



District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes Resolution 19-751, Omnibus Criminal Code Amendments Emergency Amendment Declaration Resolution of 2012
- DC Council passes Resolution 19-756, Omnibus Alcoholic Beverage Regulation Emergency Declaration Resolution of 2012
- Department of Health Care Finance proposes rate reductions for selected Medicaid dental services
- Department of Consumer and Regulatory Affairs extends comment period for proposed 2013 D.C. Construction Codes
- Department of Health announces funding availability for the 2013 Comprehensive Treatment Support Grants
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the H Street Retail Priority Area Grant (Round 2)
- Office of the Secretary solicits applications for the grant to promote District of Columbia self-determination, voting rights or statehood

DISTRICT OF COLUMBIA REGISTER

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CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

RESOLUTIONS

Res 19-727	District of Columbia Retirement Board Lyle M. Blanchard Reappointment Resolution of 2012.....	000288
Res 19-728	District of Columbia Retirement Board Joseph M. Bress Reappointment Resolution of 2012.....	000289
Res 19-729	District of Columbia Housing Finance Agency Board of Directors M. Craig Pascal Confirmation Resolution of 2012	000290
Res 19-730	District of Columbia Housing Finance Agency Board of Directors Derek Ford Confirmation Resolution of 2012.....	000291
Res 19-731	District of Columbia Taxicab Commission Betty L. Smalls Confirmation Resolution of 2012.....	000292
Res 19-732	Civil Fines For Moving Infractions Disapproval Resolution of 2012.....	000293
Res 19-733	Sense of the Council Encouraging Congress to Enact the DREAM Act Resolution of 2012.....	000294 - 000295
Res 19-734	District of Columbia Homeland Security Commission Darrell Darnell Confirmation Resolution of 2012	000296
Res 19-735	District of Columbia Homeland Security Commission Barbara Childs-Pair Confirmation Resolution of 2012.....	000297
Res 19-736	District of Columbia Homeland Security Commission Daniel Kaniewski Confirmation Resolution of 2012.....	000298
Res 19-737	District of Columbia Homeland Security Commission John Contestabile Confirmation Resolution of 2012	000299
Res 19-738	District of Columbia Homeland Security Commission J. Michael Barrett Confirmation Resolution of 2012.....	000300

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

RESOLUTIONS CONT'D

Res 19-739	District of Columbia Homeland Security Commission Glenn Gerstell Confirmation Resolution of 2012	000301
Res 19-740	District of Columbia Homeland Security Commission Andrew Cutts Confirmation Resolution of 2012	000302
Res 19-741	Motor Vehicle Theft Prevention Commission Chairperson Andrew Fois Confirmation Resolution of 2012.....	000303
Res 19-742	Classroom Animal for Educational Purposes Clarification Congressional Review Emergency Declaration Resolution of 2012	000304
Res 19-743	Clarification of Personal Property Tax Revenue Reporting Congressional Review Emergency Declaration Resolution of 2012	000305
Res 19-744	Income Tax Withholding Statements Electronic Congressional Review Emergency Declaration Resolution of 2012	000306
Res 19-745	Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption Clarification Congressional Review Emergency Declaration Resolution of 2012	000307 - 000308
Res 19-746	Fiscal Year 2013 Budget Support Technical Clarification Congressional Review Emergency Declaration Resolution of 2012	000309 - 000310
Res 19-747	Metropolitan Washington Airports Authority Congressional Review Emergency Declaration Resolution of 2012	000311 - 000312
Res 19-748	Fiscal Year 2014 Budget Submission Requirements Resolution of 2012	000313 - 000317
Res 19-749	Reprogramming of \$1,700,000 from Repayment of Interest on Short-Term Borrowing to the Metropolitan Police Department Disapproval Resolution of 2012.....	000318
Res 19-750	NoMA Residential Development Tax Abatement Emergency Declaration Resolution of 2012	000319
Res 19-751	Omnibus Criminal Code Amendments Emergency Amendment Declaration Resolution of 2012.....	000320 - 000322
Res 19-752	Affordable Dwelling Unit Hardship Waiver Emergency Declaration Resolution of 2012	000323

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

RESOLUTIONS CONT'D

Res 19-753 Visitability Requirements Emergency Declaration
Resolution of 2012 000324

Res 19-754 Beulah Baptist Church Real Property Equitable
Tax Relief Emergency Declaration Resolution
of 2012 000325

Res 19-755 Inaugural Hours Emergency Declaration
Resolution of 2012 000326

Res 19-756 Omnibus Alcoholic Beverage Regulation
Emergency Declaration Resolution of 2012 000327

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

Intent to Act on New Legislation –

Bill 20-03, 20-08, 20-09, 20-12, 20-13, 20-14,
20-19 through 20-51, 20-52 through 20-61,
20-63 through 20-68 and
Proposed Resolutions 20-35 and 20-47000328 - 000335

COUNCIL HEARINGS

Notice of Public Hearing

B20-31 District of Columbia Fire and Casualty
Amendment Act of 2013000336 - 000337

B20-36 Temporary and Small Business Entrepreneurship
Amendment Act of 2013000336 - 000337

B20-50 Telemedicine Reimbursement Act of 2013000336 - 000337

Notice of Public Roundtable

PR20-11 Reimbursable Details Subsidy Program Resolution
of 2012000338 - 000339

PR20-26 Egregious First Time Sale to Minor Violations
Clarification Approval Resolution of 2012000338 - 000339

PR20-7 Board of Zoning Adjustment Kathryn Allen
Confirmation Resolution of 2012 000340

Status of the Office of Motion Picture and Television
Development's Request for Proposal for the Feasibility
Study on Film Incentives and a District-Owned Sound Stage..... 000340

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

OTHER COUNCIL ACTIONS

Consideration of Temporary Legislation -

B20-18 Medical Marijuana Cultivation Center Temporary
Amendment Act of 2013 000342

Notice of Excepted Service Employees

As of December 31, 2012.....000343

Reprogramming Requests -

Reprog. Request to reprogram \$58,124 of Fiscal Year 2013
20-6 Local funds budget authority from the Repayment of
Loans and Interest Account (RLIA) to the D.C.
Office of Human Rights (DCOHR)..... 000344

Reprog. Request to reprogram \$572,518 of Fiscal Year 2013
20-7 Local funds budget 'authority from the Non-
Departmental Account to the Office of the State
Superintendent of Education (OSSE)..... 000344

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

ABC Board's Calendar – January 23, 2013.....000345 - 000347
Alcohol awareness certification 000348
Art Jamz - ANC 2B - Transfer to New Location 000349
DC Cruises - ANC 6D..... 000350
D'Vines - ANC 1A 000351
Kabin - ANC 2B..... 000352
Portico - ANC 6D – Substantial change..... 000353
RedRocks - ANC 6A..... 000354
Takorean - ANC 5B 000355

Environment, District Department of the - Air Quality Issues000356

Health, Dept. of / State Health Planning and Development Agency

Certificate of Need Registration No. 12-2-8 - District Hospital
Partners, L.P. George Washington University Hospital..... 000357

Historic Preservation Review Board - Landmark designation -

12-05 Harbour Square.....000358 - 000359

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

Zoning Adjustment – March 26, 2013 Hearings

18518 YMCA Capitol View - ANC-8D - Appl000360 - 000361

18519 Gregory Igbozuruike - ANC 1A - Appl..... 000360 - 000361

18521 819 6th St LLC - ANC-2C -Appl000360 - 000361

18522 Washington Harbour Condominium Unit Owner’s
Association - ANC 2E - Appeal000360 - 000361

Zoning Commission - Applications

12-20 13th & U Lessee, LLC 000362 - 000364

FINAL RULEMAKING

Consumer and Regulatory Affairs, Dept. of – Amend 12 DCMR
(D.C. Construction Codes Supplement of 2008), Subtitle F
(Plumbing Code Supplement) to require single-occupant
bathroom facilities to have gender-neutral signage..... 000365 - 000366

Environment, District Department of the – Amend 20 DCMR
(Environment), Ch. 35 (Green Building Requirements),
Sec. 3513, “Energy Performance Benchmarking of
Privately-Owned Buildings,”000367 - 000378

Environment, District Department of the – Amend 20 DCMR
(Environment), Ch. 43 (Hazardous Waste Management
Regulations Administration and Enforcement), Sec. 4399 to
change the definition of “regulated medical waste” 000379 - 000382

PROPOSED RULEMAKING

Alcoholic Beverage Regulation Administration – Amend
23 DCMR (Alcoholic Beverages), Ch. 2 (License and Permit
Categories), Sec. 211 “Alcohol Certification Provider Permit”
to expand the subjects that alcohol awareness certification
providers must include in their alcohol and education training program000383 - 000384

Environment, District Department of the – Amend 20 DCMR
(Environment), Ch. 42 (Standards for the Management of
Hazardous Waste and Used Oil) to extend the comment period..... 000385 - 000397

Zoning Commission – Case No. 12-11 to amend 11 DCMR
(Zoning), Chapters 4 through 9, 24, 30, 31, and 32 to
make various administrative amendments..... 000398 - 000412

Zoning Commission – Case No. 12-17 to amend 11 DCMR
(Zoning), Ch. 14 (Reed-Cooke Overlay District) to permit
hotel use within an enlarged First Church Christ Scientist building 000413 - 000414

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY RULEMAKING

Human Services, Dept. of – Amend 29 DCMR (Public Welfare) to add Ch. 78 (Family Re-Housing and Stabilization) to establish rules for administering the District of Columbia’s Family Re-Housing and Stabilization Program (FRSP), Adopted December 10, 2012; Expires April 8, 2013000415 - 000431

EMERGENCY PROPOSED RULEMAKING

Health Care Finance, Dept. of – Amend 29 DCMR (Public Welfare), Ch. 9 (Medicaid), Sec. 964 (Dental Services) to implement rate reductions for selected services; Adopted December 20, 2012; Expires April 18, 2013000432 - 000433

NOTICES, OPINIONS, AND ORDERS

MAYOR’S ORDERS

- 2013-009 Reappointments and Appointments - District of Columbia Board of Pharmacy 000434 - 000435
- 2013-010 Designation of Special Event Area - BET Honors 2013 000436 - 000437
- 2013-011 Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Rudolph School 000438
- 2013-012 Appointment - Metropolitan Washington Airports Authority Board of Directors..... 000439
- 2013-013 Reappointments - District of Columbia Recreational Trails Advisory Committee..... 000440

NOTICES, OPINIONS, AND ORDERS CONT'D

BOARDS, COMMISSIONS, AND AGENCIES

- Alcoholic Beverage Regulation Administration / ABC Board - Investigative Meeting Agenda - January 23, 2013.....000441 - 000443
- Regular Meeting Agenda - January 23, 2013.....000444 - 000445
- Asian and Pacific Islander Affairs, Office on - Commission on Asian and Pacific Islander Affairs - Meeting..... 000446
- Child Support Services Division – Child Support Guideline Commission meeting - January 24, 2013000447
- Community Academy Public Charter Schools - Request for Proposals - Tutorial Services 000448

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

**NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D**

Consumer and Regulatory Affairs, Department of –
 Extension of Comments Period for Proposed 2013 D.C.
 Construction Codes000449
 Board for the Condemnation of Insanitary Buildings –
 Scheduled Meeting - January 23 2013000450

Elections, Board of - Monthly Report of Voter Registration Statistics
 As of October 31, 2012000451 - 000460
 As of November 2012000461 -000470

Environment, District Dept. of the - Extension of Public Comment Period
 Air Quality Permits, Architect of the Capitol’s
 Capitol Power Plant, 25 E Street SE, 000471

Environment, District Department of the - Intent to Issue Permit
 13th & F Associates Limited Partnership,
 555 13th Street NW000472 - 000473
 1991 Acquisition Fund No. 1 Limited Partnership,
 700 11th Street NW000474 - 000475
 Hines 1200 Nineteenth Street LLC, 1200 19th St. NW000476 - 000477
 Hines VAF II 2100 M Street, L.P., 2100 M St. NW000478 - 000479
 Hines, 1900 K Street NW000480 - 000481
 Teachers Insurance and Annuity - College Retirement Equities
 Fund (TIAA-CREF), 1001 Pennsylvania Ave. NW000482 - 000483
 Union Investment Real Estate GmbH, 600 13th St. NW000484 - 000485
 WUSA-TV, 4010 Chesapeake Street NW000486 - 000487

Environment, District Department of the –
 Public Comment Period on Air Quality Issues – See page 000356

Health, Dept. of \ HAHSTA - Funding Availability (NOFA)
 2013 Comprehensive Treatment Support (Amended notice) 000488

Housing Authority, DC - 2013 Meeting Schedule 000489

Housing Finance Agency, DC - Board Meeting Agenda – 1/22/2013 000490

Howard Road Academy - Request For Proposals -
 School Turnaround Service 000491

Human Services, Department of / Family Services Administration /
 Refugee Health Program - Fiscal Year 2013 Grant Funding Availability to Non-Profit
 Community Based Health Organizations 000492

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

**NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D**

Insurance, Securities and Banking, Department of -
District of Columbia Financial Literacy Council meeting –
January 24, 2012 000493

Not-for-Profit Hospital Corporation - Board Meeting -
January 24, 2013 000494 - 000495

Planning and Economic Development, Office of the Deputy Mayor for -
Funding Availability - H Street Retail Priority Area Grant (Round 2) 000496 - 000498

Secretary, Office of the - Request for Applications
Grant to Promote District of Columbia Self Determination,
Voting Rights or Statehood 000499 - 000506

Taxicab Commission, DC -
General meeting - January 24, 2013..... 000507

University of the District of Columbia
Board of Trustees - Audit, Administration and Governance
Committee – Regular meeting - January 22, 2013 000508
Board of Trustees - Regular meeting - January 22, 2013..... 000509 - 000510

Water and Sewer Authority, DC -
Audit Committee - 2013 Meeting Schedule..... 000511

Board of Directors - 2013 Meeting Schedule..... 000512

Environmental Quality and Sewerage Services Committee
2013 Meeting Schedule 000513

Finance and Budget Committee -
2013 Meeting Schedule 000514
January 24, 2013 Meeting 000515

Governance Committee - 2013 Meeting Schedule..... 000516

Human Resources and Labor Relations Committee -
2013 Meeting Schedule 000517

Retail Water and Sewer Rates Committee -
2013 Meeting Schedule 000518
January 22, 2013 Meeting 000519

Water Quality and Water Services Committee
2013 Meeting Schedule 000520

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

**NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D**

Zoning Adjustment – Orders

18432	John C. Hines - ANC 2C - Order.....	000521 - 000523
18478	Rene' D. McCray - ANC 5A.....	000524 - 000525
18479	Bruce Joseph & Lois Kampinsky - ANC 3C.....	000526 - 000527
18480	David M. Sohn - ANC 3C - Order.....	000528 - 000530
18483	Sergei Mikhailov and Sara Bakker - ANC 6C - Order.....	000531 - 000533

Zoning Commission -

07-35C	Sheridan Terrace Redevelopment, LLC – Order	000534 - 000543
--------	---	-----------------

Zoning Commission -

	Closed Meeting Schedule - 2013 and January 13, 2014	000544
	Closed Meeting - February 26, 2013.....	000545

Public Employee Relations Board – Opinions

1340	PERB Case No. 11-A-08, Fraternal Order of Police/ Metropolitan Police Department Labor Committee, v. District of Columbia Metropolitan Police Department.....	000546 - 000551
1341	PERB Case No. 11-A-10, District of Columbia Metropolitan Police Department, v. Fraternal Order of Police/Metropolitan Police Department Labor Committee.....	000552 - 000557
1342	PERB Case No. 12- U-32, Leonard Watson v. District of Columbia Housing Authority and American Federation of Government Employees, Local 2725,	000558 - 000561
1343	PERB Case No. 10-U-32, The National Association of Government Employees, Local R3-07 v. DC Office of Unified Communications, Mr. Bennie Coates, Supervisor,.....	000562 - 000565
1344	PERB Case No. 12-A-05, District of Columbia Metropolitan Police Department, v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Crystal Dunkins),.....	000566 - 000572
1345	PERB Case No. 10-U-42, American Federation of Government Employees, AFL-CIO Local 2978 v. District of Columbia Department of Health.....	000573 - 000576
1346	PERB Case No. 00-U-33, Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Joseph Simmel), v. District of Columbia Metropolitan Police Department.....	000577 - 000580

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D

BOARDS, COMMISSIONS, AND AGENCIES CONT'D

- 1347 PERB Case No. 10-A-22, Fraternal Order of
Police/Department of Corrections Labor Committee (on
behalf of Hugh Cummings), v. District of Columbia
Department of Corrections.....0005801 - 000589

- 1348 PERB Case No. 09-U-62, District of Columbia American
Federation of Government Employees, Local 2978 v.
District of Columbia Office of the Chief Medical Examiner.....000590 - 000599

ENROLLED ORIGINAL

A RESOLUTION

19-727

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To reappoint Mr. Lyle M. Blanchard to the District of Columbia Retirement Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia retirement Board Lyle M. Blanchard Reappointment Resolution of 2012".

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

Mr. Lyle M. Blanchard
5609 32nd Street N.W.
Washington, D.C. 20015
(Ward 4)

as a member of the District of Columbia Retirement Board, established by section 121 of the District of Columbia retirement Reform Act, approved November 17, 1979 (93 Stat. 869; D.C. Official Code § 1-711), for a term to end January 27, 2017.

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

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

19-728

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To reappoint of Mr. Joseph M. Bress to the District of Columbia Retirement Board.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Retirement Board Joseph M. Bress Reappointment Resolution of 2012".

Sec. 2. The Council of the District of Columbia reappoints:

Mr. Joseph M. Bress
3704 Harrison Street N.W.
Washington, D.C. 20015-1816
(Ward 3)

as a member of the District of Columbia Retirement Board, established by section 121 of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 869; D.C. Official Code § 1-711), for a term to end January 27, 2016.

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

Sec. 4. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

19-729

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. M. Craig Pascal to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Board of Directors M. Craig Pascal Confirmation Resolution of 2012".

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

Mr. M. Craig Pascal
2501 K Street, N.W. #8C
Washington, D.C. 20037
(Ward 2)

as a member, with experience in finance, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2014.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-730

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the reappointment of Mr. Derek Ford to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Housing Finance Agency Board of Directors Derek Ford Confirmation Resolution of 2012".

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

Mr. Derek Ford
4508 B Street, S.E., # 8
Washington, D.C. 20019
(Ward 7)

as a member, with experience in mortgage lending, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2014.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-731

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Ms. Betty L. Smalls to the District of Columbia Taxicab Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Taxicab Commission Betty L. Smalls Confirmation Resolution of 2012”.

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

Ms. Betty L. Smalls
312 Tennessee Avenue, N.E.
Washington, D.C. 20002
(Ward 6)

as a public member of the District of Columbia Taxicab Commission, established by section 5 of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code § 50-304), replacing Bart Lasner, for a term to end May 4, 2016.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-732

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To disapprove rules proposed by the Mayor to decrease fines for certain moving violations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Civil Fines For Moving Infractions Disapproval Resolution of 2012”.

Sec. 2. Pursuant to the authority set forth in section 1825 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), section 6 of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03), and section 105 of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.05), on November 27, 2012, the Mayor submitted proposed rules to amend speed-related traffic fines. The Council disapproves the proposed rules to Chapter 26 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 2600 *et seq*).

Sec. 3. The Secretary to the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to the Department of Motor Vehicles and to the Mayor.

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

Sec. 5. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-733

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the sense of the Council to encourage the United States Congress to enact the Development, Relief, and Education for Alien Minors (“DREAM”) Act.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council Encouraging Congress to Enact the DREAM Act Resolution of 2012”.

Sec. 2. The Council finds that:

(1) The United States of America is a nation of immigrants and has been from its inception;

(2) The District of Columbia has a long history as a diverse community that has served as home to many immigrants from across the world;

(3) Throughout our Nation’s history, immigrants have created, developed and maintained our country in all areas including education, health, commerce, defense, science, culture, and the arts, and this is particularly true in the District of Columbia;

(4) It is vital to public safety in the District of Columbia that immigrants feel welcomed in the community and comfortable reporting crimes to law enforcement without ramifications related to their immigration status;

(5) Despite periods of hostility toward immigrants, our country, time and again, has promoted the assimilation of immigrants into American society and this has continuously been the case in the District of Columbia;

(6) Despite the assimilation of immigrants into American society at large and the District of Columbia in particular, the current national legal system of immigration has grown increasingly complex and dysfunctional, to the point where an estimated 2.1 million undocumented youth currently reside in the United States without the opportunity to pursue an education or to otherwise contribute to American society;

(7) These undocumented youth entered the country as children and know only the United States of America as their home;

(8) The DREAM Act, which is pending federal legislation, would provide certain undocumented youth, who arrived in this country as minors, with a credible path to legal residency by satisfying certain conditions, among them graduating from high school, receiving a GED, attending college, and serving in our country’s armed forces;

ENROLLED ORIGINAL

(9) The DREAM Act would also provide a path to citizenship upon the satisfaction of a number of conditions, including the maintenance of good moral character and the payment of fees;

(10) The DREAM Act would repeal the current penalty for states that provide in-state tuition without regard to immigration status;

(11) Adoption of the DREAM Act would validate the significant American public support, including public education that these youths have received, by creating a viable path way to citizenship.

(12) The DREAM Act would promote the national economy by providing corporate and government entities, including educational institutions and health care organizations, with a highly-educated workforce, and by providing the United States with a multilingual workforce to compete in an increasingly globalized economy;

(13) The DREAM Act, by some estimates, could provide the American economy with a population that generates from \$1.4 trillion to \$3.6 trillion in income over a 40-year period; and

(14) The DREAM Act has been endorsed by Americans from all areas of our society as an expression of our fundamental value of fairness.

Sec. 3. It is the sense of the Council that the United States Congress should enact the DREAM Act, and should do so without further delay.

Sec. 4. A copy of this resolution shall be transmitted to the District of Columbia Delegate to the U.S. House of Representatives, the Mayor, and the Leadership of both The House of Representatives and The Senate.

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

ENROLLED ORIGINAL

A RESOLUTION

19-734

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. Darrell Darnell as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission Darrell Darnell Confirmation Resolution of 2012”.

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

Mr. Darrell Darnell
1412 Potomac Avenue, S.E.
Washington, D.C. 20003
(Ward 6)

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 3-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-735

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Ms. Barbara Childs-Pair as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Homeland Security Commission Barbara Childs-Pair Confirmation Resolution of 2012".

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

Ms. Barbara Childs-Pair
2345 Belleview Avenue
Cheverly, MD 20785

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-736

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. Daniel Kaniewski as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission Daniel Kaniewski Confirmation Resolution of 2012”.

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

Mr. Daniel Kaniewski
432 3rd Street, N.E., #1
Washington, D.C. 20002
(Ward 6)

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-737

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. John Contestabile as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission John Contestabile Confirmation Resolution of 2012”.

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

Mr. John Contestabile
1557 Fridinger Mill Road
Westminster, MD 21157

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 3-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-738

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. J. Michael Barrett as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission J. Michael Barrett Confirmation Resolution of 2012”.

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

Mr. J. Michael Barrett
5 Park Place, #207
Annapolis, Maryland 21401

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 3-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-739

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. Glenn Gerstell as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission Glenn Gerstell Confirmation Resolution of 2012”.

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

Mr. Glenn Gerstell
5045 Loughboro Road, N.W.
Washington, D.C. 20016
(Ward 3)

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 3-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-740

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. Andrew Cutts as a member of the District of Columbia Homeland Security Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Homeland Security Commission Andrew Cutts Confirmation Resolution of 2012”.

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

Mr. Andrew Cutts
295 Bennett Road
Henniker, NH 03242

as a member of the District of Columbia Homeland Security Commission, established by section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2271.02), for a 2-year term.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-741

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To confirm the appointment of Mr. Andrew Fois as Chairperson of the Motor Vehicle Theft Prevention Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Motor Vehicle Theft Prevention Commission Chairperson Andrew Fois Confirmation Resolution of 2012”.

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

Mr. Andrew Fois
2020 Sedgwick Street, N.W.
Washington, D.C. 20016
(Ward 3)

as Chairperson of the Motor Vehicle Theft Prevention Commission, established by section 3, and in accordance with section 4(f), of the Motor Vehicle Theft Prevention Act of 2008, effective July 18, 2008 (D.C. Law 17-197; D.C. Official Code §§ 3-1352 and 3-1353(f)), for a term to end June 30, 2013.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-742

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend the Animal Control Act of 1979 to clarify that an educational institution is permitted to have animals for educational and instructional purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Classroom Animal for Educational Purposes Clarification Congressional Review Emergency Declaration Resolution of 2012".

Sec. 2. (a) In September, the Council enacted the Classroom Animal for Educational Purposes Clarification Emergency Act of 2012, effective October 6, 2012 (D.C. Act 19-466; 59 DCR 11767) ("emergency legislation"), and in October, the Classroom Animal for Educational Purposes Clarification Temporary Amendment Act of 2012, signed by the Mayor on October 26, 2012 (D.C. Act 19-491; 59 DCR 12718) ("temporary legislation"), which amended the Animal Control Act of 1979 to clarify that an educational institution is permitted to possess classroom and instructional animals.

(b) The emergency legislation will expire on January 3, 2013. The temporary legislation has not yet been transmitted to Congress for the 30-day review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and is not projected to become law before the emergency expires.

(c) It is important that the provisions of the emergency legislation continue in effect, without interruption, until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Classroom Animal for Educational Purposes Clarification Congressional Review Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-743

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, due to Congressional review, with respect to the need to clarify the reporting of personal property tax revenues.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Clarification of Personal Property Tax Revenue Reporting Congressional Review Emergency Declaration Resolution of 2012”.

Sec. 2. (a) Legislation was necessary to allow the Office of the Chief Financial Officer to recognize, as actual revenue, personal property tax in the fiscal year in which it is collected to allow this revenue, consistent with ordinary principles of accounting, to be treated as available to meet current year expenses.

(b) In 2011, the Council enacted the Clarification of Personal Property Tax Revenue Reporting Temporary Act of 2011, effective February 24, 2012 (D.C. Law 19-91; 58 DCR 11209), which will expire on October 6, to provide that personal property tax be recognized in the year it is collected. It is important that this provision continues to be the law to insure that the District has these funds available.

(c) The emergency legislation expires on January 4, 2013. The temporary legislation is pending. It is important that the provisions of the emergency legislation remain in effect until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Clarification of Personal Property Tax Revenue Reporting Congressional Review Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-744

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend the tax code to provide the number of statements that payors of amounts subject to income tax withholding must submit electronically.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Income Tax Withholding Statements Electronic Congressional Review Emergency Declaration Resolution of 2012".

Sec. 2. (a) Emergency legislation, which will expire in early January, was enacted to authorize the Office of Tax and Revenue ("OTR") to require that a greater number of W-2 and form 1099 series statements be filed electronically to assist OTR in eliminating fraudulent W-2 and form 1099 series statements and preventing the payment of unwarranted refunds. It is important to continue this authority to aid OTR in the upcoming income tax filing season.

(b) The emergency legislation expires on January 4, 2013. The temporary legislation is pending. It is important that the provisions of the emergency legislation remain in effect until the temporary legislation is in effect.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Income Tax Withholding Statements Electronic Submission Congressional Review Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-745

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend section 47-4641 of the District of Columbia Official Code to clarify that Lot 0218, Square 5730, which was consolidated from portions of Lots 0038, 0923, and 0924, Square 5730, will continue to be exempt from real property taxation, and to provide that the tax exemption will apply to any subsequent owner or assignee or successor in interest of the Alabama Ave. Affordable Housing, L.P., as long as the property is used as an affordable housing rental project.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption Clarification Congressional Review Emergency Declaration Resolution of 2012".

Sec. 2. (a) On November 1, 2012, the Council of the District of Columbia passed on 2nd reading, the Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption Clarification Act of 2012, signed by the Mayor on November 16, 2012 (D.C. Act 19-535; 59 DCR 13548) ("Act"), which is currently under review by Congress.

(b) On September 19, 2012, the Council of the District of Columbia passed on an emergency basis, the Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption Clarification Emergency Act of 2012, effective October 10, 2012 (D.C. Act 19-481; 59 DCR 12475). This emergency act is set to expire on January 8, 2013.

(c) The Act clarifies that real property on Lot 0218, Square 5730, which was consolidated from portions of Lots 0038, 0923, and 0924, Square 5730, will continue to be exempt from real property taxation and provides that the exemption will apply to any subsequent owner, assignee, or successor in interest as long as the property is used as an affordable housing rental project.

(d) Allen Chapel African Methodist Episcopal Church, Inc. ("Allen Chapel") obtained a tax exemption for the unimproved real property located Lots 0024, 0025, 0026, 0038, 0214, 0215, 0923, 0924 and 0925, Square 5730 pursuant to § 47-461 of the District of Columbia Official Code.

(e) A portion of Lots 0038, 0923 and 0924, Square 5730 were consolidated into Lot 0218, Square 5730 ("Property").

ENROLLED ORIGINAL

(f) The Ward 8 community has long recognized the need for more affordable senior housing and therefore supports this project. The development is also supported by the District of Columbia Housing Authority (“DCHA”), which plans to utilize some or all of the units for senior DCHA residents that have been left on their waiting list.

(g) This emergency is necessary to ensure that the Property will remain exempted from real property taxation until the permanent legislation becomes law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Allen Chapel A.M.E. Senior Residential Rental Project Property Tax Exemption Clarification Congressional Review Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-746

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to make minor, technical, and clarifying amendments to various budget-related provisions of law.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fiscal Year 2013 Budget Support Technical Clarification Congressional Review Emergency Declaration Resolution of 2012”.

Sec. 2. (a) On June 5, 2012, the Council enacted the Fiscal Year 2013 Budget Support Act of 2012.

(b) Following the passage of the Fiscal Year 2013 Budget Support Act of 2012, staff at the Office of the Chief Financial Officer, the Office of Tax and Revenue, executive agencies, and the Council identified certain provisions in the Fiscal Year 2013 Budget Support Act of 2012, as well as related provisions, that need to be clarified or amended to effectuate their intent.

(c) The proposed modifications include conforming amendments, clarifying provisions, repeals of subject-to-appropriations clauses, approval of salary levels, and other amendments of a technical nature that must go into effect immediately to clarify the Year 2013 Budget Support Act of 2012 and implement the fiscal year 2013 budget as approved by the Council and the Mayor.

(d) The Revised Fiscal Year 2012 Budget Support Technical Clarification Temporary Amendment Act of 2011, effective December 2, 2011 (“Law 19-53”), expired on July 14, 2012. The Office of Tax and Revenue identified several provisions of Law 19-53 that need to be revived and extended in order to properly implement certain tax policies. These provisions have been incorporated into the emergency legislation.

(e) The Fiscal Year 2013 Budget Support Technical Clarification Emergency Amendment Act of 2012, effective October 12, 2012 (D.C. Act 19-482; 59 DCR 12478)(“Emergency Act”), will expire January 10, 2013, before the temporary legislation has completed the 30-day Congressional review period required by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973(87 Stat. 813; D.C. Official Code § 1-602(c)(1)). It is important that the provisions of the emergency act continue in effect, without interruption, until the temporary legislation is in place.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal

ENROLLED ORIGINAL

Year 2013 Budget Support Technical Clarification Congressional Review Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-747

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend the District of Columbia Regional Airports Authority Act of 1985 to increase the total number of members of the Washington Metropolitan Airports Authority to 17 members, the number of members appointed by Virginia to 7, by the District of Columbia to 4, and by Maryland to 3, to provide that any member of the Washington Metropolitan Airports Authority shall be eligible for reappointment for one additional term and may not serve beyond the expiration of his or her term, to increase the quorum requirement to 9 members, and to increase the number of votes required to approve bond issues and the annual budget of the Washington Metropolitan Airports Authority to 10.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Metropolitan Washington Airports Authority Congressional Review Emergency Declaration Resolution of 2012".

Sec. 2. (a) The Congress of the United States and the Commonwealth of Virginia have recently approved amendments affecting the membership of the board of directors of the Metropolitan Washington Airports Authority ("MWAA"), which is the instrumentality that was established in 1985 to govern the operations of Reagan National and Dulles International airports pursuant to a lease from the federal government and an interstate compact between the District of Columbia and the Commonwealth of Virginia.

(b) Among the amendments is an increase in the number of MWAA members appointed by the District of Columbia from 3 to 4, by the Commonwealth of Virginia from 5 to 7, and by the State of Maryland from 2 to 3.

(c) There exists an immediate need to ratify the Congressionally approved changes affecting the composition of MWAA board of directors to ensure that the District's additional MWAA member is appointed and seated as soon as possible.

(d) The Metropolitan Airports Authority Emergency Act of 2012, effective October 4, 2012 (D.C. Act 19-452; 59 DCR 11738), will expire on January 02, 2013, and the permanent legislation will not have gone through the 30-day review period required by section 602(c)(1) of

ENROLLED ORIGINAL

the District of Columbia Home Rule Act, approved December 24, 1973 (87Stat. 814; D.C. Official Code § 1-206.02(c)). It is important that the emergency legislation continues in effect, without interruption, until the permanent legislation is in place.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Metropolitan Washington Airports Congressional Review Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-748

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To establish the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2014, to identify information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2014, and to require the Mayor to submit performance plans and accountability reports pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fiscal Year 2014 Budget Submission Requirements Resolution of 2012”.

Sec. 2. Pursuant to section 442(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.42(a)) (“Home Rule Act”), the Mayor shall submit to the Council, and make available to the public, not later than March 28, 2013, the proposed budget for the District government and related budget documents required by sections 442, 443, and 444 of the Home Rule Act (D.C. Official Code §§ 1-204.42, 1-204.43, and 1-204.44), for the fiscal year ending September 30, 2014.

Sec. 3. The proposed budget shall contain:

(1) Required budget documents as follows:

(A) For the entire District government, including all subordinate agencies, independent agencies, independent instrumentalities, and independent authorities (“agency”), the proposed budget shall contain a summary statement or table showing the following:

(i) The revenues by source (local, dedicated tax, special purpose, federal, and private);

(ii) Expenditures by Comptroller Source Group; and

(iii) Projections for revenues and expenditures for the fiscal year 2013 approved budget and for the fiscal year 2014 proposed budget.

(B) For each agency or separate Organizational Level I line item in the District’s annual budget, summary statements or tables showing all sources of funding by source (local, dedicated tax, special purpose, federal, private, and intra-district) for fiscal years 2011 and

ENROLLED ORIGINAL

2012, including a presentation of any variance between fiscal year appropriations and expenditures;

(C) For each agency or separate Organizational Level I line item in the District's annual budget, a summary statement or table showing projections of all sources of funding by source (local, dedicated tax, special purpose, federal, private, and intra-district), for the fiscal year 2013 approved budget and for the fiscal year 2014 proposed budget;

(D) For each agency or separate Organizational Level I line item in the District's annual budget, summary statements or tables showing expenditures by Comptroller Source Group and by Program (Organizational Level II), delineated by Activity (Organizational Level III), by source of funding for fiscal years 2011 and 2012, including a presentation of any variance between fiscal year appropriations and expenditures, as well as projections for the fiscal year 2013 approved budget and for the fiscal year 2014 proposed budget;

(E) For each Program (Organizational Level II), a delineation by Comptroller Source Group;

(F) A narrative description of each program and activity that explains the purpose and services to be provided; and

(G) A summary statement or table showing, by Comptroller Source Group and by Program, delineated by Activity, authorized full-time equivalents ("FTEs") by revenue source (local, dedicated tax, special purpose, federal, private, intra-district, and capital).

(2) School-related budget documents as follows:

(A) A summary statement or table showing the number of full-time and part-time school-based personnel in the District of Columbia Public Schools, by school level (e.g., elementary, middle, junior high, pre-kindergarten through 8th grade, senior high school) and school, including school-based personnel funded by other District agencies, federal funds, or private funds;

(B) A summary statement or table showing the number of special education students served by school level (e.g., elementary, junior high), including the number of students who are eligible for Medicaid services; and

(C) For each District of Columbia public school, a summary statement or table of the local funds budget, including the methodology used to determine each school's local funding.

(3) The Uniform Law Commission established by the District of Columbia Uniform Law Commission Act of 2010, effective March 12, 2011 (D.C. Law 18-313; D.C. Official Code § 3-1431 *et seq.*) ("Act"), shall be listed as a separate program in a single paper agency called Uniform Law Commission that is separate from the Council of the District of Columbia for the purpose of paying annual dues to the National Conference of Commissioners on Uniform State Law and for the registration fees and travel expenses associated with the annual meeting as required by section 4 of the Act.

(4) Capital budget documents as follows:

(A) A capital budget shall be presented separately in one volume and shall include budget information as described in subparagraphs (B), (C), and (D) of this paragraph. The

ENROLLED ORIGINAL

information shall be based on an updated, multiyear capital improvement plan for all capital projects (inclusive of subprojects) in all agencies proposing a capital project, as defined in section 103(8) of the Home Rule Act, including local and federal aid highway and other transportation improvements.

