified the likely locations for paper-based records and three databases of electronic records and caused a supplemental search for each type of records to be made using the inmate name and DOC identifying number.

In both cases, a search methodology was employed which was reasonably designed to locate the responsive records. Accordingly, we find the search by DOC, as revised, reasonable and adequate.

Conclusion

Therefore, the decision of DOC, as revised, is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 19, 2013

BY U.S. MAIL

Mr. Daryl Rosenbaum
P.O. Box 2411
La Plata, Maryland 20646

Re: Freedom of Information Act Appeal 2013-27

Dear Mr. Rosenbaum:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 7, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Employment Services ("DOES") improperly withheld records in response to your requests for information under DC FOIA dated January 7, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "copies of an investigation" which Appellant alleges should have been made pursuant to his complaint and all emails from the Director of DOES to an Associate Director of DOES with respect to the termination of Appellant and the investigation. By letter dated January 29, 2013, DOES stated that, after conducting a search, it did not have any responsive records. On Appeal, Appellant simply states that he is appealing the denial of the FOIA Request.

In its response, by email dated March 30, 2012, DOES reaffirmed its position. DOES has set forth the manner in which it conducted the search. With respect to the investigation report, the FOIA Officer, who is also General Counsel of DOES, stated that, based on her knowledge of the assignment of the complaint to the Equal Opportunity Manager/Labor Relations Advisor, she contacted such individual and was advised that the investigation is ongoing and that no report has been generated. With respect to the requested emails, a search was made by date, subject, and recipient of the sent, inbox, and deleted items of the Director and the inbox and deleted items of the Associate Director. The search did not produce any responsive records.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

While Appellant has not stated a specific ground for the Appeal, it is apparent that the basis of the Appeal is the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. See, e.g., Freedom of Information Act

Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, DOES stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-28, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

In the case of the Appeal, DOES has employed a search methodology was which was reasonably designed to locate the responsive records. With respect to the investigation report, the individual who is conducting the investigation and would have the report was contacted. The fact that the investigation has not been completed explains the absence of the responsive record. With respect to the requested emails, the likely location for the records was searched using appropriate search terms. Accordingly, we find the search by DOES was reasonable and adequate. We note that the FOIA Request was made as part of longer letter addressing the complaint of Appellant and believe that the FOIA officer performed commendably in extracting and prosecuting the FOIA Request.

Conclusion

Therefore, the decision of DOES is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Tonya Sapp, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 4, 2013

BY EMAIL

Mr. John K. Ross
jross@reason.com

Re: Freedom of Information Act Appeal 2013-28

Dear Mr. Ross:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 6, 2013 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated December 7, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request was as follows:

> I would like to know:
>
> 1) How many civil forfeitures the city does each year (each of the last three years)
> 2) How much revenue the city makes from civil forfeiture each year (each of the last three years).
> 3) In 2009, the District sent 3,000 letters to people who had property seized. 2,000 of them were returned unsigned. I would like to know how many letters were sent out in 2010, 2011 and how many were returned unsigned.
> 4) I would like copies of the last three public notices of forfeitures sent to the Washington Times.

In response, by letter dated January 24, 2012, MPD furnished responsive records with respect to parts 1 and 4 of the FOIA Request. With respect to part 2 of the FOIA Request, MPD indicated that it did not maintain such records and referred Appellant to other agencies which may maintain such records. With respect to part 3 of the FOIA Request, MPD stated that "records and/or statistics are currently a part of court proceedings, and is subsequently exempt from disclosure under D.C Official Code § 2-534(a)(3)(A)(i)."

On Appeal, Appellant challenges the response of MPD with respect to part 3 of the FOIA Request, that is, the assertion by MPD of the exemption under D.C Official Code § 2-534(a)(3)(A)(i), contending that DC FOIA "contains no exemption for court proceedings."

In response, by letter dated March 1, 2013, MPD revised its original response, indicating that the reasoning for its prior response was in error. MPD stated that, upon receipt of the Appeal, it made a search for responsive records. "Personnel in the department's unit that processes forfeitures advised that there were no responsive documents."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As set forth above, upon receipt of the Appeal, MPD reconsidered its position and caused a search to be made which would be responsive to part 3 of the FOIA Request.[1] No responsive records were located.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains.