(B) A multiyear capital budget for all capital projects, including highway and other transportation projects and services, setting forth the projects' and subprojects' names and numbers with the following information:

- (i) Original fully funded cost estimate;
- (ii) Prior year estimate;
- (iii) Projected year authority for the budget year and for 5 future year budgets;
- (iv) Estimated impact of each project on the operating budget;
- (v) A description specific to the project and subproject, including purpose, location, all sources of funding, key milestones, and current status;
- (vi) An alphabetical index for all project and subproject descriptions provided pursuant to sub-subparagraph (v) of this subparagraph;
- (vii) An index, sorted by owner agency, for all project and subproject descriptions provided pursuant to sub-subparagraph (v) of this subparagraph;
- (viii) All proposed funding by source (local, special purpose, bond, dedicated tax, federal, private, and intra-district, etc.); and
- (ix) For each project, all proposed funding for Personal Services identified as necessary for the implementation of the project, including the number of FTE positions required, the associated direct labor costs, and the percentage of total project cost to be incurred for the cost of Personal Services. These elements should be provided for each relevant project and summarized for the agency.

(C) A spreadsheet summary of the capital budget that identifies the following for each capital project:

- (i) Implementing agency;
 - (ii) Owner agency;
 - (iii) Project title (sorted alphabetically);
 - (iv) Project number;
 - (v) All proposed funding sources;
 - (vi) Total cost of each capital project on a fully funded basis;
 - (vii) Current lifetime budget;
 - (viii) Lifetime to date allotments;
 - (ix) Lifetime to date expenditures;
 - (x) Unspent allotments;
 - (xi) Existing encumbrances (excluding pre-encumbrances);
 - (xii) Lifetime budget balance (including pre-encumbered budget);
- and
- (xiii) Planned allotments for the next 6 years.

ENROLLED ORIGINAL

(D) For capital projects funded through multiple agencies, a summary of all intra-district funds and corresponding capital project numbers for each agency.

(E) A capital budget pro forma setting forth the sources and uses of new allotments in the capital improvement plan, including Housing Production Trust Fund revenue bonds and all other sources of tax-supported debt.

(5) Additional documents as follows:

(A) Copies of all documents referenced in and supportive of the budget justification for fiscal year 2014, including the proposed Fiscal Year 2014 Budget Request Act, and any other legislation that is necessary for implementation of the proposed budget for the District for fiscal year 2014;

(B) A list, by agency, of all special purpose revenue fund balances, each fund balance use, carryover of funds from prior fiscal years, a narrative description of each fund, and the revenue source for each special purpose revenue fund, which shall include the:

(i) Actual amounts for fiscal year 2012;

(ii) Approved amounts for fiscal year 2013; and

(iii) Proposed amounts for fiscal year 2014;

(C) A table of all intra-district funds included in the fiscal year 2014 budget, including the receiving and transmitting agency, and whether a signed Memorandum of Understanding for each intra-district funding arrangement;

(D) The Highway Trust Fund plan;

(E) A table showing budget authority and actual amounts borrowed in the 2 prior years for all projects in the capital budget;

(F) An explanation of the debt cap analysis used to formulate the capital budget and a table summarizing the analysis by fiscal year, which shall include total borrowing, total debt service, total expenditures, the ratio of debt service to expenditures, and the balance of debt service capacity for each fiscal year included in the capital improvement plan;

(G) A table showing all tax-supported debt issued and authorized within and above the debt cap and spending authority remaining within the cap;

(H) A summary table, which shall include a list of all intra-agency and inter-agency changes of funding, with a narrative description of each change sufficient to provide an understanding of the change in funds and its impact on services;

(I) A crosswalk for any agency that has undergone a budget restructuring in fiscal year 2013, that shows the fiscal year 2012 allocations under the fiscal year 2013 structure;

(J) A listing of all stimulus awards and expenditures by year and by agency, project, or program;

(K) A master fee schedule, organized by agency, setting forth all fees charged by District agencies; and

(L) No later than April 1, 2013, a plan for expansion of automated traffic enforcement, as required by section 103 of the Safety-Based Traffic Enforcement Amendment Act of 2012, passed on 2nd reading on December 18, 2012 (Enrolled version of Bill 19-1013).

ENROLLED ORIGINAL

Sec. 4. Performance accountability reports.

Pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective May 16, 1995 (D.C. Law 11-16; D.C. Official Code § 1-614.11 *et seq.*), the Mayor shall submit to each Councilmember and the Council Officers, and make available to the public, not later than January 31, 2013, all performance accountability reports for fiscal year 2012 that cover all publicly funded activities of each District government agency.

Sec. 5. Pursuant to section 446 of the Home Rule Act, the Council's 56-calendar day budget review period shall begin after the date that all materials required to be submitted by sections 2 through 4, except for section 3(5)(K), have been submitted in accordance with this resolution and the Council's rules.

Sec. 6. The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 7. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A RESOLUTION

19-749

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To disapprove the proposed reprogramming (Reprog. 19-243) of \$1,700,000 from Repayment of Interest on Short-Term Borrowing to the Metropolitan Police Department.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming of \$1,700,000 from Repayment of Interest on Short-Term Borrowing to the Metropolitan Police Department Disapproval Resolution of 2012”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, on December 6, 2012, the Mayor transmitted a reprogramming request to the Council to reprogram \$1,700,000 from Repayment of Interest on Short-Term Borrowing to the Metropolitan Police Department’s Professional Development Bureau in order to fund the hiring of 48 additional police officers in fiscal year 2013 (Reprog. 19-243).

(b) The Council hereby disapproves the \$1,700,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-750

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to ensure that the amended deadline to apply for the NoMA residential tax abatement is in place before the end of the 2012 calendar year.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "NoMA Residential Development Tax Abatement Emergency Declaration Resolution of 2012".

Sec. 2. (a) The Council enacted the NoMA Residential Development Tax Abatement Amendment Act of 2012 ("B19-670"), which was signed by the Mayor on December 2, 2012, and is pending congressional review.

(b) B19-670 amends section 47-859.02 of the District of Columbia Official Code to remove the statutory limit on the number of residential units that may be approved for a tax abatement and extends the deadline to apply for the abatement from December 31, 2012, until December 31, 2013.

(c) This emergency measure is necessary to ensure the amended deadline to apply for the abatement is in place before the end of the 2012 calendar year

Sec. 3 The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the NoMA Residential Development Tax Abatement Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-751

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency, with respect to the need amend the Omnibus Public Safety and Justice Amendment Act of 2009 to clarify that intentionally failing to charge a detection device is considered tampering for purposes of the offense; to amend An Act For the preservation of the public peace and the protection of property within the District of Columbia to return prosecutorial authority on certain matters to the Office of the Attorney General, and to permit a charge for a less serious offense where one or more persons demonstrate in an area where it is not permitted and remain or return to the area after receiving a warning from law enforcement; to amend the District of Columbia Law Enforcement Act of 1953 in order to prohibit excessive noise and disruptive conduct in public buildings and to return prosecutorial authority on certain matters to the Office of the Attorney General; to amend An Act Regulating the issuance of checks, drafts, and orders for the payment of money within the District of Columbia to increase the felony threshold for a “bad check” to \$1,000; to amend An Act To establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes to a provision related to escape from an institution or officer; to amend the Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001 to designate the Criminal Justice Coordinating council as a criminal justice agency for purposes of accessing criminal justice-related data and information; to amend Title 23 of the District of Columbia Official Code to conform the District’s Crime Victim’s Rights statute with the federal statute on crime victims restitution, to modify the list of offenses for which pre-trial detention is authorized, and to allow law enforcement officers to arrest, without a warrant, an individual that he or she has probable cause to believe has committed a misdemeanor offense outside of the officer’s presence; to amend the Federal Law Enforcement Officer Cooperation Act of 1999 to make conforming changes related to amendments in Title 23 related to law enforcement officers’ ability to arrest without a warrant; to amend the District of Columbia Uniform Controlled Substances Act of 1981 to clarify the Mayor’s authority to schedule substances, and to add to the list of controlled substances those substances that have recently been added to the federal controlled substances act; to amend An Act To establish a code of law for the District of Columbia to create an offense for assault on a public vehicle-for-hire inspector; to amend the District of Columbia Taxicab Commission

ENROLLED ORIGINAL

Establishment Act of 1985 to create an offense for fleeing from a public vehicle-for-hire inspector; to amend the District of Columbia Comprehensive Merit Personnel Act to approve the compensation for the Director of the Department of Forensic Sciences; to amend The District of Columbia Health Occupations Revision Act of 1985 to clarify the regulation of massage therapists; to amend the Motor Vehicle Theft Prevention Act of 2008 to incorporate technical corrections; to amend the Access to Justice Initiative Establishment Act of 2010 in order to enlarge the number of eligible participants and improve civil legal services to low-income residents; to amend the Omnibus Police Reform Amendment Act of 2000 to clarify the duties of the Police Officers Standards and Training Board; to amend the Arson Investigators Amendment Act of 1988 regarding the authority related to ensuring compliance with the fire code; to amend the Department of Forensic Sciences Establishment Act of 2011 in order to clarify the membership of the Science Advisory Board; to amend the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006 to change the terms of commission members; to amend section 16-914 of the District of Columbia Official Code to prohibit a person convicted of rape from obtaining legal custody, physical custody, or any visitation rights with a child that has been conceived as a result of that rape; to amend; to amend the Innocence Protection Act of 2001 to amend the definition of "Biological material"; to repeal section 47-2811(b) of the District of Columbia Official Code; to amend the Driver Privacy Protection Amendment Act of 2012 to make technical corrections; to require the Office of the Attorney General to develop and submit a report on drug screening and drug treatment programs for youth arrested for possession of a substance; and to repeal section 401 of An Act To provide for the more effective prevention, detection, and punishment of crime in the District of Columbia; the Criminal Justice Supervisory Board Act of 1978; and Chapter 10 of Title 28 of the District of Columbia Municipal Regulations

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Omnibus Criminal Code Amendments Emergency Amendment Declaration Resolution of 2012".

Sec. 2. (a) The Council unanimously approved on first reading Bill 19-645, the Omnibus Criminal Code Amendments Act of 2012, at the December 4, 2012 Legislative Meeting. This legislation will appear on the agenda for second reading at the December 18, 2012 Legislative Meeting.

(b) The provisions of Bill 19-645 make important amendments and clarifications to the District's criminal code and provide better tools for law enforcement to reduce crime.

(c) Amendments to the criminal code require 60 days congressional review, which means that the improvements in Bill 19-645 would have to wait until the Spring of 2013.

ENROLLED ORIGINAL

(d) It is especially important that a number of sections in Bill 19-645 become effective as quickly as possible. Those include:

(1) Two sections make clarifications and returning prosecutorial authority to the Office of the Attorney General for offenses related to Disturbances of the Public Peace (blocking passage and disorderly conduct);

(2) One section updates the District's Controlled Substances statute, including a number of substances that are already banned under federal law, but law enforcement is unable to bring charged in District court as the substances are not banned at the local level.

(3) Clarifications of the law regarding tampering with a GPS tracking device; and

(4) Clarifications of the law regarding licensed massage therapists so that they may practice with minimal burden.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-752

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to provide a hardship waiver whereby owners residing in Affordable Dwelling Units may rent their units based upon a current condominium fee increase of \$150 or 25% or more annually, whichever is greater.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Affordable Dwelling Unit Hardship Waiver Emergency Declaration Resolution of 2012”.

Sec. 2. (a) Excessive condominium fees have placed an enormous burden on Affordable Dwelling Unit (“ADU”) owners.

(b) ADU owners experiencing excessive annual condominium fee increases of 25% or more are facing foreclosure and other detrimental effects due to the inability to rent or sell their units as a result of resale restrictions and covenants tied to their properties.

(c) Excessive condominium fees are effectively rendering affordable housing units unaffordable based on the housing burdens created for affected ADU owners.

(d) Emergency action is necessary to provide ADU owners with a hardship waiver whereby owners residing in ADUs may rent their ADUs based upon a current condominium fee increase of \$150 or 25% or more annually, whichever is greater.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Affordable Dwelling Unit Hardship Waiver Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-753

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to require all newly constructed, District financially assisted residential units (single-family homes, townhomes, ground units in a detached or attached multi-level building) to meet minimum standards of visitability for persons with disabilities or those who may acquire mobility and functional limitations as they age.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Visitability Requirements Emergency Declaration Resolution of 2012”.

Sec. 2. (a) Residents living with disabilities make up about 20% of the District’s population, which translates to 116,000 residents. Additionally, residents 65 years of age and older make up 12% of the District’s population.

(b) Federal laws such as the Fair Housing Act do not extend to single-family homes and townhomes, thus this legislation is necessary to ensure that elderly residents living with mobility impairments as well as residents living with disabilities have access to accessible housing.

(c) By 2030, it is estimated that one in every 3 households in America will include a person living with a disability.

(d) Emergency action is necessary to ensure that there is an adequate supply of accessible housing in the District for persons with disabilities or those who may acquire mobility and functional limitations as they age.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Visitability Requirements Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-754

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the taxation of real property in the District of Columbia of the Beulah Baptist Church and its related entities.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Beulah Baptist Church Real Property Equitable Tax Relief Emergency Declaration Resolution of 2012”.

Sec. 2. (a) It is necessary to exempt from Class 3 taxation real property in the District of Columbia of the Beulah Baptist Church and its related entities, all tax-exempt organizations.

(b) This legislation is needed to facilitate development of mixed-use projects, such as affordable housing, retail, and a business incubator, as soon as possible on this property.

(c) Funding existed in Fiscal Year 2012, but this authorization is necessary for it to be funded in Fiscal Year 2013.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Beulah Baptist Church Real Property Equitable Tax Relief Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-755

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to clarify that in 2013 "Inaugural Week" runs from January 15 through January 22.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Inaugural Hours Emergency Declaration Resolution of 2012".

Sec. 2. There exists an immediate need to amend § 25-723(e)(1) of the D.C. Official Code because the intent of the provision, which extends the legal hours for service and sale of alcohol during a period of time designated "Inaugural Week" will not be effectuated in January 2013, as currently drafted. The intent of the provision was to allow extended sales and service of alcohol for a period of time which would begin on January 15 in a presidential inaugural year and would end the early morning after the Presidential Inauguration which occurs on January 20. However in this year, the public, ceremonial Inaugural events will occur on January 21. Thus, in order to effectuate the intent of law, in 2013, the designation of "Inaugural Week" must be extended to include January 22.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Inaugural Hours Emergency Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

19-756

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 18, 2012

To declare the existence of an emergency with respect to the need to strengthen alcohol beverage enforcement and public safety laws, establish a noise complaint line at the Alcoholic Beverage Regulation Administration, establish clear timeframes for the scheduling of protest hearings and for the Alcoholic Beverage Control Board to issue decisions on hearings, clarify and preserve protest rights of residents, and address a range of other issues related to alcohol beverage laws in the District.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Omnibus Alcoholic Beverage Regulation Emergency Declaration Resolution of 2012”.

Sec. 2. (a) There exists an immediate need to address enforcement, public safety, and nuisance issues regarding alcoholic beverage regulation that affect residents.

(b) There is an immediate need to clarify and protect protest rights of residents and to strengthen protections related to noise in neighborhoods. The proposed emergency bill addresses a number of issues that have created ongoing problems for residents living in close proximity to nightlife.

(c) There is also an immediate need to ensure timely scheduling of license protest hearings and to ensure that hearing decisions are rendered timely to minimize the costs incurred by businesses resulting from delays in these processes.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

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

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

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COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS

- B20-03 Comprehensive Campaign Finance Reform Amendment Act of 2013

Intro. 01-04-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations
- B20-08 D.C. Official Code Title 49 Enactment Act of 2013

Intro. 01-07-13 by Chairman Mendelson and Councilmembers Cheh and Wells and referred to the Committee on Judiciary and Public Safety
- B20-09 Emergency Medical Services Amendment Act of 2013

Intro. 01-07-13 by Chairman Mendelson and referred to the Committee on Judiciary and Public Safety
- B20-12 Department of Health Grant Making Authority Amendment Act of 2013

Intro. 01-07-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health
- B20-13 Attorney General Subpoena Authority Authorization Amendment Act of 2013

Intro. 01-07-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

B20-14 Supercans for Seniors Act of 2013

Intro. 01-08-13 by Councilmember McDuffie and referred to the Committee on Transportation and the Environment

B20-19 Real Property Tax Sale Notice Amendment Act of 2013

Intro. 01-08-13 by Councilmember Bowser and referred to the Committee on Finance and Revenue

B20-20 Metropolitan Police Department Minimum Staffing Act of 2013

Intro. 01-08-13 by Councilmembers Evans and Grosso and referred to the Committee on Judiciary and Public Safety

B20-21 Council Contract Review Repeal Act of 2013

Intro. 01-08-13 by Councilmembers Evans and Grosso and referred to the Committee of the Whole

B20-22 Residential Real Property Tax Relief Act of 2013

Intro. 01-08-13 by Councilmember Evans and referred to the Committee on Finance and Revenue

B20-23 Residential Real Property Equity and Transparency Act of 2013

Intro. 01-08-13 by Councilmembers Evans and Grosso and referred to the Committee on Finance and Revenue

B20-24 Major Real Property Assessment and Appeals Schedule Revision Act of 2013

Intro. 01-08-13 by Councilmember Evans and referred to the Committee on Finance and Revenue

B20-25 Campaign Finance Reform Amendment Act of 2013

Intro. 01-08-13 by Councilmembers Bowser, Bonds, Cheh and Grosso and referred to the Committee on Government Operations

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

- B20-26 Long-time Homeowner Incentive and Economic Diversity Act of 2013
Intro. 01-08-13 by Councilmember Bowser and referred to the Committee on Finance and Revenue
-
- B20-27 Homestead Deduction Equity Act of 2013
Intro. 01-08-13 by Councilmembers Bowser and Bonds and referred to the Committee on Finance and Revenue
-
- B20-28 Money Order Tiered Contribution Limit Amendment Act of 2013
Intro. 01-08-13 by Councilmember McDuffie and Chairman Mendelson and referred to the Committee on Government Operations
-
- B20-29 District of Columbia Distillery Pub Licensure Act of 2013
Intro. 01-08-13 by Councilmembers McDuffie, Wells and Grosso and referred to the Committee on Human Services
-
- B20-30 Medical Marijuana Cultivation Center and Dispensary Location Restriction Amendment Act of 2013
Intro. 01-08-13 by Councilmembers McDuffie, Orange and Bonds and referred to the Committee on Health
-
- B20-31 District of Columbia Fire and Casualty Amendment Act of 2013
Intro. 01-08-13 by Councilmember McDuffie and referred to the Committee on Business, Consumer and Regulatory Affairs
-
- B20-32 Surrogacy Parenting Agreement Act of 2013
Intro. 01-08-13 by Councilmember Catania and referred to the Committee on Judiciary and Public Safety
-
- B20-33 Electronic Communications Privacy Protection Act of 2013
Intro. 01-08-13 by Councilmembers Catania and Barry and referred to the Committee on Judiciary and Public Safety
-

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

B20-34 Office of the Chief Financial Officer Audit Report Transparency Act of 2013

Intro. 01-08-13 by Councilmembers Catania, Barry, Graham, McDuffie, Evans, Cheh, Orange, Wells and Chairman Mendelson and referred to the Committee on Finance and Revenue

B20-35 Domestic Violence Hotline Establishment Act of 2013

Intro. 01-08-13 by Councilmember Wells and referred to the Committee on Judiciary and Public Safety

B20-36 Temporary and Small Business Entrepreneurship Amendment Act of 2013

Intro. 01-08-13 by Councilmember Wells and referred sequentially to the Committee on Business, Consumer, and Regulatory Affairs and the Committee of the Whole

B20-37 Campaign Finance Reform, Transparency and Accountability Amendment Act of 2013

Intro. 01-08-13 by Councilmembers Wells and Grosso and referred to the Committee on Government Operations

B20-38 Trinity Plaza Affordable Housing Project Real Property Tax Exemption Act of 2013

Intro. 01-08-13 by Councilmember Barry and referred to the Committee on Finance and Revenue

B20-39 Parkway Overlook Affordable Housing Real Property Tax Abatement Act of 2013

Intro. 01-08-13 by Councilmember Barry and referred to the Committee on Finance and Revenue

B20-40 Organ Donors Save Lives Act of 2013

Intro. 01-08-13 by Councilmembers Barry and Alexander and referred sequentially to the Committee on Workforce and Community Affairs and the Committee on Finance and Revenue

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

- B20-41 Reading Development and Grade 3 Retention Act of 2013
Intro. 01-08-13 by Councilmembers Orange, Barry and Bonds and referred to the Committee on Education
-
- B20-42 Constituent-Service Program Amendment Act of 2013
Intro. 01-08-13 by Councilmembers Orange, Graham, Wells and Grosso and referred to the Committee on Government Operations
-
- B20-43 Money Order Contribution Limit Amendment Act of 2013
Intro. 01-08-13 by Councilmember Orange and referred to the Committee on Government Operations
-
- B20-44 Consecutive Term Limit Amendment Act of 2013
Intro. 01-08-13 by Councilmember Orange and referred sequentially to the Committee on Government Operations and the Committee of the Whole
-
- B20-45 Prohibition on Third-Party Employers Amendment Act of 2013
Intro. 01-08-13 by Councilmembers Orange and Barry and referred to the Committee of the Whole
-
- B20-46 Jobs Training Act of 2013
Intro. 01-08-13 by Councilmember Orange and Barry and referred sequentially to the Committee on Workforce and Community Affairs and Committee of the Whole
-
- B20-47 Underground Utility Act of 2013
Intro. 01-08-13 by Councilmembers Cheh, Alexander, Evans, Graham and Chairman Mendelson and referred to the Committee on Government Operations
-
- B20-48 Civil Asset Forfeiture Amendment Act of 2013
Intro. 01-08-13 by Councilmembers Cheh, Evans, McDuffie, Alexander, Barry and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety
-

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

B20-49 Workplace Wellness Act of 2013

Intro. 01-08-13 by Councilmembers Cheh and McDuffie and referred to the Committee on Government Operations

B20-50 Telemedicine Reimbursement Act of 2013

Intro. 01-08-13 by Councilmember Cheh and referred to the Committee on Business, Consumer and Regulatory Affairs

B20-51 LGBTQ Homeless Youth Reform Act of 2013

Intro. 01-08-13 by Councilmembers Cheh and Bowser and referred to the Committee on Human Services

B20-53 Litter Control Amendment Act of 2013

Intro. 01-08-13 by Councilmember Graham and referred to the Committee on Transportation and the Environment

B20-54 Jubilee Housing Residential Rental Project Property Tax Exemption and Equitable Real Property Tax Relief Act of 2013

Intro. 01-08-13 by Councilmember Graham and referred to the Committee on Finance and Revenue

B20-55 GALA Hispanic Theater Real Property Tax Abatement Act of 2013

Intro. 01-08-13 by Councilmember Graham and referred to the Committee on Finance and Revenue

B20-56 Portion of 13th Street Building Restriction Line Elimination Act of 2013

Intro. 01-08-13 by Councilmember Graham and referred to the Committee of the Whole

B20-57 Community Renewable Energy Act of 2013

Intro. 01-08-13 by Councilmembers Alexander, Graham, Grosso, Bonds, Cheh, Wells, McDuffie and Barry and referred to the Committee on Government Operations

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

- B20-58 Tenant Bill of Rights Act of 2013
- Intro. 01-08-13 by Councilmembers Alexander, Barry, Evans, Bonds, McDuffie, Graham, Orange, Grosso, Cheh and Chairman Mendelson and referred to the Committee on Economic Development
-
- B20-59 D.C. Residents Point Preference Amendment Act of 2013
- Intro. 01-08-13 by Councilmembers Alexander and Barry and referred to the Committee on Government Operations
-
- B20-60 Eyewitness Identification Procedures Act of 2013
- Intro. 01-08-13 by Chairman Mendelson and Councilmember Cheh and referred to the Committee on Judiciary and Public Safety
-
- B20-61 Non-Driver's Identification Card/Driver's License Amendment Act of 2013
- Intro. 01-08-13 by Chairman Mendelson and Councilmember Graham and referred to the Committee on Transportation and the Environment
-
- B20-63 Police Monitoring Enhancement Amendment Act of 2013
- Intro. 01-08-13 by Chairman Mendelson and Councilmembers Bowser and Cheh and referred to the Committee on Judiciary and Public Safety
-
- B20-64 Teachers' Retirement Amendment Act of 2013
- Intro. 01-08-13 by Chairman Mendelson and Councilmembers McDuffie and Barry and referred to the Committee of the Whole
-
- B20-65 Equal Access to Employment for All Act of 2013
- Intro. 01-10-13 by Councilmember Graham and referred to the Committee on Business, Consumer and Regulatory Affairs with comments from the Committee on Workforce and Community Affairs
-
- B20-66 Homeowner Protection Amendment Act of 2013
- Intro. 01-10-13 by Councilmember Graham and referred to the Committee on Business, Consumer and Regulatory Affairs
-

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS cont'd

B20-67 Washington Latin Public Charter School Campus Property Tax Exemption Act of 2013

Intro. 01-10-13 by Councilmember Bowser and referred to the Committee on Finance and Revenue

B20-68 The Central 14th Street N.W. Supermarket Incentive Extension Amendment Act of 2013

Intro. 01-10-13 by Councilmember Bowser and referred to the Committee on Finance and Revenue

PROPOSED RESOLUTIONS

PR20-35 District of Columbia Board of Nursing Vera W. Mayer Confirmation Resolution of 2013

Intro. 01-07-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR20-47 Sense of the Council Regarding the Need for an Affordable Housing Policy at the Washington Metropolitan Area Transit Authority Resolution of 2013

Intro. 01-08-13 by Councilmember Bowser and referred to the Committee on Economic Development

**Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Notice of Public Hearing**

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119, Washington, DC 20004

**VINCENT B. ORANGE, SR.
ANNOUNCES A PUBLIC HEARING
OF THE COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS
ON
B20-31, THE "DISTRICT OF COLUMBIA FIRE AND CASUALTY
AMENDMENT ACT OF 2013"**

**B20-36, THE "TEMPORARY AND SMALL BUSINESS ENTREPRENEURSHIP
AMENDMENT ACT OF 2013"**

B20-50, THE "TELEMEDICINE REIMBURSEMENT ACT OF 2013"

**THURSDAY, FEBRUARY 7, 2013, 10:00 A.M
JOHN A. WILSON BUILDING, ROOM 500
1350 PENNSYLVANIA AVENUE, N.W.**

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public hearing by the Committee on Business, Consumer, and Regulatory Affairs on B20-31, the "District of Columbia Fire and Casualty Amendment Act of 2013", B20-36, the "Temporary and Small business Entrepreneurship Amendment Act of 2013", and B20-50, the "Telemedicine Reimbursement Act of 2013", and. The public hearing is scheduled for February 7, 2013 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW.

The purpose of the public hearing is to provide the public with an opportunity to comment on the following proposed legislation:

B20-31, the "District of Columbia Fire and Casualty Amendment Act of 2013", which proposes to require homeowners insurance companies clearly disclose that homeowner's insurance does not cover all risks and to list additional optional coverage available to the homeowner and to require the homeowners insurance company to notify applicants that homeowner's insurance does not cover losses from flood and to explain how flood insurance may be obtained;

B20-36, "Temporary and Small business Entrepreneurship Amendment Act of 2013", proposes the creation of a temporary business license, the establishment a temporary certificate of occupancy and require the Mayor to develop an expedited approval process for obtaining a temporary certificate of occupancy, to establish that a property that is occupied by a temporary use for at least 60 days per 6-month property tax period shall not be classified as vacant property, and to require the Mayor to establish a public, central database of government-owned property available for temporary commercial activity; and,

B20-50, the "Telemedicine Reimbursement Act of 2013", is a bill that would require health insurance coverage and Medicaid reimbursement for telemedicine services.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to telephone Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Thursday, January 31, 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 Thursday, February 22, 2012. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

**THE COMMITTEE ON HUMAN SERVICES
COUNCILMEMBER JIM GRAHAM, CHAIRPERSON**

ANNOUNCES A PUBLIC ROUNDTABLE ON

**PR 20-0011, "REIMBURSABLE DETAILS SUBSIDY PROGRAM RESOLUTION OF
2012"**

AND

**PR20-0026, "EGREGIOUS FIRST TIME SALE TO MINOR VIOLATIONS
CLARIFICATION APPROVAL RESOLUTION OF 2012"**

THURSDAY, JANUARY 24, 2013 AT 11:00 A.M.

**THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
ROOM 412
WASHINGTON, D.C. 20004**

Councilmember Jim Graham, Chairperson of the Committee on Human Services, announces a Public roundtable on:

- PR20-0011 "Reimbursable Details Subsidy Program Resolution of 2012" and
- PR20-0026 "Egregious First-Time Sale to Minor Violation Clarification Approval Resolution of 2012"

The Public roundtable will be held on Thursday, January 24, 2013, at 11:00 a.m. in Room 412 of the John A. Wilson Building.

The purpose of this roundtable is to hear public comment on PR20-0011, "Reimbursable Details Subsidy Program Resolution of 2012" and on PR20-0026 "Egregious First-Time Sale to Minor Violation Clarification Approval Resolution of 2012".

PR20-0011, "*Reimbursable Details Subsidy Program Resolution of 2012*" would approve the proposed rules to allow reimbursement at the current rate of 50% for hours worked by MPD officers on District or Federal Holidays in addition to those worked on Friday and Saturday nights. This is part of the ABC Board's implementation of the Fiscal Year 2013 Budget Support Act of 2012 which allows eligible on-premises licensees to sell and serve alcoholic beverages until 4:00 a.m. and to operate 24 hours a day on District or federal holidays

and certain holiday weekends. As a result of the additional hour of alcohol sales on District or Federal holidays and certain holiday weekends, the ABC Board also decided to make the Subsidy available to on-premises licensees from 11:30 p.m. until 5:00 a.m.

PR20-0026 “Egregious First-Time Sale to Minor Violation Clarification Approval Resolution of 2012” would amend section 807 of Title 23 of the DCMR to clarify that selling an alcoholic beverage to a minor where the minor was not asked by the licensee to produce identification constitutes an “egregious” first-time sale to minor violation.

Those who wish to testify should contact Mr. Malcolm Cameron of the Committee on Human Services by email at mcameron@dccouncil.us or by telephone at (202) 724-8191. Email contacts to Mr. Cameron should include the residential ward, full name, title, and affiliation -- if applicable -- of the person(s) testifying. Witnesses should bring 15 copies of their written testimony to the roundtable. Individuals will be permitted 3 minutes for oral presentation -- individuals representing organizations or groups will be permitted 5 minutes.

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 emailed to Mr. Malcolm Cameron at mcameron@dccouncil.us or submitted to the Committee on Human Services at 1350 Pennsylvania Avenue, N.W., Suite 117, Washington, D.C. 20004, by no later than 6:00 p.m., January 31, 2013, when the official record will close.

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

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC ROUNDTABLE**

on

PR 20-7, Board of Zoning Adjustment Kathryn Allen Confirmation Resolution of 2012

on

**Wednesday, January 30, 2013
11:00 a.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 roundtable of the Committee of the Whole on PR 20-7, the "Board of Zoning Adjustment Kathryn Allen Confirmation Resolution of 2012." The public roundtable will be held Wednesday, January 30, 2013, at 11:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 20-7 is to confirm the appointment of Kathryn Allen as a member of the Board of Zoning Adjustment. The purpose of this roundtable is to receive testimony from government and public witnesses as to the fitness of this nominee for the Board of Zoning Adjustment. PR 20-7 was introduced by Mayor Gray on October 24, 2012 and designated PR 19-1065.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Monday, January 28, 2012. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on January 28, 2012, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 9:00 a.m. on Monday, February 4, 2013.

**Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Notice of Public Roundtable**

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite 119, Washington, DC 20004

**VINCENT B. ORANGE, SR.
ANNOUNCES A PUBLIC ROUNDTABLE
OF THE COMMITTEE ON BUSINESS, CONSUMER AND REGULATORY AFFAIRS**

On The

**STATUS OF THE OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT'S
REQUEST FOR PROPOSAL FOR A FEASIBILITY STUDY ON FILM INCENTIVES AND A
DISTRICT-OWNED SOUND STAGE**

**THURSDAY, JANUARY 31, 2013, 10:00 A.M.
JOHN A. WILSON BUILDING, ROOM 500
1350 PENNSYLVANIA AVENUE, N.W.**

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public roundtable by the Committee on Business, Consumer, and Regulatory Affairs on the status of Office of Motion Picture and Television Development's request for proposal for a feasibility study on film incentives and a District-owned sound stage. The public roundtable is scheduled for January 31, 2013 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW.

The purpose of the public roundtable is to learn of the Office of Motion Picture and Television Development's progress to date in issuing a request for proposal for a study that would examine the feasibility of funding the DC Economic Film Incentive Grant program and creating a District-owned sound stage. Last year the Mayor's Fiscal Year 2013 budget provided \$100,000 to cover the costs toward such a study, which was approved by the Council of the District of Columbia pursuant to L19-168, the "Fiscal Year 2013 Budget Support Act of 2012".

Individuals and representatives of organizations who wish to testify at the public roundtable are asked to telephone Faye Caldwell of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Thursday, January 24, 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 roundtable, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Thursday, February 14, 2013. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
CONSIDERATION OF TEMPORARY LEGISLATION

B20-18, "Medical Marijuana Cultivation Center Temporary Amendment Act of 2013", was adopted on first reading on January 8, 2013. This temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on February 5, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA EXCEPTED SERVICE APPOINTMENTS AS OF DECEMBER 31, 2012
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NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	POSITION TITLE	GRADE	TYPE OF APPOINTMENT
Lozano, Bryan	Communications Specialist	3	Excepted Service - Reg Appt
Steward, Rosalyn C.	Assistant General Counsel	12	Excepted Service - Reg Appt
Blackwell, Michele N.	Legislative Aide	3	Excepted Service - Reg Appt
Bellfield, Christine	Administrative Assistant	3	Excepted Service - Reg Appt
Mitchell, Katherine A.	Legislative Counsel	6	Excepted Service - Reg Appt
Robinson, Cierra M	Administrative Assistant	4	Excepted Service - Reg Appt

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

Reprog. 20-6: Request to reprogram \$58,124 of Fiscal Year 2013 Local funds budget authority from the Repayment of Loans and Interest Account (RLIA) to the D.C. Office of Human Rights (DCOHR) was filed in the Office of the Secretary on January 10, 2013. This reprogramming is needed to hire an Equal Opportunity Specialist Investigator to support the essential operations of DCOHR.

RECEIVED: 14 day review began January 11, 2013

Reprog. 20-7: request to reprogram \$572,518 of Fiscal Year 2013 Local funds budget authority from the Non-Departmental Account to the Office of the State Superintendent of Education (OSSE) was filed in the Office of the Secretary on January 14, 2013. This reprogramming ensures that OSSE will be able to support the activities of the newly created statewide athletic department.

RECEIVED: 14 day review began January 15, 2013

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JANUARY 23, 2013
2000 14TH STREET, N.W., SUITE 400S,
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members:

Nick Alberti, Donald Brooks, Herman Jones, Mike Silverstein

- Protest Hearing (Status) 9:30 AM**
Case # 12-PRO-00086; Neighborhood Restaurant Group XVII, LLC, (Trade Name to be Determined), 1323 Connecticut Ave NW, License #90634, Retailer CR, ANC 2B
- New Application**
- Summary Suspension Status Hearing 9:30 AM**
Case # 12-251-00383; Umana's Inc., t/a Gloria's Restaurant & Carry Out 3411 14th Street NW, License #70623, Retailer DR, ANC 1A
- Update from Licensee on Compliance with Board Order**
- Summary Suspension Status Hearing 9:30 AM**
Case # 12-251-00360, 12-251-00360(a); Roc Bar, LLC, t/a Roc Bar 1426 L Street NW, License #89818, Retailer CT, ANC 2F
- Update from Licensee on Compliance with Board Order**
- Show Cause Hearing (Status) 9:30 AM**
Case # 12-251-00223; Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE, License #74456, Retailer CN, ANC 6C
- Failed to Follow Security Plan**
- Show Cause Hearing (Status) 9:30 AM**
Case # 12-251-00168; Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE, License #74456, Retailer CN, ANC 6C
- Failed to Follow Security Plan**
- Show Cause Hearing (Status) 9:30 AM**
Case # 12-251-00196; Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE License #74456, Retailer CN, ANC 6C
- Failed to Comply With the Terms of a Board Order**

Board's Calendar

Page -2- January 23, 2013

Show Cause Hearing (Status) 9:30 AM

Case # 12-251-00108; Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE

License #74456, Retailer CN, ANC 6C

Failed to Follow Security Plan

Show Cause Hearing (Status) 9:30 AM

Case # 12-AUD-00034; Levante Corporation, t/a Levante, 1320 19th Street NW

License #26391, Retailer CR, ANC 2B

Failed to File Quarterly Statements (1st Quarter 2012)

Show Cause Hearing 10:00 AM

Case # 12-CMP-00262; Central Wines, LLC, t/a Central Liquors

625 E Street NW, License #86268, Retailer A, ANC 2C

No ABC Manager on Duty

Show Cause Hearing

Case # 12-AUD-00028; HML Rose, Inc., t/a Lindy's Bon Appétit, 2040 I Street **10:00 AM**

NW, License #23533, Retailer CR, ANC 2A

Failed to File Quarterly Statements (4th Quarter 2011)

Show Cause Hearing 11:00 AM

Case # 12-CMP-00106; Solomon Enterprises, LLC, t/a Climax Restaurant &

Hookah Bar, 900 Florida Ave NW, License #88290, Retailer CT, ANC 1B

Violation of Voluntary Agreement, Operating After Board Approved Hours

BOARD RECESS AT 12:00 PM

ADMINISTRATIVE AGENDA

1:00 PM

Show Cause Hearing 1:30 PM

Case # 12-251-00090; Delta Elite, Inc., t/a Delta Elite, 3734 10th Street NE

License #1182, Retailer CN, ANC 5B

Failed to Comply With Security Plan

Show Cause Hearing 2:30 PM

Case # 11-CMP-00513; Ahmed Ouhman Enterprises, t/a Taan (Formerly-

Marrakech Lounge), 1817 Columbia Road NW, License #87585, Retailer CR

ANC 1C

Violation of Voluntary Agreement, Noise Violation, Failed to Obtain a

Sidewalk Café and Summer Garden Endorsement

Show Cause Hearing 3:30 PM

Case # 12-CC-00051; Twin T's, LLC, t/a DC Shenanigans (formerly

McNasty's), 2450 18th Street NW, License #88119, Retailer CT, ANC 1C

Sale To Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking

Age

Board's Calendar

Page -2-January 23, 2013

Show Cause Hearing

4:30 PM

**Case # 12-251-00123, 12-CMP-00194; Sunshine Bar & Lounge, LLC, t/a
Sunshine Bar & Lounge, 7331 Georgia Ave NW, License #85239, Retailer CR
ANC 4B**

**Interfered with an MPD Investigation, Allowed the Establishment to be
Used for an Unlawful or Disorderly Purpose, Operating After Board
Approved Hours, Substantial Change without Board Approval, Failed to
Comply with Board Order**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARING

Thursday, February 28, 2013

10:00 a.m. – 12:00 noon

2000 14th Street NW
Board Hearing Room, 4th Floor South
Washington, D.C. 20009

The Alcoholic Beverage Control Board will conduct a public hearing at the above-stated date and time to receive comment on a proposed rulemaking that amends the list of subjects that alcohol awareness certification providers must include in their alcohol and education training set forth in section 211.2 of Title 23 of the District of Columbia Municipal Regulations. These additional training subjects include recognizing harmful or potentially harmful situations that may lead to sexual harassment or sexual assault, and intervention techniques to mitigate possible harm to patrons and employees who are being subjected to sexual harassment or sexual assault.

Individuals and representatives of organizations who wish to testify should contact Martha Jenkins at 202/442-4456 or by e-mail at martha.jenkins@dc.gov by February 22, 2013. E-mail contacts should include the full name, title, and affiliation, if applicable, of the person(s) testifying. Testimony may be limited to five (5) minutes in order to permit each person an opportunity to be heard. Witnesses should bring seven (7) copies of their written testimony to the hearing.

If you are unable to testify and wish to comment, written statements are encouraged and will be made a part of the official record. Copies of written statements must be submitted to the Office of the General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street NW, Suite 400 South, Washington, D.C. 20009, no later than 4:00 p.m., Thursday, February 28, 2013.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013

License No.: ABRA-091285
Licensee: Art Jamz, LLC
Trade Name: Art Jamz
License Class: Retailer's Class "CX" Multi-Purpose Facility
Address: 1728 Connecticut Ave., NW
Contact: Rosemarie Salguero 202-589-1836

WARD 2 ANC 2B SMD 2B02

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.

NATURE OF OPERATION

Transfer to New Location

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday 10 am - 2 am and Friday & Saturday 10 am - 12 am

PROPOSED HOURS OF ENTERTAINMENT

Sunday through Thursday 6 pm - 2 am and Friday & Saturday 6 pm - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013
Protest Hearing Date: May 8, 2013

License No.: ABRA-091194
Licensee: DC Cruises, LLC
Trade Name: DC Cruises
License Class: Retailer's Class "CX" Common Carrier
Address: 1300 Maine Avenue, SW
Contact: Fred Rapaport 301-765-0750

WARD 6 ANC 6D SMD 6D01

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 May 8, 2013.

NATURE OF OPERATION

Common Carrier with an occupancy load of 107. Serving packaged food: Chips, Popcorn, Pretzel and Cookies.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday 11 am - 8 pm, Monday & Tuesday 12 pm - 8 pm, Wednesday through Friday 12 pm - 12 am and Saturday 11 am - 12 am

HOURS OF ENTERTAINMENT

Sunday 11 am - 8 pm and Thursday & Friday 5 pm - 12 am and Saturday 11 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013
Protest Hearing Date: May 8, 2013

License No.: ABRA-091199
Licensee: DC Vines, LLC
Trade Name: D'Vines
License Class: Retailer's Class "A" Liquor Store
Address: 3103 14th Street, NW
Contact: Paul Pascal 202-544-2200

WARD 1 ANC 1A SMD 1A06

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 Roll Call 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 1:30 pm on May 8, 2013.

NATURE OF OPERATION

A new Retailer's Class "A" Liquor Store

PRROPOSED HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday - Closed, Monday through Saturday 7am- 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013
Protest Hearing Date: May 8, 2013

License No.: ABRA-091276
Licensee: Kabin Group, LLC
Trade Name: Kabin
License Class: Retailer's Class "C" Tavern
Address: 1337 Connecticut Ave., NW
Contact: Jeffrey Jackson 202-561-1566

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 on the Roll 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 May 8, 2013.

NATURE OF OPERATION

Tavern with a seating capacity of 175 and total occupancy load of 210. Requesting an entertainment endorsement to include dancing.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

HOURS OF ENTERTAINMENT

Sunday through Thursday 6 pm - 2 am, and Friday & Saturday 6 pm - 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 04, 2013
Roll Call Hearing Date: March 18, 2013

License No.: ABRA-082192
Licensee: Moka, LLC
Trade Name: Portico
License Class: Retailer's Class "C" Restaurant
Address: 1914 9th Street, NW
Contact: Makonnen Teklu, Managing Member 202-247-8476

WARD 1 ANC 1B SMD 1B02

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 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.

NATURE OF SUBSTANTIAL CHANGE

Request for License Class Change from Class "C" Restaurant to Class "C" Tavern

CURRENT HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION FOR PREMISES:

Sunday through Thursday 12:00pm - 2:00am, Friday and Saturday 12:00pm - 3am.

CURRENT HOURS OF ENTERTAINMENT:

Thursday through Saturday 8:00pm - 2:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013
Protest Hearing Date: May 8, 2013

License No.: ABRA-090997
Licensee: RR4, LLC
Trade Name: RedRocks
License Class: Retailer's Class "C" Restaurant
Address: 1348 H Street, NE
Contact: Cheryl Webb, Owner 202-277-7461

WARD 6 ANC 6A SMD 6A06

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 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 4:30pm on May 8, 2013.

NATURE OF OPERATION

New Full Service Restaurant and Bar serving Neapolitan Pizza and a DJ on the 2nd Floor. Seating Capacity is 281, total occupancy load is 370. Summer Garden with 76 seats.

PROPOSED HOURS OF OPERATION FOR PREMISE:

Sunday through Wednesday 11:00am - 12:00am, Thursday 11:00am - 2:00am, Friday and Saturday 11:00am - 3:00am.

PROPOSED HOURS OF SALES/SERVICE/CONSUMPTION FOR PREMISE:

Sunday through Wednesday 11:00am - 11:45pm, Thursday 11:00am - 1:45am, Friday and Saturday 11:00am - 2:45am.

PROPOSED HOURS OF OPERATION FOR SUMMER GARDEN:

Sunday through Thursday 11:00am - 12:00am, Friday and Saturday 11:00am - 3:00am.

PROPOSED HOURS OF SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN:

Sunday through Thursday 11:00am - 11:45pm, Friday and Saturday 11:00am - 2:45am.

PROPOSED HOURS OF ENTERTAINMENT:

Thursday through Saturday 6:00pm - 1:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: January 18, 2013
Petition Date: March 4, 2013
Roll Call Hearing Date: March 18, 2013
Protest Hearing Date: May 8, 2013

License No.: ABRA-091197
Licensee: TaKorean at Union Market, LLC
Trade Name: TaKorean
License Class: Retailer's Class "C" Tavern
Address: 1309 5th Street, NE
Contact: Paul Pascal, 202-544-2200

WARD 5 ANC 5B SMD 5B06

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 Roll Call 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 May 8, 2013.

NATURE OF OPERATION

New quick service restaurant in the new Union Market complex that will serve a variety of Asian- inspired taco combinations and menu items. Occupancy load is 99, with no seats. Joint use of Common area with Union Market merchants consisting of 85 indoor seats and a Summer Garden with 80 seats.

PROPOSED HOURS OF OPERATION

Sunday through Thursday: 7am - 2am, Friday and Saturday: 7am - 3am

PROPOSED HOURS OF SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGES

Sunday through Thursday: 8 am - 2am, Friday and Saturday: 8am - 3am

PROPOSED SUMMER GARDEN HOURS OF OPERATION

Sunday through Thursday: 7am - 2am, Friday and Saturday: 7am - 3am

PROPOSED SUMMER GARDEN HOURS OF SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGES

Sunday through Thursday: 8am - 2am, Friday and Saturday: 8 am - 3am

DISTRICT DEPARTMENT OF THE ENVIRONMENT

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

Notice is hereby given that a public hearing will be held on Wednesday, February 20, 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 District of Columbia's (District) proposed redesignation request and maintenance plan for the fine particulate matter (PM_{2.5}) 1997 annual national ambient air quality standards (NAAQS). Once the District has completed its procedures, the documents will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to its State Implementation Plan (SIP) at 40 CFR Part 52 Subpart J, pursuant to the provisions of § 107 of the federal Clean Air Act (CAA).

PM_{2.5} ambient air quality has improved in the Washington DC-MD-VA nonattainment area since the area was designated as being in nonattainment of the 1997 annual PM_{2.5} NAAQS. The area is currently operating under a clean data determination (74 Fed. Reg. 1146, January 12, 2009). The District, the State of Maryland, and the Commonwealth of Virginia are requesting that EPA concurrently approve, as a SIP revision for each state, the related CAA § 175A maintenance plan. The maintenance plan ensures that good PM_{2.5} air quality will be maintained through 2025. The plan also demonstrates that PM_{2.5} air quality in the Washington DC-MD-VA area will remain compliant with the 1997 PM_{2.5} NAAQS, as measured by a monitoring network that meets all federal requirements.

Copies of the proposed redesignation request and maintenance plan 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 February 20, 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 rama.tangirala@dc.gov, or Ms. Daniels at (202) 741-0862 or jessica.daniels@dc.gov. No comments will be accepted after February 20, 2013.

DEPARTMENT OF HEALTH
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY
NOTICE OF PUBLIC HEARING

Pursuant to 22 DCMR B § 4302, the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold a public hearing on the following certificate of need application:

District Hospital Partners, L.P. George Washington University Hospital for the
Establishment of Kidney and Pancreas Transplant Services - Certificate of Need
Registration No. 12-2-8

The hearing will be held on Tuesday, February 19, 2013, beginning at 10:00 a.m., at 899 North Capitol Street, N.E., 4th Floor, Room 407, Washington, D.C. 20002.

Testimony from affected persons will be received at the hearing. Comments may be submitted in writing before the hearing, or they may be presented at the hearing orally or in writing. Written statements may also be submitted to the SHPDA, 899 North Capitol Street, N.E., Second Floor, Washington, D.C. 20002, until 4:45 p.m. on Tuesday, February 26, 2013 before the record closes. The referenced application is available at the SHPDA for review.

Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Friday, February 15, 2013. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes.

HISTORIC PRESERVATION REVIEW BOARD**NOTICE OF PUBLIC HEARING**

The D.C. Historic Preservation Review Board will hold a public hearing to consider applications to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 12-05: Harbour Square
Square 503, Lot 116, including the following addresses:
400 and 500 blocks, even numbers only, of N Street, SW;
400 and 500 blocks, odd numbers only, of O Street, SW; and
1400 block, odd numbers only, of 4th Street, SW

The hearing will take place at **9:00 a.m. on Thursday, February 28, 2013**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10A DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

For each property, a copy of the historic landmark application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates the property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects

affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District of Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, MARCH 26, 2013
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

9:30 A.M. MORNING HEARING SESSION

A.M.

WARD EIGHT

18518 **Application of YMCA Capitol View**, pursuant to 11 DCMR § 3104.1,
ANC-8D for a special exception for a Child Development Center – Before and After
School Program (150 children and 8 staff) under section 205, in the R-5-A
District at premises 4275 4th Street, S.E. (Square 6242, Lot 834).

WARD ONE

18519 **Application of Gregory Igbozuruike**, pursuant to 11 DCMR § 3103.2,
ANC-1A for a variance from the lot width requirements under subsection 401.3, to
allow the construction of three new flats in the R-4 District at premises
429 Newton Street, N.W. (Square 3035, Lots 82 and 83).

WARD TWO

18521 **Application of 819 6th St LLC**, pursuant to 11 DCMR § 3103.2, for a
ANC-2C variance from the lot occupancy requirements under section 403, and a
variance from the rear yard requirements under section 404, to allow the
construction of an apartment building in the DD/R-5-E District at premises
819 6th Street, N.W. (Square 485, Lot 15).

WARD TWO

18522 **Appeal of Washington Harbour Condominium Unit Owner’s**
ANC-2E **Association**, pursuant to 11 DCMR §§ 3100 and 3101, from a decision by
the Department of Consumer and Regulatory Affairs to issue a
determination letter dated November 7, 2012, for construction of a new
mixed use (residential, retail, office and inn) building in the W-2 and W-3
Districts at premises 3050 K Street, N.W. (Square 1173, Lot 102).

BZA PUBLIC HEARING NOTICE
MARCH 26, 2013
PAGE NO. 2

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

**LLOYD J. JORDAN, CHAIRMAN, NICOLE C. SORG, VICE CHAIRPERSON,
JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION -----
----- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY,
SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF
ZONING.**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING**

TIME AND PLACE: **Monday, March 4, 2013, 6:30 P.M.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 12-20 (13th and U Lessee, LLC – Consolidated Planned Unit Development (“PUD”) and Related Zoning Map Amendment for Square 237, Lots 198-202 (the “Property”))

THIS CASE IS OF INTEREST TO ANC 1B

On September 21, 2012, the Office of Zoning received an application from 13th and U Lessee, LLC (the “Applicant”) requesting approval of a consolidated PUD and related Zoning Map amendment in order to permit the redevelopment of the Property. The Office of Planning provided its report on November 30, 2012, and the application was set down for hearing on December 10, 2012. The Applicant provided its prehearing statement on December 21, 2012.

The property that is the subject of this application consists of approximately 25,230 square feet of land area and is located at the intersection of 13th and U Street N.W., across the street from the U Street-Cardozo Metrorail Station. The Property is located in the Mixed-Use Medium Density Commercial / Medium Density Residential land use category on the Future Land Use Map of the District of Columbia Comprehensive Plan. The Property is located in the ARTS/C-2-A Zone District. In connection with the proposed PUD, the Applicant requests rezoning to the ARTS/CR Zone District.

The Applicant proposes to redevelop the Property as a new eight-story building with approximately 134-138 apartments, 12 of which will be reserved as affordable housing, and approximately 15,270 square feet of ground-floor retail use. If granted, the PUD will be constructed to a height of approximately 86 feet and a FAR of 6.84, and will contain approximately 48 parking spaces.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written

Z.C. PUBLIC HEARING NOTICE
Z.C. CASE NO. 12-20
PAGE 2

testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person’s interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning’s website at: <http://dcoz.dc.gov/services/app.shtm>.** This form may also be obtained from the Office of Zoning at the address stated below.

To the extent that the information is not contained in the Applicant's prehearing submission as required by 11 DCMR § 3013.1, the Applicant shall also provide this information not less than 14 days prior to the date set for the hearing.

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall contain the information indicated in § 3012.5 (a) through (i).

Time limits.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- | | | |
|----|----------------------------------|-------------------------|
| 1. | Applicant and parties in support | 60 minutes collectively |
| 2. | Parties in opposition | 60 minutes collectively |
| 3. | Organizations | 5 minutes each |
| 4. | Individuals | 3 minutes each |

**Z.C. PUBLIC HEARING NOTICE
Z.C. CASE NO. 12-20
PAGE 3**

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF FINAL RULEMAKING

The Chairperson of the Construction Codes Coordinating Board, pursuant to the authority set forth in section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2008 Repl.)) and Mayor's Order 2009-22, dated February 25, 2009, hereby gives notice of the adoption of the following amendments to subtitle F (Plumbing Code Supplement) of title 12 (D.C. Construction Codes Supplement of 2008) of the District of Columbia Municipal Regulations.

The rulemaking amends the District of Columbia Plumbing Code Supplement to require single-occupant bathroom facilities to have gender-neutral signage and to update the American Water Works Association's standards reference numbers for backflow prevention assembly. Violations of the gender-neutral signage requirement would be a Class 3 civil infraction and could result in a \$500 fine.

This rulemaking was previously published in the *D.C. Register* as proposed rulemaking on June 22, 2012 (59 DCR 7509). One comment in support of the proposed regulations was received from the D.C. Center. No substantive changes have been made to the rulemaking, although a spelling mistake was corrected in American Water Works Association Standard C511-07.

Pursuant to section 10(a) of the Act, a proposed resolution approving the proposed rulemaking (P.R. 19-1050, the "District of Columbia Plumbing Code Supplement Amendment Resolution of 2012") was introduced in the Council of the District of Columbia on October 4, 2012. The proposed resolution was deemed approved by the Council on December 20, 2012.

The Chairperson of the Construction Codes Coordinating Board took final rulemaking action on January 9, 2013. This rulemaking will become effective upon publication of this notice in the *D.C. Register*.

Subtitle F (Plumbing Code Supplement) of title 12 (D.C. Construction Codes Supplement of 2008) of the District of Columbia Municipal Regulations is amended as follows:

Section 403 (Minimum Plumbing Facilities) of chapter 4 (Fixtures, Faucets and Fixture Fittings) is amended as follows:

Subsection 403.5 is amended to read as follows:

403.5 Signage. Multi-occupancy public facilities shall be designated by a legible sign for each sex. Single-occupancy public facilities shall be designated with gender-neutral signage. Signs shall be readily visible and located near the entrance to each toilet facility.

Chapter 13 (Referenced Standards) is amended as follows:

The reference standard for the American Water Works Association is amended to read as follows:

AWWA	American Water Works Association 6666 West Quincy Avenue Denver, CO 80235	
Standard Reference number	Title	Referenced in code section number
C 510-07	Double Check Valve Backflow Prevention Assembly	Table 608.1 608.13.7
C 511-07	Reduced-Pressure Principle Backflow Prevention Assembly	Table 608.1 608.13.2 608.16.2

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Energy Performance Benchmarking of Privately Owned Buildings

The Interim Director of the District Department of the Environment (DDOE), in accordance with the authority in section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2008 Repl.)); section 4 of the Green Building Act of 2006 (GBA), effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.03 (2008 Repl. & 2011 Supp.)); Mayor's Order 2010-1, dated January 5, 2010; the Clean and Affordable Energy Act of 2008 (CAEA), effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code § 8-1773.01 *et seq.* (2011 Supp.)); and section (c)(2)(A) of the Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012, effective June 5, 2012 (D.C. Law 19-139; 59 DCR 2555)), hereby gives notice of the adoption of this final rulemaking upon the publication of this notice in the *D.C. Register*, to add a new section 3513, entitled "Energy Performance Benchmarking of Privately-Owned Buildings," and to amend section 3599 (Definitions) of chapter 35 (Green Building Requirements) of title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

A Notice of Proposed Rulemaking was published in the *D.C. Register* on October 21, 2011 (58 DCR 9057). The thirty (30) day comment period ended on November 21, 2011, during which time a public meeting was held and six (6) sets of formal comments were received. In response to significant comments, DDOE determined that substantive changes to the proposed regulations were needed. In February 2012, DDOE held a public meeting and multiple stakeholder meetings to present the changes to the rulemaking under consideration and get further public input. Furthermore, DDOE proactively sought input from the United States Environmental Protection Agency (U.S. EPA), various stakeholder and trade organizations, non-profits, and officials in other jurisdictions with similar energy benchmarking requirements for privately-owned buildings. DDOE made further changes to the rulemaking as a result of these meetings.

A Second Notice of Proposed Rulemaking was published in the *D.C. Register* on July 20, 2012 (59 DCR 8573). The thirty (30) day comment period ended on August 20, 2012, during which time a public meeting was held and one (1) set of formal comments was received. Although the comments were considered, DDOE has determined that no further changes to the rulemaking are necessary pursuant to the comments. However, DDOE has made a small change to subsection 3513.15, to clarify how the regulations address the delayed implementation of the benchmarking requirements established by the GBA.

This final rulemaking references and is supported by multiple guidance documents, all of which are published on DDOE's website at <http://ddoe.dc.gov/energybenchmarking/>. The full text of all comments and DDOE's responses may also be viewed on DDOE's website. Most of the comments DDOE received during the second comment period pertained to the guidance documents, and DDOE has made a number of changes to them accordingly.

DDOE will assist the regulated community with compliance with the retroactive reporting requirements that are necessary on account of the delayed publication of this final rulemaking. In

order to support the regulated community, DDOE has worked with the District of Columbia Sustainable Energy Utility (DC SEU) to temporarily establish a benchmarking help center at the DC SEU. This help center is available to provide technical assistance with benchmarking buildings as required by this regulation. The DC SEU Benchmarking Help Center can be reached during normal business hours at 202-525-7036 or at benchmarking@dcseu.com; more information can be found at <http://dcseu.com/for-your-business/benchmarking>. In addition, DDOE has conducted an extensive series of in-person trainings and briefings on the regulations and the online tools for energy benchmarking. During 2012, over 400 individuals attended a DDOE benchmarking presentation or received hands-on technical training from the DC SEU. DDOE also maintains an electronic mailing list for over 600 stakeholders, which can be signed up for on DDOE's website, <http://ddoe.dc.gov/energybenchmarking>.

Summary

These final regulations implement the provisions of the Green Building Act (GBA) and its amendments, which mandate that, according to building size and a defined schedule, owners of privately-owned buildings annually benchmark their buildings using the U.S. EPA's ENERGY STAR[®] Portfolio Manager benchmarking tool (Portfolio Manager); that the benchmark and ENERGY STAR[®] statements of energy performance for each building be submitted to DDOE; and that, beginning with the second annual filing for a given building, DDOE make the results available to the public. In addition, these final regulations set forth DDOE's implementation and enforcement of the benchmarking requirements.

Buildings, energy use, and greenhouse gas emissions

Buildings account for a major portion of a city's energy use, imposing both local and global environmental costs. This fact was underscored in the District's 2006 Greenhouse Gas Inventory report, which found that buildings (primarily large commercial buildings) account for seventy-four percent (74%) of greenhouse gas emissions released in the District. When fossil fuel based energy is generated to power buildings, pollutants such as smog-producing sulfur and nitrogen oxides are produced and eventually end up in a region's air and waterways. High levels of ground-level ozone, which contribute to serious health problems among vulnerable populations, are also associated with the production of energy used to power buildings.

Energy use also has a significant impact on a building's operations budget, costs that are borne by building owners and their tenants. For tenants of commercial office buildings, energy inefficiency means additional lease costs, and the loss of dollars that affect the bottom-line of building owners, tenants, and investors. Energy inefficiency disproportionately affects low-income residents, who often must forgo such necessities as health care and food to pay high utility bills in inefficient buildings.

Increasing the energy efficiency of the District's building stock is an essential component of any effort to make the District more efficient and environmentally sustainable. To begin to address this critical area of energy use, the GBA requires that, beginning in 2008, public buildings be designed to achieve a rating of seventy-five (75) or higher using U.S. EPA's ENERGY STAR[®] Target Finder tool, an energy modeling tool that enables a design team to model and plan future energy performance. After construction, these buildings are further required to be annually benchmarked using the Portfolio Manager benchmarking tool. The Council of the District of Columbia then took the environmentally progressive step of enacting the Clean and Affordable

Energy Act of 2008 (CAEA), which amended the GBA to include the set of efficiency tracking requirements for existing private and public sector buildings that these regulations address.

The CAEA initiated benchmarking requirements beginning in Fiscal Year 2009 for the District's public buildings of ten thousand square feet (10,000 sq. ft.) in size or larger. Beginning with calendar year 2010, private buildings over two hundred thousand square feet (200,000 sq. ft.) are required to report data, with the law expanding coverage to include private buildings over fifty thousand square feet (50,000 sq. ft.) by 2013.

The CAEA's expanded benchmarking requirements for public buildings, and new requirements for the private sector, are intended to make energy and water performance information for the city's largest buildings readily available to the public. Easily accessible information about building performance will lead to better-informed decisions by parties who buy, lease, or manage buildings. Transparent energy and water performance information can, in particular, highlight the need for improvements in low-scoring buildings, and inform and encourage building owners to make their buildings more efficient and competitive in the marketplace. Greater awareness about energy and water use in buildings and follow-up conservation measures will lead to reduced energy consumption and its accompanying positive environmental and financial impacts.

ENERGY STAR[®] Portfolio Manager

Portfolio Manager, the U.S. EPA's online energy benchmarking system, is a widely accepted tool that enables building owners to track energy use in their buildings and compare a building's energy performance against similar buildings nationwide. Portfolio Manager is used by building owners throughout the country as a tool to track and evaluate energy and water consumption, develop energy management goals over time, and identify strategic opportunities for cost savings. Additionally, the U.S. Green Building Council references Portfolio Manager as the measurement tool to verify energy performance under the Leadership in Energy and Environmental Design (LEED) for Existing Buildings, Operations and Maintenance standard.

Portfolio Manager energy performance is reported as either a score on a scale of one (1) to one hundred (100) relative to similar buildings nationwide, or as an Energy Use Intensity (EUI) result when the inventory of similar buildings is not sufficient to allow for a comparative statistical scoring. Portfolio Manager accounts for the impact of local weather variations, as well as for changes in key physical and operating characteristics of each building type. From on-site fuel combustion, purchased electricity, and heating and cooling data, Portfolio Manager can calculate building greenhouse gas emissions such as carbon dioxide, methane, and nitrous oxide. Portfolio Manager can also track energy and water use trends as compared with the costs of these resources, thus providing a helpful tool for understanding the relative costs associated with a given level of building performance.

Outline of the Energy Benchmarking Regulations

These regulations provide specific instructions to the owners and tenants of privately-owned buildings on how to fulfill the District's benchmarking requirements. These regulations identify the building size-based timeline that triggers benchmarking requirements with each successive year, and establish a schedule for requesting and reporting building information necessary to complete annual benchmarking. These regulations and accompanying guidance documents developed by DDOE (available on DDOE's website at <http://ddoe.dc.gov/energybenchmarking/>)

identify District-specific building information to be entered into a building owner's Portfolio Manager account to generate acceptable benchmark results, including standard fields in Portfolio Manager for energy, water use, and space use attributes. These regulations also provide general guidance on how to report information to DDOE, which is further elaborated in the accompanying guidance documents.

These regulations establish the requirements for residential as well as non-residential reporting, address issues related to partial and incomplete benchmark reporting, and set standards for reporting verification. Lastly, as authorized by the Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012, these regulations address DDOE's authority to assess a fine of not more than one hundred dollars (\$100) for each calendar day that a building owner or non-residential tenant fails to provide the benchmarking information required by the GBA.

These regulations are designed to ease implementation by integrating established Portfolio Manager tools. Many building owners and managers in the District are already using the Portfolio Manager system. Variation from the "standard" Portfolio Manager requirements is limited to requiring building owners to report most data fields that are identified as optional within Portfolio Manager. This additional reporting is required for benchmarking in the District because DDOE considers the data sufficiently important to merit robust reporting.

DDOE will provide additional guidance, reference documents, and resource information on Portfolio Manager at <http://ddoe.dc.gov/energybenchmarking>. Various guidance documents and forms supporting these regulations will be provided in an electronic format on this website. Final reporting will be done through a "District Benchmark Reporting Template" that interacts directly with the building owner's Portfolio Manager account and can be completed and submitted online by the building owner.

Selected Section-by-Section Explanations

Subsections 3513.1 and 3513.2 set forth the application of benchmarking requirements through a phasing-in process based on building size. For the purpose of reporting, a building owner should calculate the gross square foot area of the building's primary spaces as defined by Portfolio Manager in order to determine if the building meets the two hundred thousand (200,000), one hundred fifty thousand (150,000), one hundred thousand (100,000), or fifty thousand (50,000) square feet size thresholds in subsection 3513.1. For the purpose of determining the reporting threshold, secondary spaces, such as parking garages, should not be included. However, these secondary spaces must be accounted for since they contribute to the complete energy profile of a building. Thus when benchmarking a building, building owners must fully report and account for secondary spaces within Portfolio Manager.

If several structures are served by shared utility systems or at least one common energy or water meter without separate metering or sub-metering, such that each building's energy or water use cannot be individually tracked, then their primary spaces should be considered to be one building for the purpose of determining if the size thresholds in subsection 3513.1 are met.

Subsection 3513.3 provides an overview of the steps building owners should follow to fulfill District reporting requirements. These reporting requirements go beyond Portfolio Manager's

minimum requirements by including mandatory reporting of water data along with some space use attributes that Portfolio Manager identifies as “optional.” The requirement to report water usage reflects the growing importance of tracking and managing water use in the District. The collection of most space use attributes is intended to provide a more robust analysis and allow completion of benchmarking when only partial-building information is available. This subsection clarifies that when multiple buildings share systems or common utility meters such that benchmarking the individual buildings is impossible, the buildings should be benchmarked together in Portfolio Manager as a single building or campus. Complex campuses containing buildings with different uses may have specialized procedures for submitting data to DDOE, which are elaborated in the guidance documents supporting this rulemaking.

Subsection 3513.4 details the elements that must be included in a complete District Benchmark Results and Compliance Report. Building owners must submit a report that includes their Building ID number as directed by DDOE, and either a one (1) to one hundred (100) score result for building types for which a Portfolio Manager benchmark score is available or an Energy Use Intensity (EUI) number for building types for which a Portfolio Manager benchmark score is not available. However, for instances where insufficient information is available to achieve either a Portfolio Manager benchmark score or an EUI result, then the building owner must explain why the requirements of the GBA were not met in reasonably sufficient detail. The online filing template will include an option to provide such an explanation. Furthermore, building owners are required to include information on any non-residential tenants who fail to supply them with required data, for the purposes of enforcement, as detailed in subsection 3513.14. Building owners should also report whether whole-building data was included for all utilities, or, if partial-building data was used, which utilities were only partial and which utilities covered the whole-building.

Subsection 3513.5 identifies the timeframe and processes that building owners must use to obtain full building information for benchmarking when owners do not have direct access to that information. Since data pertaining to all non-residential tenant spaces must be collected, the subsection applies to both owners of non-residential buildings, and owners of residential buildings that have at least one non-residential tenant. This subsection references the DDOE-developed District Data Collection Worksheet, and the Non-Residential Tenant Information Form. The worksheet and form both detail all the information a building owner is required to obtain, and the latter may be used by the building owner to obtain the necessary information from tenants. DDOE will update these forms and worksheets as needed.

Subsection 3513.6 clarifies that non-residential tenants are required to provide energy, water, and space use information to building owners, including information on sub-leased space, and are subject to fines for noncompliance.

Subsection 3513.7 clarifies the circumstances in which building owners may report partial-building data. In all cases, whole-building benchmark reporting is preferred. Where aggregate whole-building data is available from the utility company, the building owner must request that data and use it to benchmark the building, provided the utility company has made this service available more than sixty (60) days prior to the reporting deadline. The subsection then identifies an alternate reporting method for owners of non-residential buildings when a reasonable effort has been made by that owner to obtain tenant information but that information has not been

received, and for owners of residential buildings that are not master-metered. As outlined in the rule, non-residential building owners may use partial-building reporting within established parameters. Finally, until such time as they are able to obtain aggregated data from the utility company, residential building owners who do not have master meters need to report data only from the meters they, or their non-residential tenants, control.

Subsection 3513.8 identifies the date for benchmarking reports to be submitted to DDOE: April 1, for years 2013 and thereafter. To give building owners and tenants sufficient time to gather utility information to fulfill benchmarking requirements, the Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012 amended the GBA and changed this date from January 1 to April 1 of each year.

Subsection 3513.9 identifies the steps that an owner must take to correct the report they submitted to DDOE in the event they receive updated data. The most likely circumstance where this subsection applies is when a tenant did not provide the building owner with the required energy and space use data as required by subsection 3513.6, but then does provide the building owner with this data later, upon receiving a Notice of Violation as described in subsection 3513.14. A building owner might also receive corrected data from a utility company in the event the utility company discovered an error in its meter readings, or a building owner might need to correct an inaccurate building square footage figure.

Subsection 3513.10 allows a building owner to delegate responsibility for benchmarking the building to a tenant, when that tenant both leases the entire building and is responsible for the management of the building.

Subsections 3513.11 and 3513.12 cover reporting requirements for new buildings, for buildings with a change of ownership, and for vacating non-residential tenants.

Subsection 3513.13 establishes record-keeping requirements for building benchmarking information, which must be maintained for the purposes of inspection and audit.

Subsection 3513.14 establishes a process for notifying building owners and non-residential tenants of noncompliance and for issuing fines of not more than one hundred dollars (\$100) per day. The subsection also allows for appeals by building owners and non-residential tenants pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.* (2007 Repl. & 2012 Supp.)).

Lastly, subsection 3513.15 clarifies that, for reporting of 2010 and 2011 benchmarking data only, building owners must submit reports to DDOE within sixty (60) days from the effective date of these regulations. As noted above, for all subsequent years of benchmarking data, the compliance date for release of data to DDOE will be April 1 of following year. Accordingly, data from calendar year 2012 will be due April 1, 2013. These deadlines only apply to buildings above the applicable size thresholds specified in subsection 3513.1.

Chapter 35, GREEN BUILDING REQUIREMENTS, of title 20, ENVIRONMENT, of the DCMR is amended by adding a new section 3513, entitled “Energy Performance Benchmarking of Privately-Owned Buildings,” to read as follows:

3513 ENERGY PERFORMANCE BENCHMARKING OF PRIVATELY-OWNED BUILDINGS

- 3513.1 Pursuant to D.C. Official Code § 6-1451.03, an owner of a privately-owned building shall annually measure the performance of the building using the ENERGY STAR® Portfolio Manager (Portfolio Manager) benchmarking tool, according to the following schedule:
- (a) All buildings over two hundred thousand square feet (200,000 sq. ft.) of gross floor area, beginning with 2010 data and thereafter;
 - (b) All buildings over one hundred fifty thousand square feet (150,000 sq. ft.) of gross floor area, beginning with 2011 data and thereafter;
 - (c) All buildings over one hundred thousand square feet (100,000 sq. ft.) of gross floor area, beginning with 2012 data and thereafter; and
 - (d) All buildings over fifty thousand square feet (50,000 sq. ft.) of gross floor area, beginning with 2013 data and thereafter.
- 3513.2 When determining the size of a building to determine the application of § 3513.1, a building owner shall:
- (a) Calculate the gross floor area of a building as defined by Portfolio Manager;
 - (b) Include primary spaces but not include secondary spaces, as defined by Portfolio Manager; and
 - (c) Include the combined gross floor area, not including secondary spaces, of any set of buildings that share building systems or at least one common energy or water meter without separate metering or sub-metering, such that their energy or water use cannot be individually tracked and they must be benchmarked as one building or campus in Portfolio Manager.
- 3513.3 According to the schedule in § 3513.1 and the requirements specified in § 3513.4 through § 3513.8, a building owner whose building falls under the benchmarking requirements for the previous calendar year shall:
- (a) Open a Portfolio Manager account;
 - (b) Request from any non-residential tenants or utility companies the information necessary to fulfill the requirements of § 3513.3(c);
 - (c) Enter into Portfolio Manager the building information required by the District Data Collection Worksheet, including:
 - (1) Energy and water utility information, in accordance with § 3413.7;

- (2) Space use attributes information; and
- (3) Garage or other secondary space information associated with a building's energy and water use;
- (d) Benchmark in Portfolio Manager as one building, property, or campus, following guidance from the United States Environmental Protection Agency (U.S. EPA) and the District Department of the Environment (DDOE), any set of buildings that are served by shared utility systems or at least one common energy or water meter without separate metering or sub-metering, such that the buildings' individual energy or water use cannot be individually tracked, or are of a space type that U.S. EPA recommends be benchmarked as a campus; and
- (e) Authorize the transfer of a District Benchmark Results and Compliance Report to the District, via the District Benchmark Reporting Template, exclusive of any financial information.

3513.4 The District Benchmark Results and Compliance Report must include the following:

- (a) For a building type for which:
 - (1) A Portfolio Manager benchmark score is available, a score result between one (1) and one hundred (100); or
 - (2) A Portfolio Manager benchmark score is not available, an Energy Use Intensity (EUI) result; or
 - (3) Insufficient information is available to achieve either a Portfolio Manager benchmark score or an EUI result, an explanation of why the requirements of § 3513.3(c) were not met in reasonably sufficient detail to avoid the penalties of § 3513.14;
- (b) Information on any non-residential tenants who did not provide needed data as required by §3513.6, including the tenant's name, contact information, and gross floor area leased; and
- (c) Whether whole-building data was included for all utilities, or, if partial-building utility data was included, which set(s) of utility data were partial, and which covered the whole building.