[1] Apparently, such search had not been made upon receipt of the FOIA Request.

In this case, MPD made a reasonable determination of the location of responsive records, its asset forfeiture unit, and a search was made. The response of MPD does not indicate the type of records which were searched, e.g., electronic records or paper-based files, but, at this point, MPD appears to have made a good-faith search and it is uncertain that, after MPD has withdrawn its assertion of an exemption, Appellant would desire to contest the adequacy of the search on the basis that MPD has not specified the type of records which were searched. However, if Appellant desires to contest the adequacy of the search on the basis that MPD has not specified the type of records which were searched, Appellant may submit a request for reconsideration of this decision.

Conclusion

Therefore, subject to a request for reconsideration as set forth above, the decision of MPD is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald Harris, Esq.
Theresa Quon, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 22, 2013

BY U.S. MAIL

Mr. Craig A. Defoe
1306 Belmont Street, N.W., #3
Washington, D.C. 20009

Re: Freedom of Information Act Appeal 2013-29

Dear Mr. Defoe:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated January 26, 2013 (the "Appeal"). You ("Appellant") assert that the Board of Elections ("BOE") improperly withheld records in response to your request for information under DC FOIA dated November 17, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought records relating to the November 2012 general election and his submission of a provisional ballot. The FOIA Request was in five parts. The first four requests were for all records: (1) referencing or related, directly or indirectly, to Appellant; (2) "of all voters in DC who were successfully registered to vote in advance of the November 2012 general election;" (3) "of the voter rolls that were distributed to each and every precinct for use during the November 2012 general election;" and (4) regarding the discrepancy between the list of properly registered voters and the list of voters distributed to the polling places. The last request was for "any records regarding the 'special' ballot that I was forced to submit on November 6, 2012 (after being denied the right to use a regular ballot to vote), and the decision whether or not to accept and count that ballot in the final results for the election."

In response, on December 17, 2012, at the office of BOE, Appellant was provided with two computer screen printouts and a voter registration database file on a compact disk.

Appellant filed the Appeal "in an attempt to obtain a voter profile printout that will show whether or not my 'special ballot' was counted in the results of the November 2012 election." In a supplement dated January 28, 2013, Appellant stated as follows:

To be as clear as possible, the purpose of my FOIA request and this appeal is to get information on three serious issues, which all relate to my attempts to exercise my right to vote in DC:

- Why did it take three attempts for me to get registered to vote in DC?
- Why, after successfully registering before the November 2012 election, was my name not on the voter roll at my precinct (which resulted in an extra 2 hours of wait time in the special ballot line)?
- Did my 'special ballot' actually get counted; an[d] why has it been so difficult to get a straight answer on this from the BOEE?

In response, by email dated February 20, 2013, BOE stated that when it met with Appellant on December 17, 2012, it had advised him that it was "updating voter history records to reflect participation in the November 2012 election." BOE further states that, on January 28, 2013, it supplemented its disclosure by emailing Appellant "two screen printouts from his voter information file, as contained in the Board's voter registration system, which indicated that his special (provisional) ballot had been counted." BOE provided an explanation as to the notations which indicated that the ballot had been counted.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: "A request shall reasonably describe the desired record(s)."

DC FOIA provides a right to access of documents, not a right to challenge the correctness or reasoning of an agency decision, to interrogate an agency, to require an agency to conduct research, or otherwise to require answers to questions posed as FOIA requests. See *Department of Justice Guide to the Freedom of Information Act* (2009) at 51, n. 127 (collecting cases, reported and unreported). The Appeal does not set forth an issue as to the sufficiency of the search to provide the requested records, but the sufficiency of the content of the records provided to give him answers to the questions which he poses. An agency is only required to provide records, if they exist and are maintained by the agency, which are described by the requester and are responsive to such description. As we found in Freedom of Information Act Appeal 2012-72, a FOIA request is not proper if it "is an attempt to require answers to inquiries and necessitates factual analysis rather than identification of responsive records." Nevertheless, as to the main question for which Appellant was seeking an answer, whether his provisional ballot was counted,[1] as of the date of the FOIA Request, it does not appear that there was a record existing which would have indicated the same. However, as of the date of the decision, BOE has provided to Appellant records and an explanation which answers to his main inquiry. As to the remaining questions raised by the Appellant in his supplement dated January 28, 2013, they are requests for information and not for documents.