3513.5 A non-residential building owner, or an owner of a residential building with non-residential tenants, shall request the information about tenant spaces required for the owner to fulfill the requirements of § 3513.3(c). The following applies:

- (a) Beginning in 2013 and thereafter, and by February 1 of each year, a building owner shall request the space use, energy, and water consumption information listed on the Non-Residential Tenant Information Form from

all non-residential tenants, and may use the Non-Residential Tenant Notification Letter and Non-Residential Tenant Information Form to request this information; or

- (b) Beginning in 2013 and thereafter, and by February 1 of each year, provided that one or more utility companies have made access to aggregated utility data available to building owners prior to that date, the building owner may request utility data from the utility company or companies, and is only required to request from non-residential tenants space use information and any utility data not available in aggregate form.

3513.6 Within thirty (30) days of receiving a request for the data listed on the Non-Residential Tenant Information Form from the building owner, a non-residential tenant shall provide complete and accurate information to the building owner. The following applies:

- (a) Tenants who sublease their space are responsible for collecting and reporting sub-tenant information and submitting it to the building owner; and
- (b) Failure of a non-residential tenant to provide the information listed on the Non-Residential Tenant Information Form to the building owner as required by this section shall subject the tenant to fines under § 3513.14.

3513.7 A building owner shall enter data in Portfolio Manager in accordance with the following:

- (a) Whenever possible, building owners should benchmark their building(s) using whole-building utility data:
 - (1) Whole-building utility data can be obtained by receiving data from all tenants, from master meters, or from a utility company; or
 - (2) If a utility company has made aggregated utility data available to building owners prior to February 1 of that calendar year, then a building owner must benchmark using whole-building utility data for that utility;
- (b) When a non-residential building owner does not have whole-building information sufficient to fulfill the requirements of § 3513.3(c), and has made a reasonable effort to obtain from a non-residential tenant the information required by § 3513.5, but that information has not been received from that tenant, the building owner shall not be relieved of their benchmarking obligations, and shall instead submit a partial-building benchmarking report; and
- (c) A partial-building benchmarking report shall include any available whole-building information (including any available aggregated utility data), any

non-residential tenant information received (where applicable), and all common area information.

- 3513.8 Beginning in 2013 and thereafter, and by April 1 of each year, a building owner shall timely authorize the transfer to the District of a complete and accurate District Benchmark Results and Compliance Report for the previous calendar year.
- 3513.9 If, after submitting a District Benchmark Results and Compliance Report to the District as required in § 3513.8, a building owner receives new or updated information that would require an update to a building's benchmark report, then the building owner shall, within thirty (30) days of receiving the new information, enter the additional or corrected data into Portfolio Manager and authorize the transfer to the District of an updated District Benchmark Results and Compliance Report, and shall notify DDOE accordingly.
- 3513.10 In cases where a building owner has leased a building to a single tenant and that tenant has assumed management of the entire building, the building owner may, at the request of and with the consent of the tenant, delegate all responsibility regarding this section to that tenant, and notify DDOE accordingly.
- 3513.11 Consistent with the requirements of § 3513.1, a building owner shall fulfill the requirements of § 3513.3 beginning with the first full calendar year after:
- (a) The building receives its Temporary Certificate of Occupancy or Certificate of Occupancy, whichever comes first; or
 - (b) The building changes ownership.
- 3513.12 If a building owner receives notice that a non-residential tenant intends to vacate a building before the information required by § 3513.5 is due, then:
- (a) The building owner shall request that the tenant provide the information on the Non-Residential Tenant Information Form for the period the tenant occupied the building; and
 - (b) The tenant shall provide the information listed on the Non-Residential Tenant Information Form to the building owner as soon as practicable prior to vacating the leased space in the building; or, if such information is not available prior to vacating such space, as soon as practicable after the tenant vacates the building.
- 3513.13 A building owner shall comply with the following record retention requirements:
- (a) Preserve benchmark results and supporting records for a period of at least three (3) years. The records shall include:

- (1) The U.S. EPA Portfolio Manager confirmation email demonstrating proof-of-submission date;
 - (2) A copy of the building owner's energy, water, and space use attribute information entered into Portfolio Manager;
 - (3) Copies of applicable tenant information forms and letters; and
 - (4) Additional information used to support the information required by § 3513.3(c); and
- (b) Make benchmark results and supporting records available for inspection and audit by DDOE during normal business hours, following reasonable notice by DDOE.

3513.14 Enforcement of this section shall proceed as follows:

- (a) The Director shall issue a written Notice of Violation to any building owner or non-residential tenant that is determined to be in violation of this section;
- (b) If the Director determines that the violation has not been corrected within thirty (30) calendar days of the issuance of a Notice of Violation, a building owner or non-residential tenant shall be assessed a fine of not more than one hundred dollars (\$100) per calendar day, during which a complete and accurate District Benchmark Results and Compliance Report has not been timely submitted to the District; and
- (c) A building owner or non-residential tenant who receives a fine may request a hearing or adjudication pursuant to the Office of Administrative Hearings Establishment Act of 2001 (D.C. Official Code § 2-1831.01 *et seq.*) and the Office of Administrative Hearings rules (1 DCMR § 2800 *et seq.*).

3513.15 In accordance with the provisions § 3513.1, and notwithstanding the provisions of § 3513.5 and § 3513.8, a building owner shall authorize, within sixty (60) days from the effective date of these regulations, the transfer to the District of complete and accurate 2010 and 2011 District Benchmark Results and Compliance Reports.

Section 3599, DEFINITIONS, of chapter 35, GREEN BUILDING REQUIREMENTS, of title 20, ENVIRONMENT, of the DCMR is amended as follows:

Subsection 3599.1 is amended to include the following definitions:

Aggregated utility data – total whole-building energy or water data for a specified period as provided by the utility company or a third party for the building for a given utility type.

Building – any structure used or intended for supporting or sheltering any use or occupancy

Building owner – an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or other private entity either possessing title or designated to govern a privately-owned building, or an agent authorized to act on behalf of the private entity.

Director – the Director of the District Department of the Environment (DDOE), or the Director’s representative, agent, designee, or successor.

District Benchmark Results and Compliance Report – the Portfolio Manager report that includes benchmark results, identifies reporting methodology, and confirms completion of a building’s benchmarking to the District.

District Benchmark Reporting Template – the template developed by DDOE in partnership with the United States Environmental Protection Agency (U.S. EPA), that exports from Portfolio Manager the building information required for building owners to fulfill District benchmarking requirements.

District Data Collection Worksheet – the list of data fields required to fulfill District benchmarking requirements.

ENERGY STAR[®] Portfolio Manager benchmarking tool, or Portfolio Manager – the system developed by the U.S. EPA that rates the energy and water performance of a building.

Non-Residential Tenant Information Form – the District form a building owner may use to collect information required for benchmarking from a non-residential tenant.

Non-Residential Tenant Notification Letter – the District form letter a building owner may use to inform a non-residential tenant that the tenant is required to provide the information required for benchmarking.

Space use attributes – information such as the conditioned floor area, weekly operating hours, number of occupied units, and number of computers in use as defined by the Portfolio Manager, according to a building type.

Tenant – a person or entity entitled to the possession, occupancy, or the benefits of any rental unit owned by another person or entity.

Utility company – an entity distributing, supplying, or transmitting electricity, natural gas, or other fuel for heating, cooling, or power generation, or water to a building.

Utility data – energy or water consumption data from one or more meters for a specified period.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Change of the Definition of Regulated Medical Waste

The Interim Director of the District Department of the Environment (“the Department”), pursuant to the authority set forth in section 7 of the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Official Code § 8-906 (2008 Repl.)), Mayor’s Order 96-160, dated October 31, 1996, as amended by Mayor’s Order 2000-54, dated April 12, 2000, as amended by Mayor’s Order 2006-61, dated June 14, 2006, section 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1305 (2008 Repl.)), section 2(21) of the Solid Waste Facility Permit Act of 1995, effective February 27, 1996 (D.C. Law 11-94; D.C. Official Code § 8-1051(21) (2008 Repl.)), Mayor’s Order 98-53, dated April 15, 1998, as amended by Mayor’s Order 2006-61, dated June 14, 2006, and section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2008 Repl.)), hereby gives notice of adoption of the following amendments that change the definition of “regulated medical waste,” as set forth in Title 20, Chapter 43, of the District of Columbia Municipal Regulations (“DCMR”).

The Illegal Dumping Enforcement Act, the above cited Mayor’s Orders, and the Hazardous Waste Management Act authorize the Department to manage, implement, enforce, and promulgate rules pertaining to the disposal of hazardous waste, including certain regulated medical waste. D.C. Official Code § 8-906 authorizes the Department to promulgate regulations implementing the programs and plans described in the Illegal Dumping Enforcement Act, whereas D.C. Official Code § 8-1305 authorizes the Department to promulgate regulations implementing the programs and plans described in the Hazardous Waste Management Act.

The definition of “regulated medical waste” (referred to as “Regulated Waste” in 29 C.F.R. 1910.1030(b) (2011)) is an important aspect of hazardous waste management programs because under federal law, regulated medical waste must be discarded in a particular manner (*i.e.*, “red-bags”) to ensure proper disposal of biological hazards. These final rules amend and reorganize the regulations that define certain terms used in 20 DCMR Chapters 42 and 43, and specifically update the definition of “regulated medical waste,” to provide greater clarity. These final rules change the definition in 20 DCMR § 4399.1, which had combined two concepts from the D.C. Official Code into a definition that too broadly affected the regulated community. The definition in 20 DCMR § 4399.1 combined the definitions of “infectious waste,” D.C. Official Code § 8-1051(21) and ordinary “medical waste,” D.C. Official Code § 8-901(3A) into “regulated medical waste.” As a result, a medical facility could erroneously conclude that they were required to treat a used band-aid with the same precautions as a used syringe. This over-broad definition had the potential to cause hospitals and other medical facilities to use more stringent standards than would otherwise be necessary to protect human health and the environment.

The final rulemaking amends the definition of “regulated medical waste” to conform with the definition used by a number of States (*See e.g.*, Virginia 9 VAC 20-120-150 and New York 10 NYCRR, 70-1), the Center for Disease Control (*CDC/NIH Manual for Biosafety in*

Microbiological and Biomedical Laboratories), the United States Environmental Protection Agency (See 40 C.F.R. § 60.51c), and the Occupational Safety and Health Administration (Bloodborne Pathogen Standard, 29 C.F.R. 1910.1030).

The proposed regulations were published in the *D.C. Register* on November 2, 2012, at 59 DCR 012528. The comment period officially closed on December 3, 2012. The Department received only one comment from a member of the regulated community, the District of Columbia Hospital Association, supporting the proposed regulation. Therefore, the Department is finalizing this rulemaking with no changes. These final rules will be effective immediately upon publication of this notice in the *D.C. Register*.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 43 (HAZARDOUS WASTE MANAGEMENT REGULATIONS ADMINISTRATION AND ENFORCEMENT), SECTION 4399 is deleted in its entirety and replaced with the following:

4399 DEFINITIONS

4399.1 Terms not defined in this chapter shall have the meanings ascribed in § 3 of the District of Columbia Hazardous Waste Management Act, [D.C. Official Code § 8-1302](#); § 2 of the Illegal Dumping Enforcement Act, [D.C. Official Code § 8-901](#); § 2 of the District of Columbia Solid Waste Facility Permit Act, [D.C. Official Code § 8-1051](#); and 20 DCMR chapter 42.

4399.2 When used in this chapter and 20 DCMR chapter 42, the following terms have the meanings ascribed in the subsections below:

CFR – the Code of Federal Regulations, including the most recently updated volumes and any amendments thereto.

Department – the District Department of the Environment, or its successor agency.

Director – the Director of the District Department of the Environment, or its successor agency.

Regulated Medical Waste – shall mean:

- (a) Cultures and stock of microorganisms and biologicals including:
 - (1) Discarded cultures, stocks, specimens, vaccines, and associated items likely to have been contaminated by them, if they are likely to contain organisms likely to be pathogenic to healthy humans;
 - (2) Discarded etiologic agents;
 - (3) Wastes from the production of biologicals and antibiotics likely to have been contaminated by organisms likely to be pathogenic to healthy humans;

- (b) Liquid or semi-liquid blood or other potentially infectious materials including:
 - (1) Contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed;
 - (2) Items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling;
 - (3) Contaminated sharps, pathological and microbiological wastes containing blood or other potentially infectious materials;
- (c) Tissues and all human anatomical wastes and all wastes that are human tissue including:
 - (1) Pathological and microbiological wastes containing blood or other potentially infectious materials;
 - (2) Organs; and
 - (3) Body parts;
- (d) Potentially infectious materials including the following human body fluids:
 - (1) Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;
 - (2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and HIV-containing cell, tissue, or organ cultures;
 - (3) HIV, HBV, or Hepatitis C-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV;
- (e) Sharps likely to be contaminated with organisms that are pathogenic to healthy humans, including:
 - (1) All needles, syringes with attached needles, suture needles, and scalpels; and
 - (2) Sharps generated through veterinary practice;
- (f) Animal carcasses, body parts, bedding, and related wastes:
 - (1) When animals are intentionally infected with organisms likely to be pathogenic to healthy humans for the purposes of research, in vivo testing, production of

biological materials, or any other reason;

- (2) The animal carcasses, body parts, bedding material, and all other wastes likely to have been contaminated, when discarded, disposed of, or placed in accumulated storage;
- (g) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any regulated medical waste; and
- (h) Any solid waste contaminated by or mixed with regulated medical waste.

Responsible Person – a person who is or has been the generator of hazardous waste, used oil, or regulated medical waste; the owner or operator of a site that contains, or a vehicle that transports, hazardous waste, used oil, or regulated medical waste; or a person who by contract, agreement, or otherwise arranges for the storage, treatment, or disposal of hazardous waste, used oil, or regulated medical waste.

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211(b) (2012 Supp.) hereby gives notice of its intent to amend section 211 of title 23 of the DCMR to expand the subjects that alcohol awareness certification providers must include in their alcohol and education training program.

These proposed rules were adopted by the Board on January 9, 2013, by a five (5) to zero (0) vote.

The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Pursuant to D.C. Official Code § 25-211(b)(2), these proposed rules are also being transmitted to the Council of the District of Columbia (Council) for a ninety (90) day period of review. The final rules shall not become effective absent approval by the Council.

Section 211, ALCOHOL CERTIFICATION PROVIDER PERMIT, of chapter 2, LICENSE AND PERMIT CATEGORIES of title 23, ALCOHOLIC BEVERAGES of the DCMR, is amended by replacing subsection 211.2 in its entirety, to read as follows:

- 211.2 An alcohol certification provider shall include the following subjects in its alcohol and education training program:
- (a) Alcohol's effect on the body and behavior, especially as to driving ability;
 - (b) Recognition of the problem drinker;
 - (c) Intervention techniques, involving methods of dealing with the problem customer who has had or is approaching the point of having had too much to drink;
 - (d) Recognition of the harmful or potentially harmful situations that may lead to sexual harassment or sexual assault;
 - (e) Intervention techniques to mitigate possible harm to patrons and employees who are being subjected to sexual harassment or sexual assault;
 - (f) Methods of recognizing and dealing with underage customers;
 - (g) Prevention techniques involving effective identification and carding procedures, and methods to reasonably regulate the service of alcoholic beverages to patrons;

- (h) An explanation of the Title 25, D.C. Code Enactment and Related Amendments Act of 2001 and this title;
- (i) Advertising, promotion, and marketing of alcoholic beverages; and
- (j) An explanation that alcoholism is a chronic, progressive disease and that treatment is available through clinical providers and mutual support groups.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF EXTENDED COMMENT PERIOD

Standards for the Management of Hazardous Waste and Used Oil

The Director of the District Department of the Environment (“the Department”), pursuant to the authority set forth in section 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1305 (2008 Repl.)); Mayor's Order 2005-70, dated April 19, 2005 (52 DCR 5495); Section 107 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2008 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006 (53 DCR 5684) hereby gives notice of the intent to amend Title 20 of the District of Columbia Municipal Regulations (“DCMR”) concerning the standards for the management of hazardous waste and used oil, and the permit fee for small quantity generators. The proposed rules were initially proposed in the D.C. Register on December 7, 2012 and will be open for public comment for an additional thirty (30) days (see procedures for commenting at the end of the proposed rules). Thereafter, the proposed rules will be submitted to the Council for a forty-five (45)-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this forty-five (45)-day review period, the proposed rules shall be deemed approved.

The District’s Hazardous Waste Management Rules (“District rules”) are patterned after federal regulations promulgated pursuant to the Resource Recovery and Conservation Act, approved October 21, 1976, 90 Stat. 2796, Pub. L 94-580, 42 U.S.C. § 6901 *et seq.* (“RCRA”), published at Title 40 of the Code of Federal Regulations (“CFR”) Parts 124, 260 through 266, 268, 270, 273 and 279, so that any District specific regulations are easily discernible to the regulated community. For example, 40 CFR Part 260 is incorporated by reference in 20 DCMR 4260. The existing District rules largely mirror the RCRA regulations, and the proposed rules would continue the incorporation, by reference, of the most current corresponding federal rules published in the CFR.

However, the District rules contain a number of provisions that are more stringent, broader in scope, or otherwise different than the RCRA regulations. Many of these existing provisions are no longer necessary. For example, although there are District-specific provisions regarding landfills, the District has not had any landfills for a number of years and has no need for local regulations that are more stringent than those found in the CFR. In an effort to reduce excess regulation, the Department seeks to repeal the extraneous regulations in this proposed rulemaking so that District-specific regulations are clearer. The proposed rules would allow the Department to more effectively regulate hazardous waste, in a manner consistent with federal law and to focus its efforts on pollution prevention.

Notwithstanding the amendments made by the proposed rules, the District’s rules continue to establish criteria to be used in determining the materials that constitute hazardous waste; standards for generators, transporters, and owners and operators of hazardous waste facilities;

standards for universal waste management; standards for used oil management; inspection and enforcement procedures; and fees for hazardous waste activities. Moreover, the proposed rules would continue the prohibitions in the District of Columbia on the burning, land treatment and disposal, and underground injection of hazardous waste, and the burning of used oil. The proposed rules would also continue the requirement that owners and operators of hazardous waste transfer facilities obtain permits for their facilities.

Finally, the proposed rules lower the annual permit fee for small quantity generators that have less than eight (8) employees.

The following rulemaking action is proposed:

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4206.2 (RECORD-RETENTION AND REPORTING REQUIREMENTS), is amended to read as follows:

4206.2 Whenever the RCRA regulations in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279 require that a document be sent to EPA, DOT, or another federal agency, the person required to send the document to EPA, DOT, or other federal agency shall, at the same time, send a copy to the Department's Hazardous Waste Division.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4260.4 (HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL PROVISIONS), PARAGRAPHS (h), (i) and (j) ARE REPEALED and Section 4260.4 is amended to read as follows:

4260.4 Except as provided in this subsection, the substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to the definitions in 40 CFR § 260.10. The following definitions either clarify or modify the corresponding federal definitions, or provide the meaning for terms not defined in the RCRA regulations:

- (a) Active life - in the federal definition of the term "active life," the term "Director" shall supplant the term "Regional Administrator";
- (b) Boiler - in the federal definition of the term "boiler," the term "Director" shall supplant the term "Regional Administrator";
- (c) Department means the District of Columbia District Department of the Environment or a successor agency;
- (d) Director means the Director of the District Department of the Environment or his or her designee;

- (e) District-only wastes means wastes that are regulated as hazardous waste under the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, but that are not considered hazardous wastes under 40 CFR Part 261, Subparts C or D;
- (f) Existing tank system or existing component means for HSWA tanks, the terms “existing tank system” or “existing component” have the meaning, given those terms in 40 CFR § 260.10. For non-HSWA tanks, an “existing tank system” or “existing component” is one that is in operation, or for which installation has commenced, on or before March 1, 1996;
- (g) HSWA means the Hazardous and Solid Waste Amendments of 1984, approved November 8, 1984 (98 Stat. 3321; 42 USC §§ 6901 -6991i): (1) RCRA regulations promulgated by EPA under HSWA authorities take effect in all states at the same time, regardless of a state's authorization status; and (2) RCRA regulations promulgated by EPA under non-HSWA authorities do not take effect in EPA-authorized states until the state adopts the non-HSWA regulation;
- (h) Resource Conservation and Recovery Act (RCRA) regulations means the regulations contained in 40 CFR Parts 124, 260 through 266, 268, 270, 273, and 279; and
- (i) Wastewater treatment unit means a device that:
 - (1) Is part of a wastewater treatment facility that is subject to regulation under either §§ 307(b) or 402 of the Clean Water Act, 33 U.S.C. §§ 1317(b) or 1342; § 7 of the District of Columbia Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.06 (2001)); or the District of Columbia Wastewater System Regulation Act, effective March 12, 1986, as amended (D.C. Law 6-95; D.C. Official Code §§ 8-105.01 to 8-105.15 (2001));
 - (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR § 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR § 261.3; and
 - (3) Meets the definition of tank or tank system in 40 CFR § 260.10.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4261.9 - 4261.10 (IDENTIFICATION AND LISTING OF HAZARDOUS WASTE) ARE REPEALED.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4262.4 (STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE), PARAGRAPHS (a) and (b) ARE REPEALED and Section 4262 is amended to read as follows:

- 4262.1 The provisions of 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste) and the Appendix to Part 262 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.
- 4262.2 With respect to the federal compliance requirements and penalties referenced in 40 CFR § 262.10(g), the following District of Columbia enforcement authorities are also applicable: sections 10, 11, and 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1309 to 8-1311).
- 4262.3 In 40 CFR § 262.11 (hazardous waste determination), the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency.
- 4262.4 In 40 CFR § 262.43 (additional reporting), the cross-references to §§ 2002(a) and 3002(6) of RCRA shall refer instead to § 6 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code § 8-1305(a)).
- 4262.5 In addition to the requirements in 40 CFR § 262.44, beginning on March 1, 2006, and on or before March 1 of each year thereafter, each generator of greater than one hundred kilograms (100 kg) but less than one thousand kilograms (1000 kg) of hazardous waste in a calendar month shall complete and submit to the Director, on forms provided by the Department, an annual self-certification of compliance with the requirements of 40 CFR Part 262, as modified by this section (20 DCMR § 4262) during the preceding twelve (12) months, and, where necessary, a return-to-compliance plan. The generator shall also address:
- (a) Any measures taken during the previous year to reduce the volume and toxicity of hazardous waste generated; and
 - (b) To the extent such information is available, any changes in the volume and toxicity actually achieved during the year in comparison to previous years.
- 4262.6 The substitution of terms specified in 20 DCMR § 4201.8(a) and (b) shall not apply to 40 CFR Part 262, Subparts E and H (exports of hazardous waste and transfrontier shipments of hazardous waste for recovery within the member countries of the Organization for Economic Cooperation and Development).

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4263.5 (STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE), PARAGRAPHS (a), (b), (c), (d), (e), and (f) ARE REPEALED and Subsection 4263.5 is amended to read as follows:

4263.5 A public utility, as defined in D.C. Official Code § 34-214 and regulated by the Public Service Commission of the District of Columbia, shall comply with the provisions of 40 CFR Part 263, including the provisions of 40 CFR § 263.12, which are incorporated by reference with respect to the public utility.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4264.2 - 4264.12 (STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES), ARE REPEALED and Section 4264 is amended to read as follows:

4264 The provisions of 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I, IV, V, and IX to Part 264, are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4265.2 - 4265.11 (INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES), ARE REPEALED and Section 4265 is amended to read as follows:

4265 The provisions of 40 CFR Part 265 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities) and Appendices I and III through VI to Part 265 are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4266.2 (STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES), PARAGRAPH (a) IS REPEALED and Section 4266.2 is amended to read as follows:

4266.2 The provisions of 40 CFR Part 266, Subpart M (military munitions) are adopted with the modification that with respect to 40 CFR § 266.202(d), the Director may require corrective action or seek injunctive or other appropriate remedies under §§ 4, 8, 10, 11, or 12 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978, as amended (D.C. Law 2-64; D.C. Official Code §§ 8-1303(b), 8-1307(c) and (d), 8-1309, 8-1310, or 8-1311(a) (2001)), if a

used or fired military munitions lands off-range and is not promptly rendered safe and/or retrieved.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4268.2 - 4268.3 (LAND DISPOSAL RESTRICTIONS) ARE REPEALED and Section 4268 is amended to read as follows:

4268 The provisions of 40 CFR Part 268 (Land Disposal Restrictions) and Appendices III, IV, VI through IX, and XI to Part 268 are incorporated by reference subject to the general modifications in 20 DCMR §§ 4200 through 4206.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTIONS 4270.2 - 4270.7, 4270.13, and 4270.14(e) (DEPARTMENT ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM) ARE REPEALED and Section 4270 is amended to read as follows:

4270.1 The provisions of 40 CFR Part 270 (EPA-administered hazardous waste permit program) are incorporated by reference as the regulations applicable to the Department-administered hazardous waste (RCRA) permit program, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4270.2 With respect to 40 CFR § 270.12 (confidentiality of information), the following provisions shall govern the confidentiality of any information submitted to the Department pursuant to these regulations:

- (a) Any information provided to the Department under the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1301 through 8-1314, and the Hazardous Waste Management Regulations, 20 DCMR chapters 42 and 43, shall be made available to the public to the extent and in the manner authorized by the District of Columbia Freedom of Information Act (FOIA), effective March 29, 1977, as amended (D.C. Law 1-96; D.C. Official Code §§ 2-531 to 2-540 (Supp. 2004), and the rules implementing FOIA, chapter 4 in Title 1 DCMR;
- (b) Any person submitting information to the Department pursuant to the Hazardous Waste Management Act or the Hazardous Waste Management Regulations may assert a claim of confidentiality covering part or all of the information by demonstrating to the Director that the information claimed to be confidential is exempt from public disclosure under FOIA, D.C. Official Code § 2-534(a);
- (c) Any claim of confidentiality shall be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the

case of other submissions, by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice;

- (d) The Director will determine, in accordance with the FOIA criteria in D.C. Official Code § 2-534(a), whether and to what extent the information claimed to be confidential will be withheld from disclosure; and
- (e) Claims of confidentiality shall not apply to the names and addresses of any permit applicants or permittees.

- 4270.3 With respect to the introductory text in 40 CFR § 270.41 (modification or revocation and reissuance of permit), the provisions of 40 CFR § 124.5, incorporated by reference, are subject to modification in 20 DCMR § 4271.2.
- 4270.4 In 40 CFR § 270.42(f), pertaining to public notice and appeals of permit modification decisions, the cross-references to 40 CFR § 124.19 shall refer instead to 20 DCMR § 4271.6.
- 4270.5 In addition to the causes identified in 40 CFR § 270.43 for the termination of a permit, the Director may suspend, refuse to reissue, or revoke a permit as provided in §§ 4 and 10 of the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code §§ 8-1303(b) and 8-1309.
- 4270.6 The provisions of 40 CFR § 270.51(a) through (c) (continuation of expiring EPA-issued RCRA permits) are adopted as the procedures the Department will follow with respect to the continuation of expiring Department-issued permits.
- 4270.7 The provisions of 40 CFR Part 270, Subpart H (Remedial Action Plans (RAPs)) are adopted with the following modifications:
- (a) With respect to 40 CFR § 270.115, the confidentiality of information submitted to the Department shall be governed by 20 DCMR § 4270.2;
 - (b) In addition to the public notice procedures in 40 CFR § 270.145, the Director shall provide notice by publication in the D.C. Register, and in accordance with § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21;D.C. Official Code § 1-309.10 (2001));
 - (c) The provisions of 40 CFR § 270.155, pertaining to administrative appeals, are adopted with the following modifications:
 - (1) An appeal under this paragraph shall be made to the District of Columbia Office of Administrative Hearings pursuant to 1 DCMR

chapter 29; and

- (2) In 40 CFR § 270.155(a), the cross-references to 40 CFR § 124.19 shall refer instead to 20 DCMR § 4271.6;
- (d) In 40 CFR §§ 270.190 and 270.215, all references to the “Environmental Appeals Board” shall refer instead to the “District of Columbia Office of Administrative Hearings”; and
- (e) With respect to 40 CFR § 270.230(d)(2), pertaining to remediation waste management activities at locations removed from where the remediation wastes originated, the provisions of 40 CFR §§ 124.31, 124.32, and 124.33, incorporated by reference, are subject to modification in 20 DCMR § 4271.8.

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4271.2 (DECISION-MAKING PROCEDURES FOR DEPARTMENT-ADMINISTERED HAZARDOUS WASTE PERMIT PROGRAM) IS REPEALED and Section 4271 is amended to read as follows:

- 4271.1 This section incorporates by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section, the provisions of 40 CFR Part 124 applicable to RCRA permits as the decision-making procedures the Department will follow when issuing, modifying, suspending and reissuing, and revoking hazardous waste permits issued pursuant to this chapter (20 DCMR chapter 42).
- 4271.2 The provisions of 40 CFR § 124.5 (modification, revocation and reissuance, or termination of permits) are adopted with the following modifications:
- (a) Only paragraphs (a), (c), and (d)(1) in 40 CFR § 124.5 are incorporated by reference. The cross-references in the federal regulation to 40 CFR §§ 270.41 and 270.43 shall refer instead to 20 DCMR §§ 4270.3 and 4270.5 respectively;
 - (b) If the Director determines that a request for the modification, revocation and reissuance, or termination of a permit is not justified, he or she shall send the requestor a brief written response giving the reasons for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearing. Denials may be appealed administratively to the District of Columbia Office of Administrative Hearings (OAH), pursuant to procedures established in 20 DCMR § 4271.6. This appeal is a prerequisite to seeking judicial review of the Director's determination to deny a request for modification, revocation and reissuance, or termination; and

- (c) Where there has been a history of repeated violations or a permit has been previously revoked and reissued, or where there is an initial violation and the violation presents an imminent and substantial endangerment to the public health, public welfare, or the environment, the Director may proceed under § 10 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1309(c) and (d), and 20 DCMR chapter 43 to terminate the permit in lieu of proceeding under this subsection.

4271.3 The provisions of 40 CFR § 124.10 (public notice of permit actions and public comment period) are adopted with the following modifications:

- (a) With respect to 40 CFR § 124.10(a)(1)(iv), the Director shall give public notice whenever a request for a hearing under 20 DCMR § 4271.6 to review a permit decision is received; and
- (b) In addition to the methods specified in 40 CFR § 124.10(e), the Director shall give notice by publication in the D.C. Register, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10).

4271.4 In addition to the notice required under 40 CFR § 124.15(a) for a final permit decision or a decision to deny a permit for the active life of a hazardous waste management facility or unit, the Director shall provide notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, D.C. Official Code § 1-309.10.

4271.5 In 40 CFR § 124.16(a)(2)(ii), pertaining to requests for reviews of permit conditions, the term “District of Columbia Office of Administrative Hearings” shall supplant the term “EAB.”

4271.6 The provisions of 40 CFR § 124.19, pertaining to appeals of permits, are excluded from the incorporation by reference. Instead, the following procedures shall govern appeals:

- (a) Within fifteen (15) days of the date of a hazardous waste permit decision or a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit under 40 CFR § 124.15, any person adversely affected by the decision may appeal the decision pursuant to § 9 of the District of Columbia Hazardous Waste Management Act of 1977, effective March 16, 1978 (D.C. Law 2-64; D.C. Official Code § 8-1308), by requesting the District of Columbia Office of Administrative Hearings (OAH) pursuant to 1 DCMR § 2805 to conduct a hearing to review the decision;

- (b) The fifteen-day (15-day) period within which a person may request a hearing under this section begins on the date of the service of the notice of the Director's action, unless a later date is specified in the notice (the rules governing the computation of time are found in 1 DCMR § 2811);
- (c) A request for a hearing under this section shall include a statement of the reasons supporting the request, including a demonstration that the person requesting the hearing is adversely affected by the Director's decision; that any issues being raised were raised during the public comment period (including any public hearings) to the extent required by these regulations; and, when appropriate, a showing that the condition in question is based upon a finding of fact or conclusion of law that is clearly erroneous;
- (d) Pursuant to § 9 of the District of Columbia Hazardous Waste Management Act, D.C. Official Code § 8-1308, a hearing on an appeal under this subsection, 20 DCMR § 4271.6, shall be held in accordance with the contested case procedures of § 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1204; D.C. Official Code § 2-509);
- (e) The Director shall give public notice of an appeal under this subsection as provided in 20 DCMR § 4271.3;
- (f) At any time prior to the rendering of a decision by OAH on the merits of the appeal, the Director may, upon notification to OAH and any parties to the proceeding, withdraw the permit and prepare a new draft permit under 40 CFR § 124.6, addressing the portions withdrawn: (1) The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this section; and (2) Any portions of the permit that are not withdrawn and that are not stayed under 40 CFR § 124.16 continue to apply;
- (g) An appeal to OAH pursuant to this section shall be a prerequisite to the seeking of judicial review of the final administrative decision;
- (h) For purposes of judicial review, final administrative action occurs when a hazardous waste permit is issued, or when a decision under 40 CFR § 270.29 to deny a permit for the active life of a hazardous waste management facility or unit has been issued, and the administrative review procedures under this section are exhausted;
- (i) The Director shall issue a final permit decision, and administrative review procedures shall be exhausted:

- (1) When OAH issues a final decision on the merits of the appeal and the decision does not include a remand of the proceedings; or
- (2) If the proceedings are remanded, upon the completion of remand proceedings, unless OAH's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies;
- (j) The Director shall give public notice of the final decision in accordance with the procedures in 20 DCMR § 4271.4; and
- (k) A motion for reconsideration shall not stay the effective date of a final permit decision issued by the Director pursuant to paragraph (i) of this subsection, unless so ordered by OAH.

4271.7 The provisions of 40 CFR § 124.20 (computation of time) are excluded from the incorporation by reference. Instead, the provisions of 20 DCMR § 4316 shall govern time computation.

4271.8 With respect to 40 CFR Part 124, Subpart B (Specific Procedures Applicable to RCRA Permits):

- (a) The provisions of 40 CFR §§ 124.31, 124.32, and 124.33 shall also apply to applications submitted to the Department; and
- (b) In addition to the requirements of 40 CFR § 124.32(b) for public notice at the application stage, the Director shall give notice by publication in the D.C. Register, and by providing notice in accordance with the requirements of § 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975, as amended (D.C. Law 1-21; D.C. Official Code § 1-309.10).

TITLE 20 DCMR (ENVIRONMENT), CHAPTER 42 (STANDARDS FOR THE MANAGEMENT OF HAZARDOUS WASTE AND USED OIL), SUBSECTION 4273.3 (STANDARDS FOR UNIVERSAL WASTE MANAGEMENT) IS REPEALED and Section 4273 is amended to read as follows:

4273.1 The provisions of 40 CFR Part 273 (Standards for Universal Waste Management) are incorporated by reference, subject to the general modifications in 20 DCMR §§ 4200 through 4206 and the specific modifications in this section.

4273.2 With respect to 40 CFR §§ 273.12 and 273.32(a)(1), each small quantity handler and each large quantity handler of universal waste shall notify the Director of the handler's universal waste management activities by submitting a completed EPA Form 8700-12 to the Director, and shall have received an EPA identification number, before generating universal waste or receiving universal waste from

other universal waste handlers.

- 4273.3 Notwithstanding the time periods specified in 40 CFR § 273.53, a transporter storing universal waste for any length of time at a universal waste transfer facility shall become a universal waste handler and shall comply with the applicable requirements of Subparts B or C of Part 273 while storing the universal waste.
- 4273.4 In 40 CFR § 273.80, the cross-reference to 40 CFR § 260.20 shall refer instead to 20 DCMR §§ 4260.5 and 4260.6.

4390 FEE SCHEDULE

- 4390.1 Except as provided in § 4390.5, each conditionally exempt small quantity generator shall pay an annual permit fee of two hundred dollars (\$200) for each generating site on or before March 1 of each year; provided however that generators covered by this category who have less than eight (8) employees, shall pay an annual permit fee of fifty dollars (\$50).

Obtaining a Copy of these Proposed Rules

A person may obtain a copy of this Notice and the Proposed Rules by any of the following: 1) visit the Department website, www.ddoe.dc.gov, and look for the following title/section, "Regulation & Law", click on it, cursor over the pull-down "Public Notices & Hearings", then click on the announcement for this rulemaking and follow directions to download the document in a pdf cut-and-paste format; (2) e-mail a request to mary.begin@dc.gov with "Request copy of proposed fee discount rules" in the subject line; (3) stop by the Department's offices and ask for a copy at the 5th floor reception desk at the following address (mention "Hazardous Waste Proposed Rulemaking"); or (4) write the Hazardous Materials Branch, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Mary Begin, and put "Requesting a copy" on the outside of the envelope.

DDOE's responses to comments received in response to the first proposed rules will be available on the website. This document can also be emailed or mailed in response to a request.

The Manner and Time Period for Giving Public Comment

The Department is committed to considering the public's comments in an open rulemaking process. A person desiring to comment on the proposed rulemaking must file comments in writing by thirty (30) days after the date of publication of this notice of proposed rulemaking and extended comment period in the *D.C. Register*.

Comments should be clearly marked "Hazardous Waste Proposed Rulemaking" and either (1) mailed or hand-delivered to DDOE, Hazardous Materials Branch, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Mary Begin, or (2) e-mailed to mary.begin@dc.gov.

The Department will consider all timely received comments before publishing a final rule. All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by e-mail, 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 Department's website. 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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 12-11
(Text Amendment – 11 DCMR)
(Various Administrative Amendments)

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of its intent to amend §§ 199, 400, 530, 630, 770, 840, 930, 2403, 2407.2408, 2409, 3024, 3029, 3100, 3103, 3106, 3112, 3113, 3121, 3125, 3126, 3129, 3130, and 3202 of the Zoning Regulations (Title 11 DCMR. The proposed amendment pertain to the measurement of height, procedures and standards for planned unit developments, the procedural rules of the Commission and the Board of Zoning Adjustment, and the review of building permits.

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*.

Title 11 DCMR (Zoning) is proposed to be amended as follows:

Chapter 1, **THE ZONING REGULATIONS**, § 199, **DEFINITIONS**, § 199.1, definition of “Building, height of” is amended to: (1) to provide that in Residence Districts the term means the vertical distance measured from the existing grade opposite the middle of the front of the building to a point designated in the zone district; (2) to establish that berms or other forms of artificial elevation shall not be included in measuring building height; and (3) to delete the final five paragraphs, so that the definition will read as follows:

Building, height of – in other than Residence Districts (R), the vertical distance measured from the level of the curb, opposite the middle of the front of the building to the highest point of the roof or parapet or a point designated by a specific zone district; in Residence Districts (R) the vertical distance measured from the existing grade opposite the middle of the front of the building to a point designated in the zone district. Berms or other forms of artificial landscaping shall not be included in measuring building height.

The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet or a point designated by a specific zone district.

Chapter 4, **RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS**, § 400, **HEIGHT OF BUILDINGS OR STRUCTURES (R)**, is amended by adding new § 400.15 through 400.22 to read as follows

400.15 The height of buildings in R zones shall be measured in accordance with the rules provided in § 400.16 through 400.22. If more than one of these subsections applies to a building, the rule permitting the greater height shall apply.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 2

- 400.16 The building height measuring point (BHMP) shall be established at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line.
- 400.17 The height of a building with a flat roof shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.
- 400.18 The height of a building with a roof that is not a flat roof shall be measured as follows:
- (a) From the BHMP to the average level between the highest eave, not including the eave of a dormer and the highest point of the roof; and
 - (b) Where there are no eaves, the average level shall be measured between the top of the highest wall plate and the highest point of the roof.
- 400.19 In the R-5-C District in the case of a building located upon a terrace, the height of building may be measured from the top of the terrace to the highest point of the roof or parapet, but the allowance for terrace height shall not exceed five feet (5 ft.).
- 400.20 The height of a building permitted to be ninety feet (90 ft.) shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.
- 400.21 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the BHMP to the highest point of the roof or parapet.
- 400.22 If a building fronts on more than one (1) street, any front may be used to determine street frontage; but the basis for measuring the height of the building shall be established by the street selected as the front of the building

Chapter 5, **SPECIAL PURPOSE DISTRICTS**, § 530, **HEIGHT OF BUILDINGS OR STRUCTURES (SP)**, is amended by adding new § 530.8 through 530.10 to read as follows:

- 530.8 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 3

530.9 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

530.10 The height of building permitted to be ninety feet (90 ft.), shall be measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

Chapter 6, **MIXED USE (COMMERCIAL RESIDENTIAL) DISTRICTS**, § 630, **HEIGHT OF BUILDINGS OR STRUCTURES (CR)**, is amended as follows:

By amending § 630.1 to add the phrase “as measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height”, so that the provision reads as follows:

630.1 Except as provided in this section, the height of buildings and structures shall not exceed ninety feet (90 ft.) as measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

By adding new § 630.7 and 630.8 to read as follows:

630.7 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

630.8 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

Chapter 7, **COMMERCIAL DISTRICTS**, § 770, **HEIGHT OF BUILDINGS OR STRUCTURES (C)**, is amended by adding new § 770.9 through 770.11 to read as follows:

770.9 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

770.10 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 4

building shall be determined by the width of the street selected as the front of the building.

770.11 The height of a building permitted to be ninety feet (90 ft.) or greater shall be measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

Chapter 8, **INDUSTRIAL DISTRICTS**, § 840, **HEIGHT OF BUILDINGS OR STRUCTURES (C-M, M)** is amended by adding new § 840.6 through 840.8 to read as follows:

840.6 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

840.7 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

840.8 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

Chapter 9, **WATERFRONT DISTRICTS**, § 930, **HEIGHT OF BUILDINGS OR STRUCTURES (W)** is amended by adding new § 930.5 through 930.7 to read as follows:

930.5 Where a building is removed from all lot lines by a distance equal to its proposed height above grade, the height of building shall be measured from the natural grade at the middle of the front of the building to the highest point of the roof or parapet.

930.6 If a building fronts on more than one (1) street, any front may be used to determine the maximum height of the building; but the basis for the height of the building shall be determined by the width of the street selected as the front of the building.

930.7 The height of a building permitted to be ninety feet (90 ft.) shall be measured to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 5

Chapter 24, **PLANNED UNIT DEVELOPMENT PROCEDURES**, is amended by as follows:

Section 2403, **PUD EVALUATION STANDARDS**, is amended as follows:

Subsection 2403.6 is amended to add a new second and third sentence so that the provision reads as follows:

2403.6 Public benefits are superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title. All public benefits shall meet the following criteria:

- (a) Benefits shall be tangible and quantifiable items; and
- (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a Certificate of Occupancy.

Monetary contributions shall only be permitted if made to a District government program or if the Applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

Subsection 2403.9 (f) is amended to specific when mandatory affordable housing may be considered a public benefit, so that the entire subsection reads as follows:

2403.9 Public benefits and project amenities of the proposed PUD may be exhibited and documented in any of the following or additional categories:

- (a) Urban design, architecture, landscaping, or creation or preservation of open spaces;
- (b) Site planning, and efficient and economical land utilization;
- (c) Effective and safe vehicular and pedestrian access, transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts;
- (d) Historic preservation of private or public structures, places, or parks;
- (e) Employment and training opportunities;
- (f) Housing and affordable housing; except that affordable housing provided in compliance with § 2603 shall not be considered a public benefit except

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 6

to the extent it exceeds what would have been required through matter of right development under existing zoning. In determining whether this standard has been met, the commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for “low-income households” as defined in § 2601.1.

- (h) Environmental benefits, such as:
 - (1) Storm water runoff controls in excess of those required by Stormwater Management Regulations;
 - (2) Use of natural design techniques that store, infiltrate, evaporate, treat, and detain runoff in close proximity to where the runoff is generated; and
 - (3) Preservation of open space or trees;
- (i) Uses of special value to the neighborhood or the District of Columbia as a whole; and
- (j) Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.

New § 2403.15 through 2403.21 are added to read as follows:

2403.15 Subsections 2403.15 through 2403.20 describe the process in which an applicant for a PUD or PUD modification is given a final opportunity to identify the public benefits of the PUD and to prove to the Commission that each such benefit will result from a grant of the application. The Commission may relieve an applicant of this responsibility in circumstances when it believes the process is unnecessary, such as when it is considering a modification to an approved design or to a limited number of conditions.

2403.16 No later than seven (7) days after the Commission takes proposed action on any PUD application, the applicant shall file with the Office of Zoning (OZ) and serve the Office of Planning (OP) the Office of the Attorney General (OAG), and the affected ANC and any other parties, a final list of the public benefits proffered for the PUD (Proffer) and, for each proffered public benefit, provide a draft condition that is both specific and enforceable.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 7

2403.16 The description of each public benefits shall be identical to the description contained in the applicant’s proposed order unless a revision is required for clarity or to reflect a revision.

2403.17 The information required by § 2403.15 shall be presented in the form of a chart in which with each proffered public benefit is described in one column and a corresponding condition is described in a second. For example:

Proffer	Condition
42. The Applicant has agreed to contribute _____ to _____ for the purpose of _____ prior to applying for a certificate of occupancy for the PUD.	B.4. <u>Prior to applying for a certificate of occupancy for the PUD, the</u> Applicant shall contribute _____ to _____ for the purpose of _____.

2403.18 No later than fourteen (14) days after the Commission takes proposed action on any PUD application, OAG, OZ, and OP shall complete any dialogue they feel is needed with the Applicant with respect to any deficiencies in the Applicant’s proposed conditions.

2408.19 No later than twenty-one (21) days after the Commission takes propose action on any PUD application the applicant shall file with OZ and serve OP, OAG, and the affected ANC and any other parties any revisions to the Proffer and conditions, or a statement that none have been made.

2403.20 No later than twenty-eight (28) days after the Commission takes proposed action on any PUD application OAG, OP, and the affected ANC and any other party may file any responses each has to the Applicant’s final Proffer and conditions. The responses shall be limited to whether the conditions in the final Proffer are specific and enforceable. The OAG response will be treated as a confidential attorney-client communication

2403.21 The Commission will consider the PUD to contain only those public benefits described in the final Proffer.

Section 2407, **PROCESSING OF FIRST-STAGE PUD APPLICATIONS**, § 2407.11 is amended to expressly authorize the extension of a first-stage PUD approval, so that the provision read as follows:

2407.11 The rights granted under such an approval are conditional, and shall be exercised within the specified time limit. Unexercised rights shall lapse at the end of the specified time periods, and the zoning shall revert to pre-existing conditions, unless a request to extend the validity of the approval is granted by the

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 8

Commission in accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.12.

Section 2408, **PROCESSING OF SECOND-STAGE PUD APPLICATIONS**, is amended as follows:

Subsection 2408.6 is amended to add a new second sentence, so that the entire provision reads as follows:

2408.6 If the Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Commission's decision. No order approving a PUD shall be deemed to include relief from any zoning regulation, including but not limited to the requirements of chapter 26, unless such relief was expressly requested by the applicant and expressly granted in the order

A new § 2408.16 is added to read as follows:

2408.16 The grant of a PUD prohibits any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter of right standards, until:

- (a) The validity of the PUD order expires; or
- (b) The Commission issues an order granting the applicant’s motion to extinguish the PUD.

Section 2409, **IMPLEMENTATION**, is amended as follows:

Subsection 2409.2 is amended by adding a new second sentence so that the entire provisions will read as follows:

2409.2 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission’s order approving the PUD unless the order expressly authorizes an escrow.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 9

Subsection 2409.7 is amended by striking the word “request” and inserting the phrase “modification requested pursuant to § 2409.6” in its place, so that the entire provision reads as follows:

2409.7 In reviewing and approving any modification requested pursuant to § 2409.6, the Zoning Administrator shall determine that the proposed modification is consistent with the intent of Commission in approving the PUD.

Subsection 2409.8 is amended by adding a new second and third sentence, so that the entire provision reads as follows:

2409.8 Following approval of any modifications under § 2409.6, the Zoning Administrator shall report to the Commission the modification approved under this section. No building permit for the modified PUD shall be issued for forty-five (45) days after a report is sent to the Commission. If prior to the expiration of this time period the Commission decides that the modification exceeded the scope of § 2409.6, the Zoning Administrator shall not approve the building permit, but shall instruct the applicant to seek a modification pursuant to § 2409.9.

A new § 2409.11 is added to read as follows:

2409.11 Unless specifically stated otherwise, the term "Applicant" in any condition of an order approving a PUD or PUD modification shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the PUD site, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an Owner.

Chapter 30, **ZONING COMMISSION PROCEDURES RULES OF PRACTICE AND PROCEDURE**, is amended by as follows:

Section 3024, **CLOSING THE RECORD**, § 3024.1 is amended by adding three new sentences, as that the entire provision reads as follows:

3024.1 The record shall be closed at the end of the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information, or legal briefs, as directed by the presiding officer. Any other materials received by the Commission after the close of the record shall be returned by the Director and not received into the files of the Commission. However, if the materials are accompanied by a request to re-open the record, the request shall be accepted and presented to the Chair for consideration. The request

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 10

must demonstrate good cause and the lack of prejudice to any party. If granted, the materials shall be entered into the record.

Section 3029, **RECONSIDERATION AND REFILING**, § 3029.6 is amended by adding a new second sentence so that the entire provision reads as follow:

3029.6 A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought. No request for rehearing shall be considered by the Commission unless new evidence is submitted that could not reasonably have been presented at the original hearing. If a rehearing is granted, notice shall be given as in the case of an original hearing.

Chapter 31, **BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE**, is amended by as follows:

Section 3100, **JURISDICTION; AUTHORITY; POWERS**, is amended as follows:

By adding a new § 3100.3 to read as follows:

3100.3 The rules prohibiting *ex parte* communication in Zoning Commission contested cases, as set forth in § 3023 of this title, apply to all applications and appeals before the Board and commences upon the filing of such proceedings.

By amending § 3100 to insert the phrase “except that the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation” at its end, so that the entire provision reads as follows:

3100.6 No appeal or application shall be dismissed on the grounds that the appellant or applicant failed to comply with the provisions of this chapter unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected, except that the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.

Section 3103, **VARIANCES**, is amended by adding new § 3103.2 through 3103.8 to read as follows:

3103.2 Variances are classified as area variances or use variances.

3103.3 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 11

- 3103.4 Examples of area variances are requests to deviate from:
- (a) Requirements that affect the size, location, and placement of buildings and other structures such as height, floor area ratio, lot occupancy, yard width and depth, and minimum court size;
 - (b) Minimum parking or loading requirements to an extent greater than what may be permitted by special exception;
 - (c) Limitations on the extent to which the gross floor area of a building may be occupied by a matter of right non-residential uses;
 - (d) Limitations on the alteration or conversion of certain structures on alley lots as stated in § 2507.3;
 - (e) The prohibition against certain enlargements and additions to nonconforming structures stated at 11 DCMR § 2001.3; and
 - (f) Preconditions to the establishment of a matter of right use including, but not limited to, the minimum land area requirement of § 401.3 applicable to the conversion of a building an apartment house as permitted by § 330.5(e); provided that the waiver would not cause the proposed use to meet the definition of a more intense use.
- 3103.5 A use variance is a request to permit:
- (a) A use that is not permitted by right or special exception in the zone district where the property is located;
 - (b) A use that is expressly prohibited in the zone district where the property is located; or
 - (c) An expansion of a nonconforming use prohibited by § 2002.3.
- 3103.6 The standard for granting a variance, as stated in § 3103.1 differs with respect use and area variances as follows:
- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1 the strict application of a zoning regulations would result in peculiar and exceptional practical difficulties to the owner of property; and

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 12

(b) An applicant for an use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.1 the strict application of a zoning regulations would result in exceptional and undue hardship upon the owner of the property.

3103.7 For the purposes of § 3103.6 (a) “peculiar and practical difficulty” means that the property is incapable of being reasonably adapted or modified by right within the zone district in which it is located.

3103.8 For the purposes of § 3103.6 (b) “exceptional and undue hardship” means the property is incapable of being reasonably adapted for any use permitted by right or by special exception within the zone district in which it is located.

Section 3106, **APPEARANCE AND REPRESENTATION**, is amended by repealing §3106.3.¹

Section 3112, **PRE-HEARING PROCEDURES FOR APPEALS**, is amended as follows”

Subsection 3112.15 is amended to read as follows:

3112.15 At the time of the hearing on the appeal, the Board shall consider any request to intervene made pursuant to § 3106.2. The Board shall grant intervenor status only if the person requesting intervenor status has clearly demonstrated that they have a specific right or interest that will be affected by action on the appeal-

A new § 3112.16 is added to separately state the last phrase in existing § 2112.15, so that new provision will read as follows:

3112.16 In granting intervenor status, the Board may specify whether the person will be permitted to intervene in the appeal for general or limited purposes.

Section 3113, **PRE-HEARING PROCEDURES FOR APPLICATIONS**, is amended to add a new § 3113.21 to read as follows:

3113.21 At the time of the hearing on the application the Board shall consider any request for party status made pursuant to § 3106.2. The Board shall grant party status

¹ Subsection 3106.7 presently reads:

3106.3 In considering any request for party status pursuant to § 3106.2, the Board shall grant party status only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

The provision is being moved to § 3113 and restated as proposed new § 3113.21.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 13

only if the person requesting party status has clearly demonstrated that the person's interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning relief than those of other persons in the general public.

Section 3121, **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW; CLOSING THE RECORD**, § 3121.9 amended by adding three new sentences, so that the provision reads as follows:

3121.9 Any material received by the Board after the close of the record except that permitted by § 3121.5, that bears upon the substance of the appeal or application shall be returned by the Director and not received into the files of the Board. However, if the materials are accompanied by a request to re-open the record, the request shall be accepted and presented to the Chair for consideration. The request must demonstrate good cause and the lack of prejudice to any party. If granted the materials shall be entered into the record.

Section 3125, **FINAL DECISION AND EFFECTIVE DATE OF DECISIONS**, § 3125.3 is amended by adding a new second and third sentence, so that the entire provision reads as follows:

3125.3 The concurring vote of at least a full majority of the members of the Board is necessary for any decision. After a vote to grant an application or appeal, the prevailing party may file a proposed order or a revision to a previously filed proposed order. No response to the proposed order may be submitted by any other party

Section 3126, **RECONSIDERATION OR REHEARING**, § 3126.2 is amended by adding a new second sentence, so that the entire provision reads as follows:

3126.2 Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final order in a contested case proceeding that is filed prior to the order being issued nor waive this prohibition.

Section 3129, **MODIFICATION OF APPROVED PLANS**, is amended by adding a new § 3129.9 to read as follows:

3129.9 The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 14

Section 3130, **TIME LIMITS ON THE VALIDITY OF BOARD ORDERS**, is amended as follows:

Subsection 3130.6 is amended by striking the phrase “grant one extension of” so that the provision reads as follows:

3130.6 The Board may extend the time periods in § 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- (b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board’s justification for approving the original application; and
- (c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:
 - (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control;
 - (2) An inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable control; or
 - (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control.

Subsection 3130.9 is amended by striking the phrase “filed at least thirty (30) days prior to the date upon which an order is due to expire”, so that the provision reads as follows:

3130.9 A request for a time extension shall toll the expiration date for the sole purpose of allowing the Board to consider the request.

Chapter 32, **ADMINISTRATION AND ENFORCEMENT**, Section 3202, **BUILDING PERMITS**, § 3202.1 is amended to clarify that Zoning Administrator’s review of an application to alter an existing structure is limited to whether the plans for the alteration comply with the Zoning Regulations, so that the provision will read as follows:

**Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-11
PAGE 15**

3202.1 Except as provided in §§ 3202.5, 3202.7, or 3202.8, a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless the plans of and for the erection, construction, conversion, or alteration fully conform to the provisions of this title.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 12-17
(Text Amendment – 11 DCMR)
(Amendments to the Reed-Cooke Overlay District)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2008 Repl.)), hereby gives notice of its intent to amend §§ 400, 401, and 402 of the Zoning Regulations (Title 11 DCMR). These provisions state the purposes of the Reed Cooke Overlay District, prohibit certain uses, limit the maximum height of buildings, and provide that a planned unit development (PUD) may not allow greater bulk and area permissions than permitted in the underlying zone.

The amendments would permit the Commission to approve a planned unit development permitting a hotel use within an enlarged First Church Christ Scientist building currently located on Lot 872 of Square 2560 notwithstanding certain provisions of the current use and area limitations. The Commission also proposes to amend the Overlay's purposes to include the purpose of ensuring the preservation and adaptive reuse of the First Church of Christ Scientist building through a planned unit development process. The PUD application is the subject of Zoning Commission Case No. 11-17.

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*.

The following amendments to the Zoning Regulations are proposed:

Chapter 14, **REED-COOKE OVERLAY DISTRICT**, is amended as follows:

Section 1400, **GENERAL PROVISIONS (RC)**, § 1400.2, is amended by adding a new paragraph (d) so that the entire provision reads as follows:

1400.2 The purposes of the RC Overlay District shall be to:

- (a) Implement the objectives of the Reed-Cooke Special Treatment Area, which are to:
 - (1) Protect current housing in the area and provide for the development of new housing;
 - (2) Maintain heights and densities at appropriate levels; and
 - (3) Encourage small-scale business development that will not adversely affect the residential community;

Z.C. NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 12-17
PAGE 2

- (b) Ensure that new nonresidential uses serve the local community by providing retail goods, personal services, and other activities that contribute to the satisfaction of unmet social, service, and employment needs in the Reed-Cooke and Adams-Morgan community;
- (c) Protect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts; and
- (d) Ensure the preservation and adaptive reuse of the First Church of Christ Scientist building located on Lot 872 of Square 2560, through a Planned Unit Development process.

Section 1401, **USE PROVISIONS (RC)**, is amended by adding a new § 1401.4 to read as follows:

1401.4 Notwithstanding § 1401.1, the Zoning Commission may approve a planned unit development that permits a hotel use integrating the First Church Christ Scientist building on a new lot created by combining Lots 872, 875, and 127 of Square 2560, and within such hotel, but only within the First Church Christ Scientist building, permit a restaurant and bar use; provided that the Zoning Commission may also permit food and alcohol to be served in the enclosed pool, the meeting rooms, the guestrooms, and the rooftop area located in the proposed addition to the First Church Christ Scientist building/or so long as such addition and the First Church Christ Scientist building are being operated together as a hotel.

Section 1402, **HEIGHT AND BULK PROVISIONS (RC)**, is amended by adding a new § 1402.3, to read as follows:

1402.3 Notwithstanding § 1402.2, the Zoning Commission, as part of a planned unit development permitting a hotel integrating the First Church Christ Scientist building on a new lot created by combining Lots 872, 875, and 127 of Square 2560, may permit a building height on former Lots 875 and 127 not to exceed 72 feet measured from Euclid Street, and an overall building density not to exceed 3.99 FAR.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon S. Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HUMAN SERVICES**NOTICE OF EMERGENCY RULEMAKING**

The Director of the Department of Human Services (Department), pursuant to the authority set forth in sections 7, 28, 30, and 31 of the Homeless Services Reform Act of 2005 (HSRA), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-753.01, 4-755.01, 4-756.01 and 4-756.02 (2008 Repl. & 2012 Supp.)), Mayor's Order 2006-20, dated February 13, 2006, and Mayor's Order 2007-80, dated April 2, 2007, hereby gives notice of the adoption of the following new Chapter 78 of Title 29 of the District of Columbia Municipal Regulations, entitled "Family Re-Housing and Stabilization" as emergency rulemaking to become effective immediately.

The purpose of the new chapter is to establish rules to administer the District of Columbia's Family Re-Housing and Stabilization Program (FRSP). The purpose of the FRSP is to provide a security deposit and a rental subsidy for up to twelve (12) months to re-house families who are homeless and who can demonstrate they are reasonably likely to have the financial means to pay their full rental costs independent of FRSP assistance within twelve (12) months.

These rules were originally published as a Notice of Emergency and Proposed Rules in the *D.C. Register* on July 27, 2012, at 59 DCR 8831. In accordance with section 31 of the HSRA, the proposed rules were transmitted to the Council of the District of Columbia for a forty-five (45)-day period of Council review. The comment period for the rules expired on August 27, 2012, and the Emergency Rules expired on September 2, 2012.

In accordance with section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2011 Repl.)), emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents who are homeless by supporting their rapid return to permanent housing. These emergency rules will allow the Department to resume to offer security deposit and rental subsidy vouchers to eligible homeless families in the District of Columbia while it continues to review the comments it received and meet with the advocacy community for purposes of soliciting additional comments on rules during the pendency of the forty-five (45) day Council review period. These emergency rules are the same as those that were published in the Notice of Emergency and Proposed Rules on July 27, 2012, in the *D.C. Register*. No changes have been made to the rules since publication.

The Department adopted the emergency rules on December 10, 2012, and took effect at that time. The emergency rules shall expire within one hundred twenty (120) days from the date of adoption (April 8, 2013) or upon a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Add the following new Chapter 78 to Title 29 of the District of Columbia Municipal Regulations to read as follows:

CHAPTER 78 FAMILY RE-HOUSING AND STABILIZATION PROGRAM

7800 SCOPE

- 7800.1 The purpose of the Family Re-Housing and Stabilization Program (“FRSP” or “Program”) is to provide assistance to rapidly re-house families who are homeless and have the capacity to quickly achieve stable housing independent of FRSP assistance.
- 7800.2 The provisions of this chapter shall provide the application process, eligibility criteria, benefit determination, and appeal procedures for the Program.
- 7800.3 Nothing in these rules shall be interpreted to mean that FRSP assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.
- 7800.4 The Department may execute contracts, grants, and other agreements as necessary to carry out the Program.

7801 APPLICATION PROCESS

- 7801.1 An authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why the applicant cannot apply in person and the name and address of the person authorized to act on the applicant’s behalf.
- 7801.2 Each FRSP application shall be in writing on a form prescribed by the Department and signed by the applicant or authorized representative under penalty of perjury. If the applicant is married and living with a spouse, both spouses shall sign the application as an applicant unit (hereinafter “applicant”).
- 7801.3 If requested by an applicant with a disability, or the authorized representative of an applicant with a disability, the Provider shall assist such applicant or authorized representative with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.
- 7801.4 The Department shall provide application forms, and the Provider shall accept applications from each applicant who requests assistance.
- 7801.5 At the time of application, each applicant shall be provided with a clear, concise, written notice containing the applicant’s rights and responsibilities and the Provider’s responsibilities with respect to the Program. The Provider shall request that all applicants, personally or through an authorized representative, sign a document acknowledging receipt of this notice.

- 7801.6 As part of the application process, all applicants, personally or through an authorized representative, shall sign a release form authorizing the Provider to obtain or verify information necessary to process the application.

- 7801.7 Each applicant shall cooperate fully in establishing his or her eligibility, including the basis of the applicant’s homelessness and how the household reasonably expects to be able to sustain housing independent of the Program at the end of FRSP assistance. This shall include, but not be limited to, providing documentation or collateral proof of:
 - (a) Household composition;
 - (b) Employment status and employment history;
 - (c) Income and assets;
 - (d) Household expenses;
 - (e) Facts and circumstances surrounding homelessness, including rental and other relevant housing history;
 - (f) Financial and other assets available or obtainable in the short and long term to support housing stability;
 - (g) Facts and circumstances surrounding financial and other barriers to housing stability; and
 - (h) Facts and circumstances surrounding work experience, education, or training that can contribute to the household’s ability to meet its housing costs by the end of the Program.

- 7801.8 The Provider shall give to each applicant a written request specifying the information needed to complete the application, and the Provider shall discuss with the applicant how to obtain the information. The application shall be considered complete when all required information is furnished.

- 7801.9 The Provider may use, among other things, documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.

- 7801.10 An application shall be considered abandoned if the applicant has not obtained and provided to the Provider the required information for eligibility determination within sixty (60) calendar days of the date of application.

7802 APPLICANT UNIT

7802.1 The applicant unit shall be composed of each individual who lives in the same household and whose needs, assets, and income are combined to determine eligibility.

7802.2 The applicant unit shall include:

- (a) Persons related by full or half blood;
- (b) Persons related by legal adoption;
- (c) Persons related by marriage, including stepchildren and unmarried parents of a common child who live together; and
- (d) Persons with legal responsibility for an unrelated minor child or an unrelated adult with a disability.

7802.3 The applicant unit may include any person not included by § 7802.2, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that the individuals intend to remain together as a family unit.

7802.4 A person temporarily away from home due to employment, hospitalization, vacation, or a visit shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household, if he or she returns to the home on occasional weekends, holidays, and during the summer vacations.

7803 ELIGIBILITY CRITERIA

7803.1 An applicant unit shall be eligible to receive FRSP assistance if the applicant unit is a family, as defined in § 7899, that:

- (a) Is currently homeless, because the applicant unit:
 - (1) Lacks a fixed, regular residence that provides safe housing, and lacks the financial means to acquire such a residence immediately, including victims of domestic violence who cannot remain in their present housing for safety reasons; or
 - (2) Has a primary nighttime residence that is
 - (i) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or
 - (ii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

- (3) Has no other housing options identified;
- (b) Is a resident of the District of Columbia as defined by D.C. Official Code § 4-751.01(32); and
- (c) Demonstrates that there is a reasonable expectation that the applicant will have the financial capacity to pay the full rental amount at the end of FRSP assistance. Failure to demonstrate that the household will be reasonably likely to sustain stable housing following FRSP assistance shall result in a denial of eligibility for FRSP benefits. Relevant factors for determining whether a household can reasonably be expected to have the financial means to pay the full rental costs following FRSP assistance include:
 - (1) Current income;
 - (2) Expected future income;
 - (3) Rental history;
 - (4) Employment history;
 - (5) Employment potential based on job skills, certifications, or participation in a training or employment program;
 - (6) Previous receipt of emergency rental assistance, including Emergency Rental Assistance Program or Homelessness Prevention and Rapid Re-Housing Program benefits within the last eighteen (18) months, whether applying for the same or a different financial benefit;
 - (7) Identification by the District of Columbia Housing Authority (DCHA) or other subsidized housing provider, as a household that is reasonably likely to receive DCHA or other subsidized housing within approximately twelve (12) months; or
 - (8) Other relevant factors.

7803.2 Eligible applicants or recipients that are subject to and currently sanctioned under the Temporary Assistance for Needy Families (TANF) program shall be considered to have failed to demonstrate that the household will be reasonably able to sustain stable housing following FRSP assistance, unless the applicant or recipient can demonstrate that they are actively working to have the sanction lifted, or have or will have the financial and other resources necessary to sustain housing independent of receipt of TANF benefits.

- 7803.3 A FRSP applicant or participant determined eligible under this section shall be subject to a re-evaluation and a redetermination of eligibility at least once every four (4) months.
- 7803.4 The ability of the household to pay an increasing share of the rental payment as part of receiving additional rental assistance will be a factor in the re-determination of eligibility for additional months of assistance pursuant to § 7803.3. Households unable to meet the requirement to pay an increased share of the rental payment at the four (4) month recertification shall be evaluated on a case-by-case basis to determine their continued eligibility, based on their ability to demonstrate capacity to meet the FRSP housing stability requirement at the end of any additional rental assistance.
- 7803.5 The Provider shall complete the eligibility determination in as short a time as possible, but not later than ten (10) calendar days after the date of a completed application. The Provider shall not be responsible for delays caused by:
- (a) The applicant's failure to supply information to document facts stated in the completed application without which eligibility or benefits cannot be determined;
 - (b) The inability to contact the applicant;
 - (c) Evidence of misrepresentation in the application;
 - (d) Delay by a third party from whom the Provider has requested information and over whom the Provider has no control; or
 - (e) Any other delay in receipt of information or documentation necessary to complete the application over which the Provider has no control.
- 7803.6 The Provider shall create and maintain in the applicant's or participant's file clear and detailed documentation of the Program's eligibility and re-eligibility determination of each applicant, particularly as it relates to how the household expects to be able to pay the full rental amount after the FRSP rental subsidy ends.
- 7803.7 If an applicant is determined eligible pursuant to § 7803.1, or redetermined eligible pursuant to § 7803.3, for FRSP assistance, the Provider shall give to the applicant, personally or through an authorized representative, a Notice of Eligibility Determination and include in this notice:
- (a) A clear statement of the eligibility determination;

- (b) A clear and detailed statement that participation in the FRSP is not approved until an applicant who has been determined eligible has selected a FRSP-approved housing unit, submitted an application for and been approved by the landlord for rental of the approved unit, and has signed the FRSP Notice of Rental Subsidy Terms and Conditions form;
- (c) A clear statement that all FRSP participants shall actively and satisfactorily participate in case management or risk termination of FRSP benefits; and
- (d) A clear and complete statement of the client's right to appeal the eligibility determination through fair hearing and administrative review proceedings in accordance with § 7808, including the appropriate deadlines for instituting the appeal.

7803.8 If an applicant is determined ineligible for FRSP assistance, the Provider shall give to the applicant, personally or through an authorized representative, a Notice of Denial of Eligibility and include in this notice:

- (a) A clear statement of the denial of eligibility;
- (b) A clear statement of the factual basis for the denial;
- (c) A reference to the statute, regulation, or policy pursuant to which denial was made; and
- (d) A clear and complete statement of the client's right to appeal the denial through fair hearing and administrative review proceedings pursuant to § 7808, including the appropriate deadlines for instituting the appeal.

7803.9 An adult applicant shall be denied FRSP assistance if the household's housing crisis is the result of his or her refusal without "good cause" to accept employment or training for employment.

7803.10 An applicant shall be considered to have refused employment or training if the applicant has:

- (a) Voluntarily quit employment or a bona fide training program within three (3) months prior to application; or
- (b) Rejected an employment or a bona fide training program opportunity within the three (3) months prior to the application.

7803.11 "Good cause" reasons for voluntarily quitting a job or not participating in an employment training program include circumstances beyond the individual's

control, such as, but not limited to, the following, when the applicant can show with reliable or credible information, that:

- (a) Wages are below the minimum wage;
- (b) The applicant is physically or mentally unable to perform the work or gain access to the worksite;
- (c) Working conditions violate health, safety, or worker’s compensation regulations and present a substantial risk to health or safety;
- (d) The employer discriminated against the applicant based on 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, status as a victim of an intrafamily offense, or place of residence or business in violation of the D.C. Human Rights Act of 1978, effective December 13, 1978 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2007 Repl. & 2012 Supp.));
- (e) The requirements of the job would be contrary to his or her religious beliefs;
- (f) A household emergency exists (including domestic violence);
- (g) The resignation is recognized by the employer as retirement;
- (h) Child care, which is necessary for the adult applicant to accept work or training, is not reasonably available; or
- (i) The applicant could not maintain work or participate in a training program because the applicant must take care of a family member who is either ill or has a disability.

7804 PRIORITY DETERMINATION

7804.1 Families residing in a Department-funded family hypothermia shelter, temporary shelter, and transitional housing programs or determined to be a Priority One for shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(1), shall receive the first priority for the FRSP.

7804.2 Families residing in a non-Department funded family shelter and housing programs within the Continuum of Care shall receive the second priority.

7804.3 Within each priority group, additional priority may be made based on the following:

- (a) The family’s prospective ability to have the financial capacity to pay the full rental amount at the end of FRSP assistance, as demonstrated by income, documented work experience, or other relevant factors;
- (b) The length of time the family has resided in such programs since the most recent placement;
- (c) Need to provide a reasonable modification based on a disability; and
- (d) Other relevant factors.

7805 UNIT IDENTIFICATION

7805.1 Participation in the FRSP is conditioned on accepting a unit that passes a housing inspection and meets the Rent Reasonableness Standard. For units that provide wheelchair accessibility, rent reasonableness shall take into account that such a unit may reasonably have a higher rent than other units in the same market or building that are not wheelchair accessible.

7805.2 A FRSP eligible applicant shall be assigned one (1) unit in the available unit inventory list. The Program shall consider the participant’s stated needs and preferences when assigning the unit to the extent possible, considering the FRSP inventory and the housing market. Participants may also find a unit of their choice, as long as such unit passes a housing inspection required by the FRSP and does not exceed the Rent Reasonableness Standard.

7805.3 To facilitate timely unit identification and entry into the FRSP, the eligible applicant shall:

- (a) Select a unit from the FRSP unit inventory list or identify a unit that meets the Rent Reasonableness Standard; and
- (b) Make a reasonable effort to meet with the Program’s representative in a timely manner to view a unit, if applicable. For purposes of this subsection, refusal to meet with the Provider’s representative three (3) times without good cause shall be considered not making a reasonable effort.

7805.4 FRSP assistance shall be provided only for housing units located within the District of Columbia, unless otherwise approved by the FRS Program. Any unit constructed before 1978 in which a child under the age of six (6) will be residing must comply with section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4822, and implementing regulations, 24 C.F.R. part 35, subparts A, B, M, and R.

7805.5 A FRSP provider may not approve or issue a FRSP benefit for a housing unit that is owned by the FRSP provider, its parent, subsidiary, or an affiliated organization of the FRSP Provider.

7806 RE-HOUSING AND STABILIZATION ASSISTANCE

7806.1 FRSP rental assistance is solely for the purpose of assisting eligible households to quickly achieve housing stability by assisting them to obtain and remain in a new rental unit.

7806.2 FRSP assistance shall be “needs-based,” meaning that the assistance provided shall be the minimum amount, as determined by the Provider, needed to re-house the FRSP applicant or participant and prevent them from returning to homelessness in the near term.

7806.3 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.

7806.4 FRSP assistance may consist of a security deposit, move-in assistance, time-limited rental subsidy, and utility assistance, in accordance with the family’s approved budget plan.

7806.5 The Program may pay up to one hundred percent (100%) of a security deposit. The maximum FRSP payment for a security deposit shall be the actual amount of the deposit, which may not exceed the cost of one (1) month’s unsubsidized rent and must meet the Rent Reasonableness Standard, up to two thousand two hundred dollars (\$2,200), except that the maximum security deposit may be higher, as determined by the circumstances and within reason, for purposes of providing a reasonable modification based on disability or large family size.