We are not unsympathetic to the frustration which Appellant experienced in being compelled to cast a provisional ballot and in verifying that his ballot was counted in the official results of the election. However, our jurisdiction is limited to issues which may be redressed under D.C. Official Code § 2-537(a).

Conclusion

Therefore, for the reasons stated above, the Appeal is hereby dismissed.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Terri D. Stroud, Esq.

[1] This was the only question raised in the original filing of the Appeal and implicated only the fifth part of the FOIA Request. "I have been trying to determine whether my 'special ballot' was actually counted. . . . I am submitting this administrative appeal in an additional attempt to try and obtain this information."

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

February 22, 2013

BY U.S. MAIL

Sgt. Deon Jones
1417 4th Street
Lanham, Maryland 20706

Re: Freedom of Information Act Appeal 2013-30

Dear Sgt. Jones:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531(a)(2001) ("DC FOIA"), dated December 5, 2012 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated November 20, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought, with respect to a named employee, the report of an investigation alleged to be conducted by Office of Internal Affairs of DOC. In response, by letter dated December 3, 2012, DOC denied the FOIA Request based on exemptions for personal privacy under D.C. Official Code § 2-534(a)(2) and (3)(C). On Appeal, Appellant challenges the denial of the FOIA Request based on the need of Appellant for the information as Appellant alleges that he and his family have been victimized by the named officer.

In its response, dated February 21, 2013, DOC reaffirmed its position. DOC indicates that the named officer has a personal privacy interest in the records and that, under the balancing test under D.C. Official Code § 2-534(a)(3)(C), disclosure of any records would not inform the public about the activities of the government, but would only serve the private interest of Appellant.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-537(a). In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public

record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute may be examined to construe the local law.

The challenge of the Appellant is to the withholding of an alleged report of investigation regarding a named employee. We agree that that privacy exemption under D.C. Official Code § 2-534(a)(3)(C) applies.

D.C. Official Code § 2-534(a)(3)(C) provides an exemption from disclosure for "[i]nvestigatory records compiled for law-enforcement purposes . . . to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648

[1] Internal investigations conducted by a law enforcement agency such as DOC will be included within D.C. Official Code § 2-534(a)(3)(C) if such investigations focus on acts which could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). *See also Rugiero v. United States DOJ*, 257 F.3d 534 (6th Cir. 2001)(The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Id*. at , 550.) The records which Appellant seeks relate to such type of investigation and the report of investigation would be deemed to be compiled for law enforcement purposes. *Cf*. D.C. Official Code § 2-534(a)(2), which applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." While D.C. Official Code § 2-534(a)(2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from D.C. Official Code § 2-534(a)(3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under D.C. Official Code § 2-534(a)(3)(C) is broader than under D.C. Official Code § 2-534(a)(2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

> F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

We find that there is a sufficient individual privacy interest in the alleged report of investigation.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

We cannot find that there is a public interest in disclosure of a report of investigation with respect to lower-level employees which outweighs their individual privacy interests in nondisclosure. The details in a report of investigation about a lower-level employee will not materially, if at all, inform one about an agency's performance of its statutory duties. See, e.g., *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984). Appellant has not advanced a public interest which would outweigh the privacy interest. Therefore, the decision of DOC was proper.

Appellant asserts that he is entitled to report of investigation as Appellant alleges that he and his family have been victimized by the named officer and the information is necessary for their protection. However, the availability of an exemption from disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004).

Conclusion

Therefore, we uphold the decision of DOC. This appeal is hereby dismissed.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.