7806.6 The initial rental assistance benefit shall not exceed the equivalent of rental costs accrued over a period of four (4) months.

7806.7 During the initial four (4) month period of rental assistance, each household shall contribute toward the cost of housing no less than forty percent (40%) of their adjusted annual income, determined in accordance with the District of Columbia Housing Choice Voucher Program (HCVP) regulations found at 14 DCMR § 6200 (household contribution). For this period, FRSP rental assistance shall be the difference between the cost of housing and the household contribution. For purposes of this section, the cost of housing shall include the cost of utilities, as determined in accordance with the HCVP regulations found at 14 DCMR § 6200.

7806.8 Households requesting additional assistance pursuant to § 7803.3 will be expected to pay an increasing share of the rental payment as part of demonstrating their capacity to meet the FRSP housing stability requirement at the end of any additional rental assistance.

- 7806.9 Receipt of FRSP assistance is conditioned on the applicant household:
- (a) Accepting a unit that meets the Rent Reasonableness Standard and passes the FRSP housing inspection;
 - (b) Submitting a timely and complete application to the landlord for the selected and approved unit;
 - (c) Entering into a lease and complying with the terms of the lease;
 - (d) Signing the FRSP Notice of Rental Subsidy Terms and Conditions form;
 - (e) Timely payment of the FRSP participant's share of the monthly rent, in accordance with § 7806.7 and the FRSP participant's lease;
 - (f) Complying with the FRSP case management requirements set out in the Department-approved Program Rules, and, as applicable, in accordance with the family's TANF Individual Responsibility Plan; and
 - (g) Applying for all applicable public benefits and housing assistance for which the applicant is eligible, including applying for housing assistance from the DCHA, if applicable.
- 7806.10 Households receiving rental assistance shall be required to report to the Provider written notice of any change in the household's monthly income as soon as the change occurs.
- 7806.11 Upon written notification by the household of a change in the household's monthly income, the FRSP Provider shall determine if there is a need to recalculate the amount of the household's housing cost contribution, based on the following:
- (a) If the household is reporting a decrease in monthly income of fifty dollars (\$50.00) or more, the Provider shall recalculate the household's contribution. In addition, a household reporting a decrease in monthly income of less than fifty dollars \$50.00 may request that a recalculation be conducted;
 - (b) If the recalculation pursuant to paragraph (a) of this subsection results in an increase in the amount of FRSP rental assistance, the change shall be effective the first day of the month (or the next day that rent is due) following completion of the calculation. The recalculation shall be completed within five (5) business days of receipt of written notice by the household of the decrease in household income and any documentation necessary for the Provider's recalculation;

- (c) If the household is reporting an increase in monthly income of one hundred dollars (\$100.00) or more, a Provider shall conduct a recalculation;
- (d) If the recalculation pursuant to paragraph (c) of this subsection results in a decrease in the amount of FRSP rental assistance, the change shall be effective the first of the month (or on the day that rent is next due, if different than the first of the month) following the month in which notice of the change in accordance with § 7806.12 is provided to the household, except that if the next day rent is due is less than fifteen (15) calendar days from the date the notice is either hand delivered or postmarked, the change in the FRSP rental assistance shall be effective the second month (or the second date upon which rent is due) following the month in which notice of the change made in accordance with § 7806.12 is provided to the household; and
- (e) Notice of a change in assistance pursuant to this section shall be made in accordance with § 7806.12.

7806.12 When a Provider calculates a change in FRSP rental assistance pursuant to a recertification under § 7803.2 or as a result of a reported change in income pursuant to § 7808.10, the Provider shall give to the participant household a Notice of Change in FRSP Rental Assistance. This notice shall include:

- (a) A clear statement of the factual basis for the change in rental assistance;
- (b) A reference to the regulation or policy pursuant to which the change was made;
- (c) A clear and detailed statement of the household's current FRSP rental assistance and the household's current share of the housing costs;
- (d) A clear and detailed computation of the new amount of FRSP rental assistance and the new amount of the household's share of the housing costs;
- (e) The effective date of the new amount of rental assistance in accordance with § 7806.11(b) or § 7806.11(d), whichever is applicable; and
- (f) A clear and complete statement of the client's right to a reconsideration of the recalculation by the Department or the Department's designee, if such reconsideration is requested within ten (10) calendar days of receipt of the Notice. A reconsideration shall be completed with five (5) business days of receipt by the designated reviewer of the household's request for a reconsideration. The five (5) business day timeframe may be tolled if the

reviewer has requested documentation necessary to the review, and receipt of such documentation is pending and not within the control of the reviewer.

7806.13 Notice required by § 7806.12 shall be either hand-delivered to an adult member of the applicant household or mailed to the household by first class mail within twenty-four (24) hours of the Provider’s calculation of the change in the household’s rental assistance share. The date from which the timeliness of the notice is measured is either the date of hand delivery or, if mailed, the date the notice is postmarked.

7806.14 The FRSP rental assistance that may be issued shall not exceed two thousand two hundred dollars (\$2,200) per month for families, except that the maximum rental assistance may be higher, as determined by the circumstances and within reason, for purposes of providing a reasonable modification based on disability or large family size.

7806.15 Only in the rare circumstance where payment is required by a vendor or a controlling government authority, including but not limited to a court or federal marshal, may the benefit payment be made in the form of cash. In all other cases, all FRSP assistance payments shall be in the form of non-cash direct vendor payments.

7806.16 FRSP benefits not utilized within sixty (60) days after approval may be forfeited, absent a showing that the applicant or recipient has made reasonable efforts to use the assistance or good cause as to why the applicant or recipient could not expend the benefits.

7807 TERMINATION OF FAMILY RE-HOUSING AND STABILIZATION ASSISTANCE

7807.1 A Provider may terminate payment of a FRSP security deposit or rental subsidy, if a member of the household:

- (a) Possesses a weapon illegally in the unit subsidized by the FRSP;
- (b) Possesses or sells illegal drugs in the unit subsidized by the FRSP;
- (c) Assaults or batters any person in the unit subsidized by the FRSP;
- (d) Endangers the safety of any member of the household or the safety of FRSP or Department staff;
- (e) Intentionally or maliciously vandalizes or destroys the unit subsidized by the FRSP, or steals the property of any person in the FRSP;

- (f) Fails to accept an offer of appropriate permanent housing or supportive housing that better serves the household's needs after being offered two (2) appropriate permanent or supportive housing opportunities. For purposes of this paragraph, two (2) appropriate permanent housing opportunities shall include two (2) offers of any kind of public housing offered through DCHA or other similar program or entity; or
- (g) Knowingly engages in repeated violations of FRSP Program Rules; and
- (h) In the case of terminations pursuant to paragraphs (f) and (g) of this section, the Provider must have made reasonable efforts to help the client overcome obstacles to obtaining permanent housing.

7807.2 The Program shall give written and oral notice to a FRSP participating household of their termination from services at least thirty (30) days before the effective date of the termination, unless such termination is an emergency termination pursuant to D.C. Official Code § 4-754.38 (2008 Repl.). For purposes of an emergency termination pursuant to D.C. Official Code § 4-754.38, "provider's premises" shall be interpreted to mean the unit subsidized by the FRSP.

7807.3 The Program's written notice to a FRSP participating household of its termination shall include:

- (a) A clear statement of the effective date of the termination;
- (b) A clear and detailed statement of the factual basis for the termination, including the date or dates on which the basis or bases for the termination occurred;
- (c) A reference to the statute, regulation, or Program Rule pursuant to which the termination is being implemented;
- (d) A clear and complete statement of the client's right to appeal the termination through a fair hearing and administrative review, including deadlines for instituting the appeal; and
- (e) A statement of the client's right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7807.4 Termination pursuant to this section refers to a termination of the Program security deposit or rental subsidy only and does not provide FRSP with any authority that interferes with a client's tenancy rights under an agreement governed by Title 14 of the District of Columbia Municipal Regulations.

7807.5 For purposes of this section, the requirement set forth in D.C. Official Code § 4-754.36 (2008 Repl.), which requires a provider to first consider suspending the client in accordance with D.C. Official Code § 4-754.35 or to have made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with D.C. Official Code § 4-754.34, shall be interpreted to mean that the provider shall have made a reasonable effort to provide the FRSP household with a transfer to another case manager, as a means of assisting the household to meet their budget plan and comply with the FRSP approved Program Rules, prior to taking steps to terminate FRSP benefits, if appropriate under the circumstances, and if there is reason to believe that the FRSP could have foreseen that such a transfer could have been of assistance to the household in complying with the FRSP requirements.

7807.6 FRSP rental assistance shall end, but shall not be determined to be a termination of assistance subject to a fair hearing pursuant to section 7808, thirty (30) days from the date the FRS Program determines a recipient household:

- (a) Has an adjusted gross annual household income that meets or exceeds fifty percent (50%) of the Area Median Income; or
- (b) Is able to pay one hundred percent (100%) of their monthly rent amount with fifty percent (50%) or less of the household's adjusted gross monthly income.

7808 FAIR HEARING AND ADMINISTRATIVE REVIEW

7808.1 An applicant or participating FRSP household shall have ninety (90) calendar days following the receipt of a notice described in §§ 7803.7, 7803.8, or 7807.3 to request a fair hearing, in accordance with the hearing provisions of D.C. Official Code § 4-774.41, for the action that is the subject of the notice.

7808.2 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for an administrative review in accordance with D.C. Official Code § 4-754.42 (2012 Supp.), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal in time to resolve the housing emergency and prevent the eviction.

7899 DEFINITIONS

7899.1 The following terms shall have the meaning ascribed:

Area Median Income – the midpoint in the family income range for a metropolitan statistical area or county, as determined annually by the U.S. Department of Housing and Urban Development.

Authorized representative – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the circumstances of the applicant to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

Department – the District of Columbia Department of Human Services or its designated agent.

Family – either of the following:

- (a) A group of individuals with at least one (1) minor or dependent child, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that they intend to remain together as a family unit. For the purposes of this definition, the term “dependent child” shall mean a minor or adult child, if such person has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration that substantially impedes his or her ability to live independently;
- (b) A pregnant woman in her third trimester;
- (c) Minor children of the applicant adult, regardless of previous living arrangements, as long as the applicant presently intends to have the children join and remain together as a family unit; or
- (d) The partner or significant other of the applicant adult, regardless of previous living arrangements, as long as he or she intends to join and remain together as a family unit, and the individuals otherwise meet the definition of family in paragraph (a) or (b).

Housing stability – the ability to pay housing costs, including rent and utilities, necessary to retain housing without FRSP assistance.

Individual Responsibility Plan – the self-sufficiency plan that the FSRP participant has entered into with the shelter, housing, TANF, or other service provider that sets out the steps and goals necessary for the participant to achieve greater housing and economic self-sufficiency.

Minor child – a child, including those by adoption, eighteen (18) years of age or younger.

Provider – an organization that receives Family Re-Housing and Stabilization funds and is authorized to administer and deliver Family Re-Housing and Stabilization services.

Rent Reasonableness Standard – Rent reasonableness, as defined by the United States Department of Housing and Urban Development to mean that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.

Rental payment – a regular payment made by a tenant to an owner or landlord for the right to occupy or use property.

Security deposit – a sum of money paid in advance that is required by the owner or landlord for leasing property as security against the tenant's failure to fulfill the lease or security to cover damage to the rental premises.

Vendor – a provider of a service or product, including but not limited to landlords.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code §1-307.02 (2006 Repl.; & 2012 Supp.)), and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code §7-771.05(6) (2008 Supp.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to section 964 (Dental Services) of chapter 9 (Medicaid Program) of title 29 of the District of Columbia Municipal Regulations (DCMR).

DHCF currently reimburses costs associated with 149 dental procedure codes. These emergency and proposed rules will authorize DHCF, effective January 1, 2013, to: (1) discontinue reimbursement for services related to six (6) dental procedure codes for non-institutionalized adults, mainly due to the fact that these codes are more appropriate for children than for adults; (2) reduce reimbursement for services related to approximately one hundred and twenty six (126) dental procedure codes for non-institutionalized adults; and (3) add twenty-two (22) dental procedure codes to all dental fee schedules and two (2) additional codes to the EPSDT dental fee schedule for beneficiaries under twenty-one years of age. There are no reductions in the reimbursement related to dental procedure codes for children, beneficiaries enrolled in the Waiver for Individuals with Intellectual and Developmental Disabilities and beneficiaries residing in Intermediate Care Facilities for Individuals with Intellectual and Developmental Disabilities. The District will realize savings of approximately 1.8 million dollars as a result of these changes.

Over the past three (3) years, the District's Medicaid program has experienced an unprecedented growth in enrollment. This increased enrollment has created huge budget pressures for the District which poses a threat to the preservation of health care delivery to Medicaid beneficiaries. Emergency action is necessary to ensure that adequate resources are available and properly allocated during this crisis; thus, minimizing the potential for a reduction in the delivery of healthcare services to Medicaid beneficiaries.

The emergency rulemaking was adopted on December 20, 2012 and will become effective on January 1, 2013. The emergency rules will remain in effect for approximately one hundred and twenty (120) days or until April 18, 2013, unless superseded by publication of a Notice of Final Rulemaking in the *DC Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication in the *DC Register*.

Section 964.10 (DENTAL SERVICES) of chapter 9 (MEDICAID PROGRAM) of title 29 (PUBLIC WELFARE) of the DCMR is deleted in its entirety and amended to read as follows:

964.10 Effective for services rendered on or after January 1, 2013, reimbursement for dental procedure codes for non-institutionalized adults shall be reduced. Reimbursement for dental services shall be made according to the District of Columbia Medicaid fee schedule available online at <http://www.dc-medicaid.com> and shall cover all services related to the procedure.

Comments on this rule should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 899 North Capitol Street, NE, 6th Floor, Washington, DC 20002, via telephone on (202) 442-9115, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2013-009
January 8, 2013

SUBJECT: Reappointments and Appointments – District of Columbia Board of Pharmacy

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 208 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99; D.C. Official Code § 3-1202.08 (2012 Supp.), it is hereby **ORDERED** that:


1. **PAUL J. BERINGER**, who was nominated by the Mayor on September 17, 2012 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 19-064 on November 4, 2012, is reappointed as a physician member of the Board of Pharmacy (hereinafter referred to as "**Board**"), as a pharmacist member of the Board, for a term to end March 12, 2015.
2. **JAMES C. APPLEBY**, who was nominated by the Mayor on September 17, 2012 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 19-065 on November 4, 2012, is reappointed as a physician member of the Board, as a pharmacist member of the Board, for a term to end March 12, 2013.
3. **DAPHNE BERNARD**, who was nominated by the Mayor on September 17, 2012 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 19-066 on November 4, 2012, is reappointed as a physician member of the Board, as a pharmacist member of the Board, for a term to end March 12, 2013.
4. **TAMARA A. FOREMAN**, who was nominated by the Mayor on September 17, 2012 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 19-067 on November 4, 2012, is reappointed as a physician

member of the Board, as a pharmacist member of the Board, for a term to end March 12, 2014.

- 5. **ALAN S. FRIEDMAN**, who was nominated by the Mayor on September 17, 2012 and, following a forty-five day period of review by the Council of the District of Columbia, whose nomination was deemed approved pursuant to Proposed Resolution 19-068 on November 4, 2012, is appointed as a physician member of the Board, as a pharmacist member of the Board, replacing Beverly C. Mims, for a term to end March 12, 2014.
- 6. **DAPHNE BERNARD** is appointed as Chairperson of the Board and shall serve in that capacity at the pleasure of the Mayor.
- 7. **EFFECTIVE DATE:** This Order shall become immediately.



VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-010
January 9, 2013

SUBJECT: Designation of Special Event Area – BET Honors 2013

ORIGINATING AGENCY: Office of Motion Picture and Television
Development


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. The following public space areas as identified below shall be designated as a Special Event Area to accommodate activities associated with the 2013 BET Honors:
 - a. Commencing Thursday, January 10, 2013 at 12:00 a.m. until Sunday January 13, 2013, at 6:00 a.m., the East and West curb lane of 12th Street NW between E and F Streets.
 - b. Commencing Thursday, January 10, 2013 at 12:00 a.m. until Sunday January 13, 2013, at 6:00 a.m., the East curb lane of 13th Street NW between E and F Streets.
 - c. Commencing Thursday, January 10, 2013 at 12:00 a.m. until Sunday January 13, 2013, at 6:00 a.m., the North curb lane of E Street NW between 12th and 13th Streets.
 - d. Commencing Saturday, January 12, 2013 at 12:00 a.m. until Sunday January 13, 2013, at 2:00 a.m., the North and South curb lanes, all travel lanes and the sidewalk of E Street NW between 12th and 13th Streets.
 - e. Commencing Saturday, January 12, 2013 at 6:00 a.m. until Sunday January 13, 2013, at 2:00 a.m., the Westbound curb lane of Pennsylvania Ave NW between 11th and 13th Streets.
 - f. Commencing Saturday, January 12, 2013 at 6:00 a.m. until Sunday January 13, 2013, at 2:00 a.m., the East sidewalk of 13th Street NW between E and F Streets.

- g. Commencing Saturday, January 12, 2013 at 12:00 p.m. until Sunday January 13, 2013, at 2:00 a.m., the East curb lane of 13th Street NW between Pennsylvania Avenue and E Street.
- 2. The designated areas shall be operated and overseen by BET Networks and the District of Columbia Office of Motion Picture and Television Development.
- 3. This Order is authorization for the use of the designated streets and curb lanes only, and the named operator shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event. All building, health, life, safety, and use of public space requirements shall remain applicable to the Special Event Area designated by this Order.
- 4. **EFFECTIVE DATE:** This Order shall become effective immediately.



VINCENT C. GRAY
MAYOR

ATTEST: 

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-011
January 10, 2013

SUBJECT: Delegation of Authority to the Director of the Department of General Services to Execute a Lease Agreement for the Rudolph School


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. No. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), it is hereby **ORDERED** that:

1. The Director of the Department of General Services (DGS) is delegated the authority vested in the Mayor pursuant to section 1(c) of An Act To grant additional powers to the Commissioners of the District of Columbia, and for other purposes, approved December 20, 1944 (58 Stat. 821; D.C. Official Code § 1-301.01(c)) to execute a lease agreement between the District of Columbia and the Washington Latin Public Charter School for certain real property located at 5210 Second Street, NW, most commonly known as the Rudolph School and more specifically designated for tax and assessment purposes as Square 3327, Lot 800 (the "**Property**") and all other documents necessary to effectuate the lease of the Property, including, but not limited to, a memorandum of ground lease and a real property recordation and tax form.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-012
January 10, 2013

SUBJECT: Appointment- Metropolitan Washington Airports Authority Board of Directors


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to 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 in accordance with section 6007(e) of the Metropolitan Washington Airports Act of 1986, approved October 30, 1986, as amended (100 Stat. 3341; 49 U.S.C. § 49106 (c)) which established the Metropolitan Washington Airports Authority Board of Directors, it is hereby **ORDERED** that:

1. **JOSLYN N. WILLIAMS**, who was nominated by the Mayor on November 28, 2012, and approved by the Council of the District of Columbia pursuant to Proposed Resolution 19-1126 on January 8, 2013, is appointed to the Metropolitan Washington Airports Authority Board of Directors, as a member, replacing H.R. Crawford, whose term expired on January 5, 2013, for a six-year term to end January 5, 2019.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-013
January 10, 2013

SUBJECT: Reappointments -- District of Columbia Recreational Trails Advisory Committee


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 Mayor's Order 96-84, dated June 20, 1996, it is hereby **ORDERED** that:

1. **DAVID A. SHELLARD** and **DAVID E. ANSPACHER** are reappointed as members of the District of Columbia Recreational Trails Advisory Committee, for a three-year term that began on September 10, 2012 and ends September 10, 2015.
2. **EFFECTIVE DATE:** This Order shall be effective immediately.



 VINCENT C. GRAY
 MAYOR

ATTEST: 

 CYNTHIA BROCK-SMITH
 SECRETARY OF THE DISTRICT OF COLUMBIA

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, JANUARY 23, 2013
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On January 23, 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#12-CMP-00236 Twelve Restaurant & Lounge, 1123 - 1125 H ST NE Retailer C Tavern, License#: ABRA-076366

2. Case#12-AUD-00056 Fusion Restaurant & Bar, 4815 Georgia AVE NW Retailer C Restaurant, License#: ABRA-080957

3. Case#12-AUD-00059 Las Placitas, 517 8TH ST SE Retailer C Restaurant, License#: ABRA-003812

4. Case#12-AUD-00062 Salina Restaurant, 1936 9TH ST NW Retailer C Tavern, License#: ABRA-082969

5. Case#12-AUD-00064 The Melting Pot, 1220 19TH ST NW A Retailer C Restaurant, License#: ABRA-060600

6. Case#12-AUD-00065 Westchester Dining Room, 4000 CATHEDRAL AVE NW A Retailer C Restaurant, License#: ABRA-019002 Case

7. #12-AUD-00066 Zula Restaurant, 1933 9TH ST NW A Retailer C Restaurant, License#: ABRA-060547

8. Case#12-AUD-00069 Cafe Green, 1513 17th ST NW Retailer C Restaurant, License#: ABRA-081752
-
9. Case#12-AUD-00070 El Tamarindo Adam Morgan, 1785 FLORIDA AVE NW Retailer C Restaurant, License#: ABRA-071179
-
10. Case#13-AUD-00004 Town House Tavern Restaurant, 1637 R ST NW Retailer C Restaurant, License#: ABRA-024682
-
11. Case#12-CMP-00733 Fur Factory, 33 PATTERSON ST NE Retailer C Nightclub, License#: ABRA-060626
-
12. Case#12-CMP-00738 Sticky Rice, 1222 - 1224 H ST NE Retailer C Restaurant, License#: ABRA-072783
-
13. Case#12-CMP-00701 M & M Market, 3544 EAST CAPITOL ST NE Retailer B Retail - Grocery, License#: ABRA-078461
-
14. Case#12-CMP-00651 Chuck & Bill Bison Lounge, 2718 GEORGIA AVE NW Retailer C Tavern, License#: ABRA-014759
-
15. Case#12-CMP-00735 Bread & Chocolate, 5542 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-007792
-
16. Case#12-CMP-00716 Club Timehri, 2439 18TH ST NW Retailer C Tavern, License#: ABRA-077730
-
17. Case#12-CMP-00722 SOVA Espresso & Wine, 1359 H ST NE Retailer C Tavern, License#: ABRA-078578
-
18. Case#12-CMP-00720 The Red Palace, 1210 - 1212 H ST NE Retailer C Tavern, License#: ABRA-072734
-

19. Case#12-CMP-00721 Atlas Arcade/Church & State, 1236 H ST NE Retailer C Tavern,
License#: ABRA-083822

20. Case#12-CMP-00694 Dangerously Delicious DC, 1339 H ST NE Retailer C Restaurant,
License#: ABRA-087422

21. Case#12-CMP-00718 Dangerously Delicious DC, 1339 H ST NE Retailer C Restaurant,
License#: ABRA-087422

22. Case#12-CMP-00558(a) Justin's Cafe, 1025 1ST ST SE Retailer C Restaurant, License#:
ABRA-083690

23. Case#12-251-00389 Echostage, 2135 QUEENS CHAPEL RD NE 251 , License#: 12-251-
00331

24. Case#12-CMP-00719 Rock N Roll Hotel, 1353 H ST NE Retailer C Tavern, License#:
ABRA-072777

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, JANUARY 23, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Manager's Application for Michael J. Schuster. **

2. Review of Manager's Application Janelle M. Smith. **

3. Review of involuntary transfer of Class CT License held by Colin Unlimited, LLC, t/a The District Restaurant-The District Underground, to HACA Ventures, Inc. (Landlord), pursuant to a Writ of Possession and Temporary Restraining Order issued by the Superior Court of the District of Columbia and placement of license in Safekeeping. Pending investigative matter. No outstanding fines/citations. *The District Restaurant-The District Underground*, 2477 18th Street NW Retailer CT01, Lic.#: 81909.

4. Review of Entertainment Endorsement Application for live music. *Proposed Hours of Entertainment*: Sunday through Thursday 6pm-10pm, Friday and Saturday 6pm-11:30pm. No pending investigative matters. Outstanding fines/citations. No conflict with Settlement Agreement. ANC 6A. *Pho Bar & Grill*, 1360 H Street NE Retailer CR01, Lic.#: 87813.

5. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales/Service. *Current Hours of Operation*: Sunday through Thursday 11am-2am, Friday & Saturday 11am-3am. *Current Hours of Entertainment*: Thursday 9pm-2am, Friday & Saturday 9pm-3am. *Proposed Hours of Operation*: Sunday through Thursday 7am-2am, Friday & Saturday 7am-3am. *Proposed Hours of Entertainment*: Sunday through Thursday 9pm-2am, Friday and Saturday 9pm-3am. No pending investigative matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 2C. *Uptown Ethiopian Fusion Cuisine*, 1608 7th Street NW Retailer CR01, Lic.#: 81849.

6. Review of request from Licensee to expansion to 2nd floor increasing the occupancy from 50 to 80 seats. No pending investigative matters. No outstanding fines/citations. No Settlement Agreement. ANC 1C. *Rumba Café*, 2443 18th Street NW Retailer CR01, Lic.#: 71023.

Board's Agenda - January 23, 2013 - Page 2

7. Review of letter, dated January 7, 2013, from Amy Vestal requesting permission to store restaurant records off premise at another location in the District. *Madam's Organ*, 2461 18th Street NW Retailer CT01, Lic.#: 25273.

8. Review of Protestant's Motion to Reconsider Findings of Fact, Conclusions of Law, and Order, dated December 3, 2012, from Commissioner Stuart Ross of ANC 3D. *Town Square Gourmet*, 4418 MacArthur Boulevard NW Retailer A, Lic.#: 78664.*

9. Review of Settlement Agreement, dated November 14, 2012, between Number Nine, ANC 2F, the Logan Circle Community Association, and the Rhode Island West Neighborhood Association. The Rhode Island West Neighborhood Association withdrew itself as a party to the Settlement Agreement in a letter submitted on November 29, 2012. *Number Nine*, 1435 P Street NW Retailer CT*, Lic.#: 86354.*

10. Review of Settlement Agreement, dated January 7, 2013, between Success and ANC 6E. *Success*, 917 5th Street NW Retailer CR02, Lic.#: 90985.*

11. Review of Settlement Agreement, dated January 9, 2013, between Costa Brava, a Group of Five or More, Victoria Rizzo, and Lawrence Perry. *Costa Brava*, 1837 1st Street NW Retailer CR02, Lic.#: 90223.*

12. Review of Settlement Agreement, dated January 10, 2013, between Fork 'n Spade and ANC 3E. *Fork 'n Spade*, 4619 41st Street NW Retailer CR03, Lic.#: 90853.*

*** 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.**

DC MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS**DC MAYOR'S COMMISSION ON ASIAN AND
PACIFIC ISLANDER AFFAIRS****NOTICE OF REGULAR MEETING**

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on Wednesday, January 23, 2013 at 6:30 pm.

The meetings will be held at the OAPIA office at One Judiciary Square, 441 4th Street, NW, Suite 721 N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov or Andrew Chang at andrew.chang@dc.gov. Telephone: (202) 727-3120.

The DC Commission on Asian and Pacific Islander Affairs usually convenes monthly meetings to discuss current issues affecting the DC AAPI community.

DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMMISSION

NOTICE OF A PUBLIC MEETING

The District of Columbia's Child Support Guideline Commission's meeting

Thursday, January 24, 2013, at 8:30 A.M.
D.C. Office of the Attorney General, Child Support Services Division
441 4th Street, NW, Ste. 550N
Conference Room A
Washington, D.C. 20001

The District of Columbia Child Support Guidelines Commission (Commission) announces meeting in which it will discuss proposed changes to the District's Child Support Guideline (Guideline). The Commission's mission is to review the Guideline annually and to provide the Mayor with recommendations for improving the efficiency and effectiveness of the Guideline. In order to achieve its objective, and to ensure the recommendations the Commission provides to the Mayor take into account the public's concerns, it invites the public to attend its meeting.

Persons wishing to Review the Child Support Guideline prior to the public meeting, may access it online by visiting the District of Columbia's website at www.dc.gov.

Individuals who wish to attend should contact: Cory Chandler, Chairperson, Child Support Guideline Commission, at 202-724-7835, or by e-mail at cory.chandler@dc.gov by Wednesday, January 23, 2013. E-mail submissions should include the full name, title, and affiliation, if applicable, of the person(s) wishing to attend. Persons wishing to comment should send nine (9) copies of their written commentary to the Office of the Attorney General for the District of Columbia at the address below.

Individuals who wish to submit their comments as part of the official record should send copies of written statements no later than 4:00 p.m., Wednesday, January 23, 2013 to:

Cory Chandler, Deputy Attorney General
Office of the Attorney General for the District of Columbia
Family Services Division
200 I Street, S.E.
4th Floor
Washington, D.C. 20003

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOLS (CAPCS)

REQUEST FOR PROPOSALS

Tutorial Services

The Dorothy I. Height Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified vendors to provide tutorial services for approximately 50 students in grades 3rd-5th at all learning levels and abilities, with a primary focus on preparation for the reading section of the DC CAS. Tutoring services to run until April. Pre- and post-assessments required for quantitative data demonstrating growth. Detailed description of experience, references, and hourly tutoring rates required. CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME. Contact Toby Hairston at tobyhairston@capcs.org for a detailed Scope of Work. **Final proposals are due Friday, January 25, 2013.**

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD**

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD

Proposed 2013 D.C. Construction Codes

Notice is hereby given that the comment period on the Notice of Proposed Rulemaking on the 2013 District of Columbia Construction Codes Supplement will be extended for an additional four-week period. Comments will be accepted until 5 p.m. on Friday, February 22, 2013.

The Notice of Proposed Rulemaking to replace Title 12 (D.C. Construction Codes Supplement) of the District of Columbia Municipal Regulations was published in the *D.C. Register* on December 7, 2012, at 59 DCR 14179-14768.

The comment period is being extended to allow the public further opportunity to submit comments.

All comments must be submitted in writing to: Mr. Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5164, Washington, D.C. 20024, or via email at: ConstructionCodes@dc.gov. Comments should clearly specify which Subtitle, Chapter, and Section of the proposed District Construction Codes they are related to.

Copies of these proposed regulations, and links to the International Code Council model codes, are available for free on the DCRA website at: <http://tinyurl.com/czja6uk>.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS**

NOTICE OF SCHEDULED MEETING

The Board for the Condemnation of Insanitary Buildings will be holding a scheduled meeting on Wednesday, January 23, 2013 at 10:40 am. The meeting will be held at 1100 4th Street, SW, room E4302, Washington, D.C. 20024.

Draft board meeting agendas are available on the website of the Department of Consumer and Regulatory Affairs at dcra.dc.gov, by clicking on the “Board for the Condemnation of Insanitary Buildings” tab on the main page.

For inquiries and meeting agenda, please call the Board for the Condemnation of Insanitary Buildings at 202-442-4332 or send an email to vacantproperty@dc.gov.

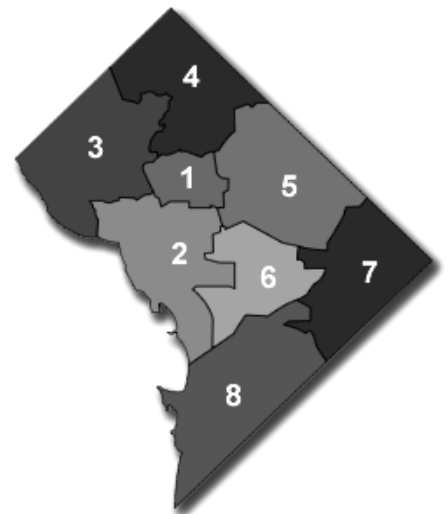
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of OCTOBER 31, 2012**

WARD	DEM	REP	STG	OTH	N-P	TOTALS
1	43,344	2,874	844	215	12,166	59,443
2	30,502	6,133	285	177	11,728	48,825
3	38,166	7,813	388	151	12,329	58,847
4	50,302	2,619	594	191	10,090	63,796
5	52,437	2,242	591	186	9,123	64,579
6	51,050	6,344	596	211	12,777	70,978
7	49,713	1,401	478	139	7,184	58,915
8	47,904	1,482	507	211	8,175	58,279
Totals	363,418	30,908	4,283	1,481	83,572	483,662
Percentage By Party	75.13%	6.39%	.89%	.31%	17.28%	100.00%

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF OCTOBER 31, 2012

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY

ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
<http://www.dcboee.org>



D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
20	1,255	40	14	12	220	1,541
22	3,568	294	32	13	954	4,861
23	2,660	160	64	11	746	3,641
24	2,550	254	38	17	818	3,677
25	4,082	474	78	8	1,311	5,953
35	3,551	230	71	13	1,071	4,936
36	4,345	284	82	23	1,203	5,937
37	3,064	154	59	9	742	4,028
38	2,704	140	62	12	746	3,664
39	4,118	224	108	23	1,071	5,544
40	3,801	234	99	30	1,166	5,330
41	3,257	203	66	25	1,065	4,616
42	1,810	59	33	9	491	2,402
43	1,663	71	27	4	361	2,126
137	916	53	11	6	201	1,187
TOTALS	43,344	2,874	844	215	12,166	59,443

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
2	507	106	3	7	293	916
3	1,396	423	15	11	670	2,515
4	1,581	445	9	8	786	2,829
5	2,234	746	24	10	895	3,909
6	2,563	1,121	29	22	1,563	5,298
13	1,348	294	8	3	492	2,145
14	3,012	470	29	11	1,116	4,638
15	3,225	350	25	21	1,014	4,635
16	3,761	423	38	16	1,060	5,298
17	4,831	688	50	40	1,639	7,248
129	1,974	356	15	5	811	3,161
141	2,470	263	29	13	740	3,515
143	1,600	448	11	10	649	2,718
TOTALS	30,502	6,133	285	177	11,728	48,825

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
7	1,190	432	16	4	557	2,199
8	2,347	698	24	10	766	3,845
9	1,152	537	10	13	511	2,223
10	1,661	476	9	10	650	2,806
11	3,408	965	46	12	1,436	5,867
12	497	222	3	4	218	944
26	2,946	397	32	9	976	4,360
27	2,548	305	18	7	603	3,481
28	2,454	650	34	10	903	4,051
29	1,316	294	16	4	467	2,097
30	1,320	269	18	5	297	1,909
31	2,347	374	20	7	609	3,357
32	2,820	420	30	11	699	3,980
33	3,030	413	35	13	831	4,322
34	3,756	553	29	13	1,298	5,649
50	2,191	327	19	14	521	3,072
136	877	133	10	1	358	1,379
138	2,306	348	19	4	629	3,306
TOTALS	38,166	7,813	388	151	12,329	58,847

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
45	2,228	78	41	10	448	2,805
46	3,105	96	30	14	631	3,876
47	3,062	166	35	16	813	4,092
48	2,900	149	35	11	641	3,736
49	878	49	19	6	222	1,174
51	3,318	609	26	10	697	4,660
52	1,333	262	6	2	268	1,871
53	1,227	79	19	4	300	1,629
54	2,429	109	38	10	529	3,115
55	2,626	79	40	16	509	3,270
56	3,228	102	35	17	766	4,148
57	2,705	96	34	17	521	3,373
58	2,430	67	24	4	439	2,964
59	2,758	100	38	9	449	3,354
60	2,270	99	23	7	722	3,121
61	1,761	59	20	3	312	2,155
62	3,347	157	30	7	406	3,947
63	3,522	128	65	12	659	4,386
64	2,404	66	16	7	364	2,857
65	2,771	69	20	9	394	3,263
Totals	50,302	2,619	594	191	10,090	63,796

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
19	4,121	208	60	15	960	5,364
44	2,978	247	32	19	682	3,958
66	4,902	148	36	10	584	5,680
67	3,193	124	25	9	425	3,776
68	1,977	172	30	6	435	2,620
69	2,363	83	17	8	288	2,759
70	1,637	74	21	3	281	2,016
71	2,598	72	35	11	385	3,101
72	4,738	135	28	19	789	5,709
73	1,979	112	35	10	375	2,511
74	4,256	194	64	10	830	5,354
75	3,185	122	44	9	652	4,012
76	1,185	55	16	4	243	1,503
77	3,078	124	40	12	545	3,799
78	2,885	79	34	9	489	3,496
79	2,023	64	14	8	363	2,472
135	3,058	184	49	17	551	3,859
139	2,281	45	11	7	246	2,590
TOTALS	52,437	2,242	591	186	9,123	64,579

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
1	4,160	386	48	19	1,073	5,686
18	4,034	237	50	13	883	5,217
21	1,095	53	18	5	255	1,426
81	4,953	365	55	24	990	6,387
82	2,588	260	24	10	561	3,443
83	3,727	396	37	15	888	5,063
84	2,029	442	31	10	605	3,117
85	2,830	575	27	12	822	4,266
86	2,301	283	29	7	527	3,147
87	2,887	228	30	13	573	3,731
88	2,199	329	18	8	531	3,085
89	2,666	734	33	8	832	4,273
90	1,656	286	13	7	494	2,456
91	4,103	381	47	19	979	5,529
127	4,001	295	57	13	918	5,284
128	2,171	210	35	10	608	3,034
130	838	355	10	3	314	1,520
131	1,471	366	15	9	518	2,379
142	1,341	163	19	6	406	1,935
TOTALS	51,050	6,344	596	211	12,777	70,978

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
80	1,711	83	18	9	289	2,110
92	1,644	42	14	10	246	1,956
93	1,564	47	15	7	221	1,854
94	2,006	59	18	3	273	2,359
95	1,709	51	19		310	2,089
96	2,397	67	28	7	372	2,871
97	1,527	38	14	4	195	1,778
98	1,891	43	22	7	268	2,231
99	1,468	43	13	5	229	1,758
100	2,056	43	16	5	284	2,404
101	1,771	39	20	5	197	2,032
102	2,485	57	27	6	334	2,909
103	3,583	93	36	13	572	4,297
104	2,849	84	28	11	449	3,421
105	2,402	63	29	5	379	2,878
106	3,202	81	25	7	457	3,772
107	1,793	56	16	3	302	2,170
108	1,250	39	10	2	137	1,438
109	1,065	39	9	1	114	1,228
110	4,194	130	36	13	495	4,868
111	2,564	63	29	9	398	3,063
113	2,414	77	19	5	307	2,822
132	2,168	64	17	2	356	2,607
TOTALS	49,713	1,401	478	139	7,184	58,915

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of OCTOBER 31, 2012

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
112	2,251	66	14	7	329	2,667
114	3,310	110	30	25	577	4,052
115	3,132	84	28	12	704	3,960
116	4,156	122	45	21	694	5,038
117	1,940	59	17	12	304	2,332
118	2,724	84	35	10	449	3,302
119	3,009	136	50	16	599	3,810
120	1,953	48	22	9	334	2,366
121	3,425	90	44	13	599	4,171
122	1,991	47	19	6	304	2,367
123	2,570	129	25	14	483	3,221
124	2,758	68	22	5	408	3,261
125	4,767	134	44	19	800	5,764
126	3,967	142	46	20	750	4,925
133	1,495	45	10	5	195	1,750
134	2,352	51	35	7	321	2,766
140	2,104	67	21	10	325	2,527
TOTALS	47,904	1,482	507	211	8,175	58,279

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 9/30/2012 and 10/31/2012

NEW REGISTRATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Beginning Totals	354,658	30,483	4,225	1,429	81,595	472,390
BOEE Over the Counter	880	50	4	2	230	1,166
BOEE by Mail	2,708	155	30	28	752	3,673
BOEE Online Registration	2,920	277	33	13	759	4,002
Department of Motor Vehicle	2,326	223	15	14	773	3,351
Department of Disability Services	15	0	1	0	4	20
Office of Aging	9	0	0	0	1	10
Federal Postcard Application	17	1	0	0	12	30
Department of Parks and Recreation	0	0	0	1	0	1
Nursing Home Program	114	12	1	0	16	143
Dept, of Youth Rehabilitative Services	4	0	0	0	2	6
Department of Corrections	68	1	3	0	13	85
Department of Human Services	107	2	1	0	13	123
Special / Provisional	0	0	0	0	0	0
All Other Sources	644	34	7	5	261	951
+Total New Registrations	9,812	755	95	63	2,836	13,561

ACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Reinstated from Inactive Status	816	37	10	3	117	983
Administrative Corrections	156	7	1	0	971	1,135
+TOTAL ACTIVATIONS	972	44	11	3	1,088	2,118

DEACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Changed to Inactive Status	34	5	0	0	5	44
Moved Out of District (Deleted)	89	4	3	0	11	107
Felon (Deleted)	1	0	0	0	0	1
Deceased (Deleted)	31	7	0	0	5	43
Administrative Corrections	3,266	273	55	9	536	4,139
-TOTAL DEACTIVATIONS	3,421	289	58	9	557	4,334

AFFILIATION CHANGES	DEM	REP	STG	OTH	N-P	
+ Changed To Party	1,916	165	68	48	510	
- Changed From Party	-501	-242	-58	-53	-1,858	
ENDING TOTALS	363,436	30,916	4,283	1,481	83,614	483,662

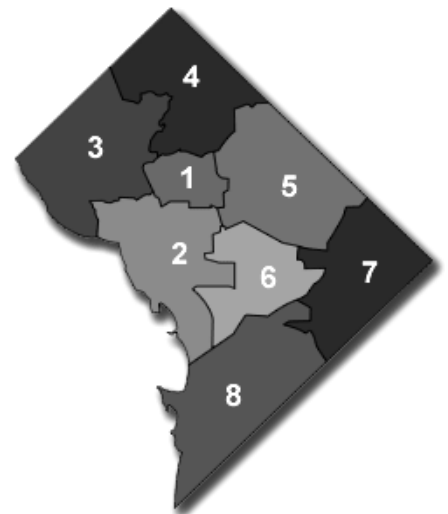
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

WARD	DEM	REP	STG	OTH	N-P	TOTALS
1	44,421	2,907	844	215	12,528	60,915
2	31,484	6,302	287	186	12,263	50,522
3	38,865	7,946	399	158	12,733	60,101
4	50,971	2,630	595	193	10,145	64,534
5	53,266	2,254	591	188	9,258	65,557
6	52,018	6,459	601	218	13,050	72,346
7	50,923	1,418	482	141	7,236	60,200
8	48,837	1,479	492	203	8,166	59,177
Totals	370,785	31,395	4,291	1,502	85,379	493,352
Percentage By Party	75.15%	6.36%	.87%	.30%	17.30%	100.00%

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF NOVEMBER 30, 2012

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY

ONE JUDICIARY SQUARE
441 4TH STREET, NW SUITE 250N
WASHINGTON, DC 20001
(202) 727-2525
<http://www.dcboee.org>



**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
20	1,305	39	13	12	230	1,599
22	3,739	303	31	13	1,022	5,108
23	2,641	157	65	11	740	3,614
24	2,526	249	38	15	818	3,646
25	4,185	484	81	8	1,387	6,145
35	3,532	229	70	12	1,058	4,901
36	4,507	298	82	23	1,250	6,160
37	3,194	157	58	9	765	4,183
38	2,833	140	62	11	766	3,812
39	4,283	222	106	24	1,114	5,749
40	3,944	238	101	32	1,229	5,544
41	3,324	207	67	26	1,086	4,710
42	1,832	60	32	9	500	2,433
43	1,662	70	27	4	359	2,122
137	914	54	11	6	204	1,189
TOTALS	44,421	2,907	844	215	12,528	60,915

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
2	540	119	3	8	313	983
3	1,495	448	17	12	749	2,721
4	1,703	484	9	9	861	3,066
5	2,229	741	23	10	895	3,898
6	2,565	1,119	29	22	1,573	5,308
13	1,399	306	7	3	523	2,238
14	3,182	498	29	14	1,177	4,900
15	3,378	365	27	22	1,078	4,870
16	3,915	442	39	16	1,131	5,543
17	4,904	696	48	41	1,694	7,383
129	1,983	356	16	6	812	3,173
141	2,468	257	29	12	737	3,503
143	1,723	471	11	11	720	2,936
TOTALS	31,484	6,302	287	186	12,263	50,522

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
7	1,202	430	16	3	570	2,221
8	2,426	718	25	11	819	3,999
9	1,233	562	12	13	568	2,388
10	1,747	490	9	12	699	2,957
11	3,401	973	46	13	1,438	5,871
12	514	219	4	4	229	970
26	2,911	390	32	8	971	4,312
27	2,616	319	18	7	647	3,607
28	2,462	643	33	10	914	4,062
29	1,312	292	16	5	470	2,095
30	1,358	272	20	5	315	1,970
31	2,423	385	21	9	636	3,474
32	2,883	422	31	11	711	4,058
33	3,106	428	35	14	865	4,448
34	3,850	581	30	13	1,351	5,825
50	2,194	326	19	14	515	3,068
136	879	135	9	1	358	1,382
138	2,348	361	23	5	657	3,394
TOTALS	38,865	7,946	399	158	12,733	60,101

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
45	2,226	78	41	10	445	2,800
46	3,111	93	30	14	627	3,875
47	3,092	166	35	16	818	4,127
48	2,921	152	34	11	640	3,758
49	871	48	19	6	220	1,164
51	3,317	611	26	11	702	4,667
52	1,334	260	6	2	266	1,868
53	1,236	79	19	4	298	1,636
54	2,481	112	39	10	542	3,184
55	2,737	82	39	16	520	3,394
56	3,359	105	35	16	779	4,294
57	2,810	99	35	17	528	3,489
58	2,492	66	24	4	446	3,032
59	2,812	99	38	9	448	3,406
60	2,281	98	22	8	724	3,133
61	1,814	60	20	3	325	2,222
62	3,357	158	30	7	405	3,957
63	3,515	129	66	12	653	4,375
64	2,434	65	17	8	365	2,889
65	2,771	70	20	9	394	3,264
Totals	50,971	2,630	595	193	10,145	64,534

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
19	4,175	208	61	16	968	5,428
44	2,983	245	32	19	676	3,955
66	5,013	149	37	11	598	5,808
67	3,229	127	24	9	427	3,816
68	2,037	186	32	6	452	2,713
69	2,374	83	17	9	286	2,769
70	1,642	74	21	3	280	2,020
71	2,621	71	36	10	385	3,123
72	4,777	131	28	19	800	5,755
73	2,030	112	34	10	395	2,581
74	4,363	198	65	10	854	5,490
75	3,214	119	42	8	655	4,038
76	1,194	54	14	4	257	1,523
77	3,123	124	40	12	551	3,850
78	2,990	77	33	9	488	3,597
79	2,068	63	13	8	362	2,514
135	3,078	185	50	18	566	3,897
139	2,355	48	12	7	258	2,680
TOTALS	53,266	2,254	591	188	9,258	65,557

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
1	4,346	402	50	23	1,102	5,923
18	4,179	250	51	15	909	5,404
21	1,152	55	19	5	268	1,499
81	4,998	367	54	24	995	6,438
82	2,602	258	24	10	556	3,450
83	3,921	422	41	15	954	5,353
84	2,026	437	31	10	624	3,128
85	2,839	573	27	12	814	4,265
86	2,371	291	29	7	547	3,245
87	2,885	230	30	13	579	3,737
88	2,213	329	19	8	534	3,103
89	2,642	733	32	8	821	4,236
90	1,648	282	13	7	505	2,455
91	4,098	377	47	19	981	5,522
127	3,999	293	56	13	912	5,273
128	2,173	208	33	11	625	3,050
130	874	367	10	3	337	1,591
131	1,677	416	15	9	578	2,695
142	1,375	169	20	6	409	1,979
TOTALS	52,018	6,459	601	218	13,050	72,346

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
80	1,770	88	19	8	301	2,186
92	1,637	42	13	10	242	1,944
93	1,652	47	15	7	229	1,950
94	2,019	57	18	3	268	2,365
95	1,824	53	21		320	2,218
96	2,441	71	28	7	374	2,921
97	1,528	36	14	4	195	1,777
98	1,924	44	23	7	267	2,265
99	1,555	47	14	5	239	1,860
100	2,088	41	15	5	287	2,436
101	1,773	39	20	5	198	2,035
102	2,523	58	27	6	331	2,945
103	3,616	93	38	14	573	4,334
104	2,904	84	29	12	448	3,477
105	2,542	65	28	5	391	3,031
106	3,226	79	24	7	453	3,789
107	1,871	56	17	3	306	2,253
108	1,277	41	10	2	139	1,469
109	1,064	39	9	1	115	1,228
110	4,329	129	35	13	501	5,007
111	2,695	65	29	10	399	3,198
113	2,420	79	19	5	306	2,829
132	2,245	65	17	2	354	2,683
TOTALS	50,923	1,418	482	141	7,236	60,200

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of NOVEMBER 30, 2012**

PRECINCT	DEM	REP	STG	OTH	N-P	TOTALS
112	2,272	68	12	7	327	2,686
114	3,367	109	30	23	570	4,099
115	3,291	81	27	13	699	4,111
116	4,252	120	44	20	695	5,131
117	1,969	59	16	11	301	2,356
118	2,741	83	35	10	447	3,316
119	3,032	136	49	14	598	3,829
120	1,959	47	22	8	336	2,372
121	3,479	89	43	13	598	4,222
122	2,006	50	19	6	304	2,385
123	2,603	134	25	14	494	3,270
124	2,788	68	21	5	406	3,288
125	5,044	132	46	17	808	6,047
126	4,000	138	43	20	736	4,937
133	1,523	47	10	5	194	1,779
134	2,387	50	34	7	321	2,799
140	2,124	68	16	10	332	2,550
TOTALS	48,837	1,479	492	203	8,166	59,177

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY

For voter registration activity between 10/31/2012 and 11/30/2012

NEW REGISTRATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Beginning Totals	363,418	30,908	4,283	1,481	83,572	483,662
BOEE Over the Counter	2	0	0	0	1	3
BOEE by Mail	5	1	0	0	1	7
BOEE Online Registration	680	77	6	1	229	993
Department of Motor Vehicle	1,460	100	8	3	440	2,011
Department of Disability Services	0	0	0	0	0	0
Office of Aging	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0
Nursing Home Program	2	0	0	0	2	4
Dept, of Youth Rehabilitative Services	2	0	0	0	1	3
Department of Corrections	0	0	0	0	0	0
Department of Human Services	0	0	0	0	0	0
Special / Provisional	1,823	144	7	12	559	2,545
All Other Sources	1,647	126	13	16	574	2,376
+Total New Registrations	5,621	448	34	32	1,807	7,942

ACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Reinstated from Inactive Status	760	49	7	1	119	936
Administrative Corrections	177	21	2	15	2,002	2,217
+TOTAL ACTIVATIONS	937	70	9	16	2,121	3,153

DEACTIVATIONS	DEM	REP	STG	OTH	N-P	TOTAL
Changed to Inactive Status	5	1	0	0	2	8
Moved Out of District (Deleted)	2	0	0	0	0	2
Felon (Deleted)	0	0	0	0	0	0
Deceased (Deleted)	3	0	0	0	0	3
Administrative Corrections	1,277	8	5	3	26	1,319
-TOTAL DEACTIVATIONS	1,287	9	5	3	28	1,332

AFFILIATION CHANGES	DEM	REP	STG	OTH	N-P	
+ Changed To Party	2,592	219	40	27	519	
- Changed From Party	-477	-233	-70	-51	-2570	
ENDING TOTALS	370,804	31,403	4,291	1,502	85,421	493,352

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF EXTENDED PUBLIC COMMENT PERIOD

Capitol Power Plant Proposed Air Quality Permits for Plantwide Applicability Limits for NOx and PM2.5, Installation of a Cogeneration Facility, and Operation of Existing Boiler #3

Notice is hereby given that the comment period on a series of proposed air quality permits to the Architect of the Capitol for equipment and operations at the Capitol Power Plant, located at 25 E Street SE, Washington DC, 20003 will be extended such that all public comments will now be due by 5:00 p.m. Monday, February 18, 2013. The original Notice of Public Hearing and Public Comment for the permits, was published in the *D.C. Register* at 59 DCR 013037 (November 16, 2012).

Interested persons may submit written comments on the proposed permits, which must 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 permits. Note that the proposed permits do not amend the operating permit for the coal fired units at the facility. **Although these permits will indirectly limit coal use at the facility, banning coal is not a legally viable option through this permitting action.** Comments should be either (1) mailed or hand-delivered to DDOE, Air Quality Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Stephen S. Ours - Chief, Permitting, or (2) e-mailed to aoc.airpermits@dc.gov.

All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by e-mail, 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 Department's website. 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.

No written comments postmarked after February 18, 2013 will be accepted, however all comments submitted since the beginning of the original comment period (November 16, 2012) will be considered and do not need to be resubmitted. For more information on the proposed permitting action, please see the original Notice at 59 DCR 013037 (November 16, 2012) or <http://green.dc.gov/node/378592>

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit #6677 to 13 & F Associates Limited Partnership to operate one (1) 800 kW diesel-fired emergency generator set at 555 13th Street NW, Washington, DC 20004. The contact person for the facility is Robert Reisteter, Senior Property Manager, at (202) 383-8888.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.82	0.2054
Oxides of Sulfur (SO _x)	0.01	0.0036
Oxides of Nitrogen (NO _x)	28.12	7.0440
Volatile Organic Compounds (VOC)	0.83	0.2069
Carbon Monoxide (CO)	6.46	1.6142

The application to operate the generator set and 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 hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permits #6675 to 1991 Acquisition Fund No. 1 Limited Partnership to operate one (1) Detroit Diesel-fired emergency generator engine rated at 316 kW. The generator is located at 700 Eleventh Street NW, Washington, DC, 20001. The contact person for the facility is Mei Moy-Lui, Senior Property Manager, at (202) 393-7001.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.931	0.2326
Oxides of Sulfur (SO _x)	0.867	0.2138
Oxides of Nitrogen (NO _x)	13.11	3.278
Volatile Organic Compounds (VOC)	1.063	0.2659
Carbon Monoxide (CO)	2.826	0.7064

The application to operate the generator and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit #6668 to Hines 1200 Nineteenth Street LLC to operate one (1) 671 kW diesel-fired emergency generator engine at 1200 19th Street, NW, Suite 260, Washington, DC 20036. The contact person for the facility is Giselle Taminez, Property Manager, at (202) 872-1435.

The proposed emission limits are as follows:

- a. Emissions shall not exceed those found in the following table [40 CFR 60.4205(b) 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]

Emission Standards	
Pollutant	g/kW-hr
NMHC+NO _x	6.4
CO	3.5
PM	0.20

- b. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
PM (Total)	0.31	0.033
SO _x	0.01	0.0027
NO _x	37.4	3.13
VOC	0.69	0.0075
CO	2.03	0.4425

The application to operate the generator set and 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 hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit renewal #6674 to Hines VAF II 2100 M Street, L.P. to operate one (1) 207 kW Cummins diesel-fired emergency generator engine. The generator is located at 2100 M Street NW, Washington, DC 20037. The contact person for the facility is Hampton Cross, Property Manager, at (202) 822-9746.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.365	0.0913
Oxides of Sulfur (SO _x)	0.340	0.0851
Oxides of Nitrogen (NO _x)	5.146	1.2865
Volatile Organic Compounds (VOC)	0.417	0.1043
Carbon Monoxide (CO)	1.109	0.2772

The application to operate the generator set and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit #6666 to Hines to operate one (1) 563 kW Cummins diesel-fired emergency generator engine. The generator is located at 1900 K Street NW, Washington, DC 20006. The contact person for the facility is Janice Guethlen, Property Manager, at (202) 467-1400.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.525	0.13125
Oxides of Sulfur (SO _x)	0.009	0.00227
Oxides of Nitrogen (NO _x)	18.00	4.5000
Volatile Organic Compounds (VOC)	0.529	0.1322
Carbon Monoxide (CO)	4.125	1.0312

The application to operate the generator set and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permits #6669 and #6670 to Teachers Insurance and Annuity-College Retirement Equities Fund (TIAA-CREF) to operate two (2) Cummins diesel-fired emergency generator engines rated at 610 kW and 460 kW, respectively. The generators are located in P1 South and P1 North of 1001 Pennsylvania Avenue NW, Suite 100, Washington, DC 20004. The contact person for the facility is Erin K. C. Kuhn, Senior Property Manager, at (202) 639-7575.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from the generators, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the units are as follows:*Permit #6669:P1 South Generator*

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
PM (Total)	0.63	0.1575
SO _x	0.01	0.0027
NO _x	21.6	5.4000
VOC	0.63	0.1586
CO	4.95	1.2375

Permit #6670: P1 North Generator

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
PM (Total)	0.53	0.1321
SO _x	0.01	0.0023
NO _x	18.12	4.5300
VOC	0.53	0.1331
CO	4.15	1.0381

The applications to operate the generators and the draft permits 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 hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
 Chief, Permitting Branch
 Air Quality Division
 District Department of the Environment
 1200 First Street NE, 5th Floor
 Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit #6665 to Union Investment Real Estate GmbH to operate one (1) diesel-fired emergency generator engine rated at 512 kW. The generator is located at 600 13th Street NW, Washington, DC, 20005. The contact person for the facility is Richard Pugh, Property Manager, at (202) 737-6130.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Particulate Matter (PM) (Total)	0.52	0.1290
Oxides of Sulfur (SO _x)	1.03	0.2575
Oxides of Nitrogen (NO _x)	13.58	3.3950
Volatile Organic Compounds (VOC)	0.08	0.0200
Carbon Monoxide (CO)	0.45	0.1125

The application to operate the generator and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit #6699 to WUSA-TV to operate one (1) 500 kW diesel-fired emergency generator at 4010 Chesapeake Street NW, Washington, DC 20016. The contact person for the facility is Victor Murphy, Director of Technology and Operations, at (202) 895-5521.

The proposed emission limits are as follows:

- a. Visible emissions shall not be emitted into the outdoor atmosphere from this generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1].
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Maximum Annual Emissions (tons/yr)
PM (Total)	0.13
SO _x	0.08
NO _x	4.50
VOC	0.13
CO	1.03

The application to operate the generator set and 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 hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air

quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after February 18, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

This notice supersedes the notice published in DC Register on 1/11/2012 volume 60/2

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
HIV/AIDS, HEPATITIS, STD and TUBERCULOSIS ADMINISTRATION
NOTICE OF FUNDING AVAILABILITY
HAHSTA RFA# CTS122112
AMENDED
2013 Comprehensive Treatment Support**

The Government of the District of Columbia, Department of Health, HIV/AIDS, Hepatitis, STD and TB Administration (HAHSTA) is soliciting applications from qualified organizations located and licensed to conduct business with the District of Columbia. The following entities are eligible to apply: private, non-profit organizations, licensed to conduct business within the District of Columbia. Private entities include community-based, community health centers and faith-based organizations.

It is anticipated that approximately \$1,400,000 will be available for FY2013 grant awards, with an optional, performance-based continuation year. Funds will be used to support Comprehensive Treatment Support, such as HIV testing & linkages to care, retention in care, re-engagement activities and treatment adherence as well as interventions for high-risk negatives, such as condom distribution, HIV CTR and prevention interventions. All awards will be based on the availability of funds. Grants will be awarded through the use of the Centers for Disease Control and Prevention funds (1U62PS003685) made available to support comprehensive HIV prevention strategies.

The release date for this RFA is Friday, December 21, 2012. The Request for Applications (RFA) will be available for download on the following website www.opgd.dc.gov under District Grants Clearinghouse. Alternatively, the RFA may be picked up from the HAHSTA offices at 899 North Capitol Street, NE, 4th Floor Washington, DC beginning Friday, December 21, 2012.

The Request for Application (RFA) submission deadline has been extended to no later than 4:30 p.m. on Thursday, January 31, 2013. Late applications will not be accepted for funding consideration. A Pre-Application Conference will be held **on Thursday, January 3, 2013 from 10:00 a.m. – 12:00 p.m.**, at 899 North Capitol Street, NE, 4th Floor, Washington, DC in the HAHSTA 4th floor conference room.

Please contact Stacey L. Cooper at 671-4900 or by email at Stacey.cooper@dc.gov for additional information.

**DISTRICT OF COLUMBIA HOUSING AUTHORITY
BOARD OF COMMISSIONERS****NOTICE OF PUBLIC MEETINGS**

1133 NORTH CAPITOL STREET, NORTHEAST
WASHINGTON, D.C. 20002-7599
202-535-1000

The regular meetings of the Board of Commissioners of the District of Columbia Housing Authority (“DCHA”) are held in open session on the second Wednesday of each month. The dates, times and locations of the meetings for the year 2013 are set forth below:

January 9, 2013	CANCELLED	1:00 p.m.
February 13, 2013	Potomac Gardens 1225 G Street, SE	1:00 p.m.
March 13, 2013	1133 North Capitol Street, NE	1:00 p.m.
April 10, 2013	Stoddert Terrace 155 Ridge Road, SE	1:00 p.m.
May 8, 2013	1133 North Capitol Street, NE	1:00 p.m.
June 12, 2013	Judiciary House 461 H Street, NW	1:00 p.m.
July 10, 2013	1133 North Capitol Street, NE	1:00 p.m.
August 14, 2013	1133 North Capitol Street, NE	1:00 p.m.
September 11, 2013	Montana Terrace 1625 Montana Avenue, NE	1:00 p.m.
October 9, 2013	1133 North Capitol Street, NE	1:00 p.m.
November 13, 2013	Woodland Terrace 2311 Ainger Place, SE	1:00 p.m.
December 11, 2013	Annual & Regular Meeting 1133 North Capitol Street, NE	1:00 p.m.

A draft agenda for the regular meetings of the DCHA Board of Commissioners and the working session will be posted at 1133 North Capitol Street, NE and on the District of Columbia Housing Authority website: www.dchousing.org

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY

BOARD OF DIRECTORS

MEETING

January 22, 2013
815 Florida Avenue, NW
Washington, DC 20001

5:30 pm

AGENDA

- I. Call to order and verification of quorum.
- II. Presentation: Open Government Act.
- III. Executive Director's Report.
- IV. Other Business.
- V. Adjournment.

HOWARD ROAD ACADEMY

REQUEST FOR PROPOSALS

School Turnaround Services

Howard Road Academy Public Charter School invites proposals for School Turnaround Service contracts for 2012-2013. Bid specifications may be obtained at the address below. Any questions regarding this bid must be submitted in writing to lhenderson@howardroadacademy.org before the RFP deadline.

Dr. LaTonya Henderson
Executive Director
Howard Road Academy – Business Office
2005 Martin Luther King Jr., Ave., SE
Washington, DC 20020
lhenderson@howardroadacademy.org

Howard Road Academy will receive bids until January 29, 2013 and no later than 2:00 p.m.

**DEPARTMENT OF HUMAN SERVICES
FAMILY SERVICES ADMINISTRATION
REFUGEE HEALTH PROGRAM**

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2013 Grant to Non-Profit Community-Based Health Organizations

(RFA): # ORR-RFA-021513

The Department of Human Services (DHS), Family Services Administration (FSA) is the lead agency within the District of Columbia (District) that implements the requirements under the Refugee Resettlement Program (Program) established pursuant to the United States Refugee Act of 1980, as amended (Pub. L. No. 96-212, 8 U.S.C. §1101 *et seq.*, 45 C.F.R. §400.1 *et seq.*) (the Act). The purpose of the Program is to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible. To facilitate the purpose of the Program, FSA intends to award federal grant funds to one (1) eligible community-based or faith-based health organization to promote the health of recently resettled refugees in the District by helping refugees enroll in medical assistance programs, referring refugees for health screenings, identifying barriers to refugee self-sufficiency and well-being, providing required immunizations and basic health education and tools.

FSA intends to make one (1) grant award of up to one hundred and fifteen thousand federal dollars (\$115,000) to fund an eligible organization for a twelve (12) month period with the option of two (2) additional years if funding is available. Eligible organizations include community-based, faith-based, non-profit organizations located in the District. The service and activity to be funded through the grant should have an immediate and direct impact on refugee clients, and meet the requirements of the Program and the Act.

The Request for Application (RFA) will be released on Monday, January 14, 2013. A copy of the RFA may be obtained from FSA's main office located at 64 New York Avenue, NE, Washington, DC 20002. In addition, the RFA will also be available on the City Administrator's website, located at <http://www.oca.dc.gov> under the link to the District Grants Clearinghouse. For additional information, please contact Ms. Debra Crawford, FSA State Refugee Coordinator at (202) 299-2153, or by email at: debra.crawford@dc.gov.

The deadline for submission is Friday, February 15, 2013 at 4:45 p.m.

Applicants are encouraged to attend the Pre-Application conference scheduled for Friday, February 8, 2013 from 10:30 a.m. – 12:00 p.m. at the FSA office located at 64 New York Avenue, NE, 5th Floor Conference Room, Washington, DC 20002. Applicants interested in attending the Conference should RSVP to Genet Derebe, Refugee Program Coordinator, at (202) 698-4316 on or before, Wednesday, January 30, 2013.

**DEPARTMENT OF INSURANCE, SECURITIES AND BANKING
DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL**

NOTICE OF PUBLIC MEETING

The Members of the District of Columbia Financial Literacy Council (DCFLC) Resident Affairs Committee will hold a meeting on Thursday, January 24, 2012 at 3:30 pm. The meeting will be held at the Office of Finance and Treasury, Government of the District of Columbia, 1101 4th Street, SW, 8th Floor, Washington, DC 20024. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>. For additional information, please contact Idriys J. Abdullah @ (202) 442-7832 or idriys.abdullah@dc.gov

DRAFT AGENDA

January 24, 2013

- I. Call to Order
- II. Introductions
- III. Progress to Date
 - a. Town Hall Meeting
 - b. Surveys and Responses Received
 - c. Technology Tracking
- IV. Approach to Collecting Additional Database Information
- V. Committee Assignments
- VI. Announcements
- VII. Adjournment

THE NOT-FOR-PROFIT HOSPITAL CORPORATION**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING**

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00 a.m. on Thursday, January 24, 2013. The meeting will be held at 1310 Southern Avenue, Southeast, Washington, DC 20032, in Conference Room 5. Notice of a location or time change will be published in the D.C. Register and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA**I. CALL TO ORDER**

- A. Recognition of New Board Members

II. DETERMINATION OF A QUORUM**III. APPROVAL OF AGENDA****IV. CONSENT AGENDA****A. READING AND APPROVAL OF MINUTES**

- 1. October 25, 2012
- 2. November 28, 2012
- 3. December 6, 2012
- 4. December 20, 2012

B. EXECUTIVE REPORTS

- 1. Chief Medical Officer
- 2. Chief Nursing Officer
- 3. Quality, Patient Safety and Regulatory Compliance
- 4. People Report (HR)

V. NONCONSENT AGENDA**A. EXECUTIVE REPORTS**

- 1. Chief Financial Officer Report
- 2. Chief Executive Officer Report

B. MEDICAL STAFF REPORT

- 1. Chief of Staff Report

C. COMMITTEE REPORTS

1. Finance Committee Report
2. Audit Committee Report
3. Strategic Planning Committee Report

D. OTHER BUSINESS

1. Old Business
2. New Business

E. ANNOUNCEMENT

1. The next Governing Board Meeting will be held 9:00am, February 28, 2013 at United Medical Center/Conference Room 5.

F. ADJOURNMENT

**OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT**

H Street, NE, Retail Priority Area

NOTICE OF FUNDING AVAILABILITY

H STREET, NE, RETAIL PRIORITY AREA PROJECT GRANT

The District's Office of the Deputy Mayor for Planning and Economic Development (ODMPED) invites the submission of applications for the H Street, NE, Retail Priority Area Project Grant authorized under "H Street, N.E., Retail Priority Area Incentive Act of 2010 effective April 8, 2011 (D.C. Law 18-354; D.C. Official Code § 1-325.171 et seq.), as amended by the "H Street NE Retail Priority Area Incentive Amendment Act of 2012", effective September 20, 2012 (D.C. Law 19-168).

Grant funds purpose and availability:

The purpose of the H Street, N.E., Retail Priority Area Grant (H Street RPAG) is to support small business development, increase the tax base and create new jobs for District Residents along the H Street corridor. DMPED will be awarding individual grants up to a maximum of \$85,000 each to support and foster growth amongst small businesses along the corridor. Grant funds may be utilized to reimburse the grantee for the purposes of improving the subject property or purchasing equipment that will be used onsite.

Eligible organizations and entities:

Eligible applicants include retail businesses engaged in the sale of home furnishings, apparel, books, art, groceries, and general merchandise goods to specialized customers or service-oriented businesses providing a direct service to specialized customers or artistic endeavors, such as art galleries, theaters, or performing arts centers. Special consideration shall be given to retail businesses that include entrepreneurial and innovative retail elements. **Eligible retail development projects shall not include liquor stores, restaurants, nightclubs, phone stores, or businesses with 20 or more locations in the United States.**

Eligible applicants must possess all of the following prior to an award being made:

1. Site control of the property either through fee simple ownership of the site or through an executed contract or lease with the property owner;
2. Direct frontage on the H Street, N.E., corridor from 3rd Street, N.E., to 15th Street, N.E.(or provide technical assistance to these businesses);
3. Adherence to design, construction, and rehabilitation requirements as defined by DMPED per the Great Streets Initiative.

Prior to the execution of a grant agreement, the grantee must enter into a First Source Agreement with the District's Department of Employment Services.

The Request for Applications will be released on **Monday, February 4, 2013**. Applicants must submit a completed online application via online to DMPED by **Monday, April 22, 2013 by 5:00 p.m.**

DMPED will hold an informational session at **Douglas Memorial United Methodist Church**, 800 11th Street, NE, Washington, DC 20002 on **Wednesday, February 27 at 6:30 p.m.**

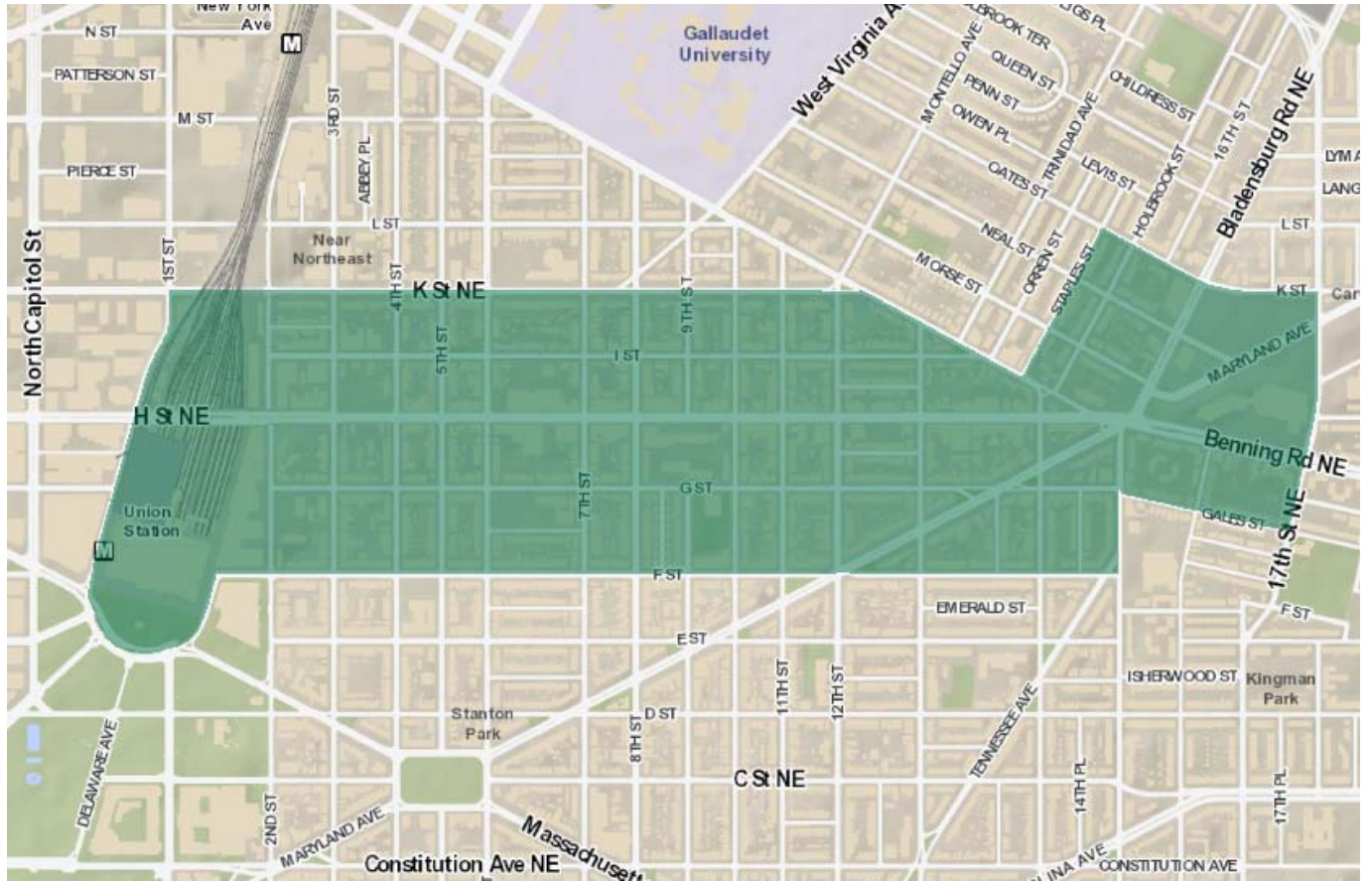
Applicants must complete an application available on-line at the ODMPED website:

www.dmped.dc.gov

(Please look at Opportunities, then Grant Opportunities)

All inquiries should be directed to LaToyia Hampton at (202) 724-7648 or latoyia.hampton@dc.gov.

H Street RPAG Eligible Areas: H Street, N.E., Retail Priority Area as defined in section 2(2) of the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007, effective July 10, 2007 (Res. 17-257; 54 DCR 7194), which includes the parcels, squares, and lots within the area bounded by a line beginning at the intersection of the center lines of Massachusetts Avenue, N.E., Columbus Circle, N.E., and 1st Street, N.E.; continuing northeast along the center line of 1st Street, N.E., to the center line of K Street, N.E.; continuing east along the center line of K Street, N.E., to the center line of Florida Avenue, N.E.; continuing southeast along the center line of Florida Avenue, N.E., to the center line of Staples Street, N.E.; continuing northeast along the center line of Staples Street, N.E., to the center line of Oates Street, N.E.; continuing southeast along the center line of Oates Street, N.E., until the point where Oates Street, N.E., becomes K Street, N.E.; continuing east along the center line of K Street, N.E., to the center line of 17th Street, N.E.; continuing south along the center line of 17th Street, N.E., to the center line of Gales Street, N.E.; continuing northwest along the center line of Gales Street, N.E., to the center line of 15th Street, N.E.; continuing south along the center line of 15th Street, N.E., to the center line of F Street, N.E.; continuing west along F Street, N.E., to the center line of Columbus Circle, N.E.; and continuing south and circumferentially along the center line of Columbus Circle, N.E., to the beginning point.



Office of the Secretary of the District of Columbia

Request for Applications for Grant to Promote District of Columbia Self Determination, Voting Rights or Statehood

Release Date: Friday, January 18, 2013

Applications Due: Monday, February 18, 2013 at Noon

SECTION I: FUNDING OPPORTUNITY

The Office of the Secretary of the District of Columbia (OS) hereby invites the submission of applications to provide support for Mayor Vincent C. Gray's initiatives to achieve self-determination, budget and legislative autonomy, full voting rights in the United States Congress and/or statehood for the District of Columbia.

Background

The residents of the District of Columbia are United States citizens who serve in the military and pay federal taxes, but continue to lack full democracy and the same rights as residents of other states and municipalities, including autonomy from congressional oversight, voting representation in the United States House of Representatives and the United States Senate and Statehood.

The District of Columbia Home Rule Act of 1973 provided limited "Home Rule" for the District by allowing election of a Mayor and Council of the District of Columbia. Since then the District's elected officials and various groups have pursued strategies to raise awareness and secure changes in law to secure DC voting representatives to the U.S. House of Representatives and U. S. Senate and autonomy from congressional oversight.

Unfortunately, democracy for DC has been derailed by non-germane proposals, riders on appropriations bills and failure to garner enough support for enactment.

For over a decade, the District has allocated funds to nonprofit organizations for educating citizens around the nation and pursuing strategies that highlight the continued lack of full democracy in the nation's capital. In addition, since 1990 District residents have elected a "shadow" delegation to Congress in order to promote statehood.

The Office of the Secretary is charged with responsibility for managing the funds allocated for full democracy for DC residents. The Fiscal Year 2013 Budget authorized \$200,000 for

the Office of the Secretary of the District of Columbia to issue competitive grants to promote voting rights and statehood in the District of Columbia.

Purpose of Program

The objective of this grant is to strengthen support for District representation in Congress and autonomy for the District of Columbia. This will require outreach across the country and measurement of support among the public. The ultimate goal of this program is that the grantee(s) increase nationwide support for the District to obtain voting rights, legislative and budget autonomy and statehood.

This program is funded with FY2013 funds, which must be expended by September 30, 2013, with a full accounting provided to the Office of the Secretary no later than December 31, 2013.

SECTION II: AWARD INFORMATION

\$200,000 in District funds will be available on a competitive basis. The release date of this Request for Applications (RFA) is 14 days after the date the Notice of Funding Availability was published in the DC Register which was Friday, January 4, 2013. This grant process conforms to the guidelines established in the *Grants Manual of the Office of Partnerships and Grant Services* (which is available at <http://opgs.dc.gov>).

All funds will be disbursed upon award of the grant, with full accounting required quarterly, but no later than December 31, 2013. All proposals must include a detailed description of how the funds will be spent, as well as a project plan. Creative proposals are encouraged. However, no grant applications will be considered from organizations without a track record of advocating on these issues and without a financial track record. No applications will be considered which include fiscal agents.

SECTION III: ELIGIBILITY INFORMATION

Eligibility for this grant is restricted to non-profit organizations with a 501(c)(3) certification, a current District of Columbia license, that do not owe any money to the District or Federal government, and that have a history of advocating for DC voting rights, legislative and budget autonomy or statehood. Audited financial statements must be submitted with the application.

SECTION IV: APPLICATION & SUBMISSION INFORMATION

This Request for Applications is posted at <http://os.dc.gov> and <http://opgs.dc.gov>. Requests for copies of this RFA may also be made to: 202-727-6306, secretary@dc.gov, or by sending a letter to: Secretary of the District of Columbia | 1350 Pennsylvania Ave NW Suite 419 | Washington, DC 20004.

Application Forms and Content

All applications will be judged against the following requirements:

1. All proposals must be written in clear, concise, grammatically correct language. Narrative shall not exceed 1,500 words, and must include answers to all the requirements specified in this Request for Applications.
2. There is no set form on which applications must be written, but brevity and clarity are appreciated.
3. The grantee shall focus efforts on education and outreach to residents of the 50 states, not just members of Congress.
4. Grantee's efforts shall not consist entirely of paid media advertisements.
5. Proposal must be specific as to how funds will be expended, including:
 - a. Names of all staff proposed to work on this program;
 - b. Justification of the need for grant funds;
 - c. Specific activities for which funds will be used;
 - d. Agreement to submit all deliverables listed in section VI; and
 - e. Performance measures and evaluation plans.
6. All certifications listed in the Application Process section must be included.

Application Process & Requirements

Responses to this Request for Applications shall be submitted via email to secretary@dc.gov or hard copy and disk delivered to Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004. Applications delivered to the Office of the Secretary must be date stamped no later than noon on Monday, February 18, 2013.

The following criteria for an application must be met. Applications that do not meet the requirements specified below will be disqualified from consideration:

1. All proposals shall include only written narrative, with no additional input (such as DVDs, videos, etc) reviewed.

2. All files submitted shall be in any of the following formats: MS Word 2003 or 2007, pdf, MS Excel, html, MS Publisher or any format compatible with those formats.
3. Not included in the 1,500 word narrative, but also necessary are:
 - a. the EIN or Federal Tax ID number of the organization;
 - b. the website and main contact information for the organization;
 - c. a list of the Board of Directors of the organization (if not listed on the website);
 - d. one-paragraph bios of all proposed project staff; and
 - e. the web address of the organizations most recent Form 990 submission to the Internal Revenue Service.
4. Copies (or web links thereto) of its most recent and complete set of audited financial statements available for the organization. [If audited financial statements have never been prepared due to the size or newness of an organization, the applicant must provide an organizational budget, an income statement (or profit and loss statement), and a balance sheet certified by an authorized representative of the organization, and any letters, filings, etc. submitted to the IRS within the three (3) years before the date of the grant application.]
5. Evidence of being a 501(c)(3) organization and a current business license, and copies of any correspondence received from the IRS within the three (3) years preceding the grant application that relates to the organization's tax status (e.g. suspension, revocation, recertification, etc.).
6. Application narrative shall be accompanied by a "Statement of Certification," the truth of which is attested to by the Executive Director or the Chair of the Board of Directors of the applicant organization, which states:
 - a. The individuals, by name, title, address, email, and phone number who are authorized to negotiate with the OS on behalf of the organization;
 - b. That the applicant is able to maintain adequate files and records and can and will meet all reporting requirements;
 - c. That all fiscal records are kept in accordance with Generally Accepted Accounting Principles (GAAP) and account for all funds, tangible assets, revenue, and expenditures whatsoever; that all fiscal records are accurate, complete and current at all times; and that these records will be made available for audit and inspection as required;
 - d. That the applicant is current on payment of all federal and District taxes, including Unemployment Insurance taxes and Workers' Compensation premiums. This statement of certification shall be accompanied by a certificate from the District of Columbia OTR stating that the entity has complied with the filing requirements of District of Columbia tax laws and has paid taxes due to the District of Columbia, or is in compliance with any payment agreement with OTR;

- e. That the applicant has the demonstrated administrative and financial capability to provide and manage the proposed services and ensure an adequate administrative, performance and audit trail;
- f. That the applicant is not proposed for debarment or presently debarred, suspended, or declared ineligible, as required by Executive Order 12549, "Debarment and Suspension," and implemented by 2 CFR 180, for prospective participants in primary covered transactions and is not proposed for debarment or presently debarred as a result of any actions by the District of Columbia Contract Appeals Board, the Office of Contracting and Procurement, or any other District contract regulating Agency;
- g. That the applicant has the financial resources and technical expertise necessary for the production, construction, equipment and facilities adequate to perform the program, or the ability to obtain them;
- h. That the applicant has the necessary organization, experience, accounting and operational controls, and technical skills to implement the program, or the ability to obtain them;
- i. That the applicant has the ability to comply with the required performance schedule, taking into consideration all existing and reasonably expected commercial and governmental business commitments;
- j. That the applicant has a satisfactory record performing similar activities as detailed in the award;
- k. That the applicant has a satisfactory record of integrity and business ethics;
- l. That the applicant is in compliance with the applicable District licensing and tax laws and regulations;
- m. That the applicant complies with provisions of the Drug-Free Workplace Act;
- n. That the applicant meets all other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations;
- o. The grantee agrees to indemnify, defend and hold harmless the Government of the District of Columbia and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this grant from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim therefore, except where such indemnification is prohibited by law; and
- p. If any of the organization's officers, partners, principals, members, associates or key employees, within the last three (3) years prior to the date of the application, has:
 - i. been indicted or had charges brought against them (if still pending) and/or been convicted of (a) any crime or offense arising directly or indirectly from

the conduct of the applicant's organization or (b) any crime or offense involving financial misconduct or fraud, or

- ii. been the subject of legal proceedings arising directly from the provision of services by the organization. If the response is in the affirmative, the applicant shall fully describe any such indictments, charges, convictions, or legal proceedings (and the status and disposition thereof) and surrounding circumstances in writing and provide documentation of the circumstances.

Timeline

All applications shall be submitted by email to secretary@dc.gov or delivered to the Office of the Secretary, 1350 Pennsylvania Avenue, NW, Suite 419, Washington, DC 20004 no later than Noon on Monday, February 18, 2013. The Office of the Secretary is not responsible for misdirected email or late deliveries.

Terms and Conditions

1. Funding for this award is contingent on the continued funding from the grantor, including possible funding restrictions pursuant to the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-51, and 1511-1519 (2004); the District Anti-Deficiency Act, D.C. Official Code §§ 1-206.03(e), 47-105, and 47-355.01-355.08 (2001); and Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Nothing in this Request for Applications shall create an obligation of the District in anticipation of an appropriation by Congress and/or the Council of the District of Columbia (the "Council") for such purpose as described herein. The District's legal liability for any payment pursuant to this RFA shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and/or the Council, and shall become null and void upon the lawful unavailability of such funds under these or other applicable statutes and regulations..
2. The Office of the Secretary reserves the right to accept or deny any or all applications if OS determines it is in the best interest of OS to do so. OS shall notify the applicant if it rejects that applicant's proposal. OS may suspend or terminate an outstanding RFA pursuant to the policies set forth in the City-Wide Grants Manual and Sourcebook.
3. The Office of the Secretary reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the RFA.

4. The Office of the Secretary shall not be liable for any costs incurred in the preparation of applications in response to the RFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.
5. The Office of the Secretary may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.
6. The Office of the Secretary may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.
7. To receive an award, the selected grantee shall provide in writing the name of all of its insurance carriers and the type of insurance provided (e.g., its general liability insurance carrier and automobile insurance carrier, workers' compensation insurance carrier, fidelity bond holder (if applicable)), and, before execution of the award, a copy of the binder or cover sheet of their current policy for any policy that covers activities that might be undertaken in connection with performance of the grant, showing the limits of coverage and endorsements. All policies (except the workers' compensation, errors and omissions, and professional liability policies) that cover activities that might be undertaken in connection with the performance of the grant, shall contain additional endorsements naming the Government of the District of Columbia, and its officers, employees, agents and volunteers as additional named insured with respect to liability abilities arising out of the performance of services under the award. The grantee shall require their insurance carrier of the required coverage to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors.
8. If there are any conflicts between the terms and conditions of the RFA and any applicable federal or local law or regulation, or any ambiguity related thereto, then the provisions of the applicable law or regulation shall control and it shall be the responsibility of the applicant to ensure compliance.

SECTION V: APPLICATION REVIEW INFORMATION

All proposals will be reviewed by a panel selected within the Executive Office of the Mayor. The ratings awarded each applicant shall be public information, and shall be made based on the following criteria:

1. Perceived ability to make progress toward increasing nationwide support for DC voting rights, budget autonomy or full democracy for the District during the grant period – 50%.

2. Specificity and feasibility of proposed activities – 25%.
3. History of supporting democracy and statehood efforts – 10%.
4. Specificity of performance measures – 10%.
5. Completing the application as instructed – 5%.

SECTION VI: AWARD ADMINISTRATION INFORMATION

Grant award(s) will be announced on the Office of the Secretary website no later than 5:00 p.m. on Monday, March 18, 2013. Unsuccessful applicants will be notified by email at the address from which the application was sent (unless otherwise specified) prior to the announcement of the winners. Disbursement of grant funds will occur as soon as practicable following the announcement of the selection of the awardee(s).

Deliverables

Project requirements that must be submitted on or before due dates are:

1. A project plan with detailed expense projections for the amount requested. (Due within 15 calendar days of grant award.)
2. Progress reports detailing expenditures to date and summary of work completed shall be due every 90 days from award date, with the final report due December 31, 2013.
3. A final report provided by the grant recipient(s).

SECTION VII: AGENCY CONTACT

All inquiries regarding this Request for Applications should be directed to:

Cynthia Brock-Smith
Secretary of the District of Columbia
secretary@dc.gov | 202-727-6306

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION**

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will be holding its regularly scheduled General Commission Meeting on Thursday, January 24, 2013 at 10:00 am. The meeting will be held in the Old Council Chambers at 441 4th Street, NW, Washington, DC 20001.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public must register to speak. The time limit for registered speakers is five (5) minutes. A speaker should also submit two (2) copies of any prepared statement to the Assistant Secretary to the Commission. Registration to speak closes at 4:30 pm the day prior to the meeting. Contact the Assistant Secretary to the Commission, Ms. Mixon, on 202-645-6012. Registration consists of your name; your phone number or email contact; and your subject matter.

DRAFT AGENDA

- I. Call to Order
- II. Commission Communication
- III. Commission Action Items
- IV. Government Communications and Presentations
- V. General Counsel's Report
- VI. Staff Reports
- VII. Public Comment Period
- VIII. Adjournment

UNIVERSITY OF THE DISTRICT OF COLUMBIA

AUDIT, ADMINISTRATION AND GOVERNANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Audit, Administration and Governance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Tuesday, January 22, 2013 at 5:30 p.m. The meeting will be held in the Board Room, Third Floor, Administration Building at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

- I. Call to Order and Roll Call**
- II. KPMG Audit**
- III. Internal Audit Status**
- IV. Status of Television Studio's Upgrade to HD**
- V. Closing**

Adjournment*Expected Meeting Closure*

In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

UNIVERSITY OF THE DISTRICT OF COLUMBIA
REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Wednesday, January 23, 2013 at 5:00 p.m. in the Board Room, Third Floor, Administration Building at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

- I. Call to Order and Roll Call**
- II. Approval of Minutes**
- III. Report of the Chairperson**
 - a. Right Sizing Task Force
 - i. Abolishment of Positions
- IV. Report of the President**
- V. Committee Reports**
 - a. Executive – Dr. Crider
 - i. Resolution – Appointment of Dr. Rachel Petty as Chief Operating Officer of the University of the District of Columbia
 - b. Committee of the Whole – Dr. Crider
 - c. Academic Affairs – Dr. Curry
 - d. Budget and Finance – Mr. Felton
 - f. Audit, Administration and Governance – Mr. Shelton
 - g. Student Affairs – General Schwartz
 - i. Communications Task Force – Mr. Pooda
 - h. Community College – Mr. Dyke
 - i. Facilities – Mr. Bell
- VI. Unfinished Business**
- VII. New Business**
- VIII. Closing Remarks**

Adjournment

Expected Meeting Closure

In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

Audit Committee

The regular bi-monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Audit Committee are held in open session on the fourth Thursday of the months listed below. The following are the dates and times for the regular bi-monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, February 28, 2013	9:30 a.m.
Thursday, April 25, 2013	9:30 a.m.
Thursday, June 27, 2013	9:30 a.m.
(Board recess in August)	
Thursday, September 26, 2013	9:30 a.m.
Friday, November 22, 2013	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) are held in open session on the first Thursday of each month. The following are dates and times for the regular monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 3, 2013	9:30 a.m.
Thursday, February 7, 2013	9:30 a.m.
Thursday, March 7, 2013	9:30 a.m.
Thursday, April 4, 2013	9:30 a.m.
Thursday, May 2, 2013	9:30 a.m.
Thursday, June 6, 2013	9:30 a.m.
Wednesday, July 3, 2013	9:30 a.m.
(Board recess in August)	
Thursday, September 5, 2013	9:30 a.m.
Thursday, October 3, 2013	9:30 a.m.
Thursday, November 7, 2013	9:30 a.m.
Thursday, December 5, 2013	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

Environmental Quality and Sewerage Services

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Environmental Quality and Sewerage Services Committee are held in open session on the third Thursday of each month. The following are dates and times for the regular monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 17, 2013	9:30 a.m.
Thursday, February 21, 2013	9:30 a.m.
Thursday, March 21, 2013	9:30 a.m.
Thursday, April 18, 2013	9:30 a.m.
Thursday, May 16, 2013	9:30 a.m.
Thursday, June 20, 2013	9:30 a.m.
Thursday, July 18, 2013	9:30 a.m.
(Board recess in August)	
Thursday, September 19, 2013	9:30 a.m.
Thursday, October 17, 2013	9:30 a.m.
Thursday, October 24, 2013 (Joint Meeting with Water Quality and Water Services, Finance and Budget, and DC Retail Water & Sewer Rates Committees)	9:30 a.m.
Thursday, November 21, 2013	9:30 a.m.
Thursday, December 19, 2013	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

Finance and Budget Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Finance and Budget Committee are held in open session on the fourth Thursday of each month. The following are dates and times for the regular monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 24, 2013	11:00 a.m.
Thursday, February 28, 2013	11:00 a.m.
Thursday, March 28, 2013	11:00 a.m.
Thursday, April 25, 2013	11:00 a.m.
Thursday, May 23, 2013	11:00 a.m.
Thursday, June 27, 2013	11:00 a.m.
Thursday, July 25, 2013	11:00 a.m.
(Board recess in August)	
Thursday, September 26, 2013	11:00 a.m.
Thursday, October 24, 2013 (Joint Meeting with Water Quality and Water Services, Finance and Budget, and DC Retail Water & Sewer Rates Committees)	9:30 a.m.
Friday, November 22, 2013	9:30 a.m.
Friday, December 20, 2013	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, January 24, 2013 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information please contact: Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dewater.com.

DRAFT AGENDA

- | | |
|--|------------------------------|
| 1. Call to Order | Chairman |
| 2. December 2013 Financial Report | Director of Finance & Budget |
| 3. Action Items | Chairman |
| 4. Agenda for December Committee Meeting | Chairman |
| 5. Adjournment | Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The regular bi-monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Governance Committee are held in open session on the second Wednesday of the months listed below. The following are dates and times for the regular bi-monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Wednesday, March 13, 2013	9:00 a.m.
Wednesday, May 8, 2013	9:00 a.m.
Wednesday, July 10, 2013	9:00 a.m.
(Board recess in August)	
Wednesday, September 11, 2013	9:00 a.m.
Wednesday, November 13, 2013	9:00 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

Human Resource and Labor Relations Committee

The regular bi-monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Human Resource and Labor Relations Committee are held in open session on the second Wednesday of the months listed below. The following are dates and times for the regular bi-monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Wednesday, January 9, 2013	11:00 a.m.
Wednesday, March 13, 2013	11:00 a.m.
Wednesday, May 8, 2013	11:00 a.m.
Wednesday, July 10, 2013	11:00 a.m.
(Board recess in August)	
Wednesday, September 11, 2013	11:00 a.m.
Wednesday, November 13, 2013	11:00 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF 2013 MEETING SCHEDULE

DC Retail Water and Sewer Rates Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) DC Retail Water and Sewer Rates Committee are held in open session on the fourth Tuesday of each month. The following are dates and times for the regular monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Tuesday, January 22, 2013	9:30 a.m.
Tuesday, February 26, 2013	9:30 a.m.
Tuesday, March 26, 2013	9:30 a.m.
Tuesday, April 23, 2013	9:30 a.m.
Tuesday, June 25, 2013	9:30 a.m.
Tuesday, July 23, 2013	9:30 a.m.
(Board recess in August)	
Tuesday, September 24, 2013	9:30 a.m.
Thursday, October 24, 2013 (Joint Meeting of the Environmental Quality and Sewerage Services, Water Quality and Water Services, Finance and Budget, and DC Retail Water and Sewer Rates Committees	9:30 a.m.
Tuesday, November 26, 2013	9:30 a.m.
Friday, December 20, 2013	9:30 a.m.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Retail Water and Sewer Rates Committee will hold a meeting on Tuesday, January 22, 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.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dewater.com.

DRAFT AGENDA

- | | |
|---|-------------------------|
| 1. Call to Order | Committee Chairman |
| 2. Monthly Update | Chief Financial Officer |
| 3. Committee Workplan | Chief Financial Officer |
| 4. Emerging Issues/Other Business | Chief Financial Officer |
| 5. Agenda for February 23, 2013 Committee Meeting | Committee Chairman |
| 6. Adjournment | Committee Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The regular monthly meetings of the Board of Directors of the District of Columbia Water and Sewer Authority's (DC Water) Water Quality and Water Services Committee are held in open session on the third Thursday of each month. The following are dates and times for the regular monthly meetings to be held in 2013. All meetings are held at 5000 Overlook Avenue, SW, Washington, DC 20032 unless otherwise indicated. Notice of a location of a meeting other than 5000 Overlook Avenue, SW will be published in the *D.C. Register* and posted on the DC Water's website (www.dcwater.com). A notice will be published in the *D.C. Register* for each meeting with a draft agenda. In addition, a copy of the final agenda will be posted on DC Water's website, and notice of the meeting will be posted at all of DC Water facilities.

Thursday, January 17, 2013	11:30 a.m.
Thursday, February 21, 2013	11:30 a.m.
Thursday, March 21, 2013	11:30 a.m.
Thursday, April 18, 2013	11:30 a.m.
Thursday, May 16, 2013	11:30 a.m.
Thursday, June 20, 2013	11:30 a.m.
Thursday, July 18, 2013	11:30 a.m.
(Board recess in August)	
Thursday, September 19, 2013	11:30 a.m.
Thursday, October 17, 2013	11:30 a.m.
Thursday, October 24, 2013 (Joint Meeting with Water Quality and Water Services, Finance and Budget, and DC Retail Water & Sewer Rates Committees)	9:30 a.m.
Thursday, November 21, 2013	9:30 a.m.
Thursday, December 19, 2013	9:30 a.m.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18432 of John C. Hines, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the rear yard requirements under § 404 and a special exception under § 2516.1, to permit an addition to an existing flat (two-family dwelling) where there is more than one principal structure on a single lot in the R-4 District at premises 1618 5th Street, N.W. (Square 477, Lot 845).

HEARING DATES: October 23, 2012 and December 4, 2012

DECISION DATE: January 8, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a memorandum, dated February 29, 2012, from the Zoning Administrator stating that a review of the Applicant's plans for the subject property indicated that Board of Zoning Adjustment ("Board") approval was required for a special exception pursuant to § 2516.1 to permit more than one principal structure in a Residential district and a variance pursuant to § 404.1 for a structure that does not provide the minimum required rear yard. (Exhibit 4.)

The 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") 2C, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 2C, which is automatically a party to this application. ANC 2C submitted a letter in support of the application, dated July 13, 2012, which indicated that at a duly noticed public meeting of the ANC held on May 2, 2012, with a quorum of commissioners present, the ANC voted unanimously (4:0:0) to support the application. (Exhibit 25.)

The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") submitted a report of no objection to the application. (Exhibit 27.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the rear yard requirements under § 404. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

BZA APPLICATION NO. 18432

PAGE NO. 2

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 in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1 for a special exception under § 2516.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, 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 32.

VOTE: **4-0-1** (Lloyd L. Jordan, Robert E. Miller, Nicole C. Sorg, and Jeffrey L. Hinkle, to Approve; third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 9, 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

BZA APPLICATION NO. 18432

PAGE NO. 3

SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18478 of Rene' D. McCray, pursuant to 11 DCMR §§ 3104.1, for a special exception to allow a free standing carport as an accessory structure under subsection 2300.8, in the R-1-B District at premises 1502 Irving Street, N.E. (Square 4014, Lot 22).

HEARING DATE: January 8, 2013
DECISION DATE: January 8, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The 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”) 5A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5A, which is automatically a party to this application. ANC 5A submitted a letter in support of the application. The Office of Planning (“OP”) submitted a report and testified at the hearing in support of the application.

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 a special exception under subsection 2300.8. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2300.8, 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 requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 7 – Plans) be **GRANTED**.

VOTE: **4-0-1** (Lloyd J. Jordan, Marcie I. Cohen, Nicole C. Sorg and Jeffrey L. Hinkle to APPROVE. The third mayoral member vacant)

BZA APPLICATION NO.18478

PAGE NO. 2

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 9, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18479 of Bruce Joseph and Lois Kampinsky, pursuant to 11 DCMR § 3104.1, for a special exception to allow rear additions to an existing one-family semi-detached dwelling under section 223, not meeting the lot occupancy requirements under section 403, and the side yard requirements under section 405, in the R-1-B District at premises 3814 Woodley Road, N.W. (Square 1816, Lot 34).

HEARING DATE: January 8, 2013

DECISION DATE: January 8, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The 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”) 3C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a letter in support of the application. The Office of Planning (“OP”) submitted a report and testified at the hearing in support of the application.

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 a special exception under subsection 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, 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 requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 8 – Plans) be **GRANTED**.

BZA APPLICATION NO. 18479

PAGE NO. 2

VOTE: **4-0-1** (Lloyd J. Jordan, Marcie I. Cohen, Nicole C. Sorg and Jeffrey L. Hinkle to APPROVE. The third mayoral member vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 9, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18480 of David M. Sohn, pursuant to 11 DCMR § 3104.1, for a special exception pursuant to § 223, for relief from the lot occupancy requirements under § 403.2, rear yard requirements under § 404.1, side yard requirements under § 405.9, and for adding to a nonconforming structure devoted to a conforming use under § 2001.3, to construct a rear deck addition to a one-family dwelling in the R-1-B District at premises 2926 Newark Street, N.W. (Square 2082, Lot 857).¹

HEARING DATE: January 8, 2013

DECISION DATE: January 8, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.² (Exhibit 30.)

The Board of Zoning Adjustment (the "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") 3C, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC3C submitted a resolution in support of the application. The ANC's resolution, dated December 17, 2012, indicated that at a duly noticed, regularly scheduled public meeting of ANC 3C with a quorum of commissioners present, the ANC voted unanimously (8:0) to support the application. (Exhibit 26.)

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 28.) The District Department of Transportation ("DDOT") submitted a report of no objection to the application. (Exhibit 20.) A petition of support for the application that was signed by six neighbors also was submitted for the record. (Exhibit 10.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1 for a

¹ The Applicant revised his plans and amended the application, thereby changing what had been a request for variances to one for a special exception as well as removing a request for court relief under § 406 that was not required. (Exhibit 25.) The caption has been amended to reflect the changes in the application.

² The Applicant submitted a self-certification form (Exhibit 30) that reflects the amended application and which is to substitute for a letter of necessary relief provided by the Zoning Administrator (Exhibit 6). The Applicant also sought clarification from the Zoning Administrator as to what relief was required based on the revised plans. (Exhibit 31.)

BZA APPLICATION NO. 18480

PAGE NO. 2

special exception under § 223, 403.2, 404.1, 405.9, and 2001.3. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, 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 25.

VOTE: **4-0-1** (Lloyd L. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Marcie I. Cohen, to Approve; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 10, 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.

BZA APPLICATION NO. 18480

PAGE NO. 3

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18483 of Sergei Mikhailov and Sara Bakker, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new flat (two-family dwelling) in the R-4 District at premises 1235 4th Street, N.W. (Square 523, Lot 23).

HEARING DATE: January 8, 2013

DECISION DATE: January 8, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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”) 6C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted a letter in support of the application. (Exhibit 27.) The Office of Planning (“OP”) also submitted a report in support of the application. (Exhibit 26.) The DC Department of Transportation expressed no objection to the application. (Exhibit 18.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from § 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a variance from § 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

BZA APPLICATION NO. 18483
PAGE NO. 2

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 9 in the record.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Marcie I. Cohen, and Jeffrey L. Hinkle to Approve; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: January 10, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL

BZA APPLICATION NO. 18483**PAGE NO. 3**

APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-35C
Z.C. Case No. 07-35C
Sheridan Terrace Redevelopment, LLC
(PUD Modifications @ Squares 5869 and 5872)
September 10, 2012

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on May 17, 2012 to consider an application of Sheridan Terrace Redevelopment, LLC, owner of Lots 61-66 in Square 5869 and Lots 49-56, 131-135, 931, 940, 958, 963, 965, 967, 969, 971, 972, 984, and 986 in Square 5872 located in the Hillside neighborhood of Anacostia (“Applicant”), for approval of modifications to a planned unit development (“PUD”) approved pursuant to Z.C. Order No. 07-35. The Commission considered the application pursuant to Chapters 24 and 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. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On February 29, 2012, the Applicant submitted an application to the Commission for approval of modifications to a PUD approved pursuant to Z.C. Case No. 07-35. (Exhibits [“Ex.”] 1-6.) The Applicant’s February 29, 2012 request sought approval for a decrease in the number of units and changes to the site plan and townhouse designs for the unbuilt portion of the PUD project. The Applicant asserted that the modifications were minor in nature and, therefore, could be granted through the Consent Calendar process set forth at 11 DCMR § 3030. The Office of Planning (“OP”) provided its report on March 8, 2012. (Ex. 9.) The Commission considered the case at its March 12, 2012 public meeting. The Commission determined that the request was not minor, removed it from the Consent Calendar, and set down the case for public hearing.
2. The property that is the subject of this application consists of approximately 12 acres of land area and is located on Sheridan Road, S.E., between Pomeroy and Howard Roads, S.E. (Square 5869, Lots 61-66 and Square 5872, Lots 49-56, 131-135, 940, 958, 961, 963, 965, 967, 971, 972, 984, and 986¹).
3. On July 30, 2009, in Z.C. Order No. 07-35A, the Commission approved the Applicant’s first application for three modifications to the approved PUD, as follows:
 - An increase in the apartment building’s ground-floor flex space and a corresponding decrease in the number of parking spaces;

¹ After the Commission approved Z.C. Order No. 07-35, it approved a modification of the PUD to delete Lot 956, and add Lots 984 and 986 through Z.C. Order No. 07-35B. Lot 986 was not included in the PUD-related map amendment.

Z.C. ORDER No. 07-35C
Z.C. CASE No. 07-35C
PAGE 2

- A side yard adjustment at one townhouse lot; and
 - A change in height in one of the townhouse typologies.
4. On October 9, 2009, in Z.C. Order No. 07-35B, the Commission approved the Applicant's second application for modifications to the approved PUD, as follows:
- A change in the approved PUD site boundaries by subdividing one of the original lots into two new lots and deleting the subdivided lot; and
 - An addition of a new lot to include a small portion of a retaining wall and storm water management system that were inadvertently not included in the original PUD site.
5. The Applicant now seeks modifications to the approved PUD. Specifically, the Applicant requests approval to:
- Reduce the number of units by 17 (from 344 to 327 units). The reduction is attributable to:
 - The elimination of 15 townhouse units on the north side of the alley between Stanton Road and Pomeroy Road; and
 - The replacement of 16 two-story stacked units on Pomeroy Road with 11 townhomes (resulting in a loss of five units) and an increase in the number of townhomes at the top of the hill from 21 to 24 (for a net gain of three units);
 - Decrease the number of parking spaces across the site from 255 spaces to 238 spaces, a loss of 17 spaces;
 - Lower the three- and four-story townhouse to two-story units and remove the parking garages associated with these units and substitute surface parking spaces; and
 - Convert the approved motor courts to open landscaped areas and parking spaces along the east-west alley.

Although the approved PUD does not impose specific requirements as to unit tenure (home ownership or rental), the Applicant noted that due to current adverse market conditions, the Applicant intends to convert the remaining unbuilt, for sale units to rental units with rents priced below 60% of Area Median Income ("AMI"). This will result in a

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 3

reduction in for-sale units within the overall PUD from 47% to 25% and a net increase in affordable units (under 60% of AMI) from 32% to 75%. The proposed modifications also result in an overall increase in green space.

6. After proper notice, the Commission held a public hearing on the application on May 17, 2012.
7. At the hearing, the Commission considered and denied party status requests from Andrew Ellis and Gia Allen finding that their interests were not more significantly or uniquely affected by the proposed PUD than those of other persons in the general public as required by § 3022.3 of the Zoning Regulations. Instead, they participated as persons in opposition to the proposed modifications at the hearing.
8. The parties in the case were therefore the Applicant and Advisory Neighborhood Commissions (“ANCs”) 8A and 8C.
10. On February 13, 2012, the Deputy Mayor for Planning and Economic Development (“DMPED”) submitted a letter in support of the proposed modifications. The letter stated that DMPED has committed \$10.5 million for the purpose of financing a portion of the multi-phase PUD project. The letter states that DMPED supports the PUD modification, as completion of the project would catalyze further economic development in Ward 8, create affordable housing, and generate additional tax revenues for the District.
11. On March 6, 2012, the Sheridan Station Steering Committee of the United Black Fund submitted a letter in support of the Applicant’s current request for modification to the south side of the PUD. The Steering Committee cited the ongoing and anticipated future success of Phases I and II of the Sheridan PUD, but acknowledged that current market conditions indicated a less optimistic outlook for completion of the PUD if the current modification is not made. The Steering Committee voted to support the modifications.

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 4

Compliance with Guiding Principles of the Comprehensive Plan

13. The Commission finds that the proposed PUD as modified continues to be not inconsistent with the District Elements of Columbia Comprehensive Plan for the National Capital.

ANC Reports

15. ANC 8C submitted a report in support of the proposed modifications, indicating that with a quorum present, the ANC voted to support the proposed modifications, noting that the current market for for-sale housing is not good at this time and the changes will allow for completion of the development. The ANC indicated that the proposed modifications are preferable to having new vacant houses that cannot be sold.
14. ANC 8A submitted a report in opposition to the modification. The report expresses concern over the increase of affordable housing units at or below 60% of the AMI from 32% to 75% of the project. Thus, instead of the promised mixed-income project, the ANC asserts that the community is now getting an upgraded housing project, which it does not want. The ANC also opposes the increase in rental units, which “serves the interest of a few and has no long term benefit for the ward.” Only significant home ownership would support long-term growth and attract needed retail businesses. Finally, the ANC believes that the reduction in parking spaces will reduce curbside parking opportunities for existing residents and increase risks to pedestrians. A representative of ANC 8A testified in opposition and expressed similar concerns.
15. In response to the concerns expressed by ANC 8A, the Commission decided to defer taking proposed action and instead requested that the Applicant file a submission that addresses the ANC’s concerns and permitted the ANC to thereafter respond.
16. Through its letter dated July 16, 2012, the Applicant indicated that there were several misconceptions as to its proposal. (Ex. 36.) First, ownership units are not being eliminated, but reduced from 165 to 80. This, according to the Washington Economic Partnership, is the fifth largest new construction homeownership project citywide. Second, the proposal will not increase the amount of public housing at Sheridan Station. The amount of public housing units will remain as planned: 110 units. The rental affordable units will in fact be marketed to a similar income group as the 80 for-sale units now under construction. Third, home ownership does not stabilize a neighborhood. In this difficult economic climate many for-sale properties are left unsold and vacant. Finally, the Applicant disagreed that the community was united in its opposition to the change in home ownership percentage.
17. In his July 23rd response, the Chairman of ANC 8A characterized the Applicant’s submission as showing “little commitment to analysis and problem solving” and

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 5

expressed sadness “that the public health, public safety and quality of life concerns of the residents of Hillside have been reduced to a list of ... misconceptions.” (Ex. 37.) The letter then sought to correct these misconceptions as follows:

- The proposal does eliminate” for-sale housing within the project by reducing the number of for-sale unit from 165 to 80;
- The Proposal will, in fact, increase the amount and proportion of public housing at Sheridan Station. The letter does not explain the basis for this assertion, but apparently the ANC equates rental housing with public housing. This portion of the letter argues that, as a result the current low interest rates, home ownership offers greater affordability than rental and that the home ownership market in the District is not as dire as the Applicant suggests;
- Homeownership does stabilize neighborhoods while rental housing destabilizes neighborhoods. The ANC Chair cites the 2012 report of the WhatWorksCollaborative on Building Successful Neighborhoods for the proposition that the home ownership stabilizes communities when a neighborhood, such as Hillside, has an overwhelming majority of very low- to low-income rentals in its housing stock; and
- The ANCs are opposed to the proposed modifications and great weight should be given to such community opposition. The ANC 8A Chair relates his conversation with the ANC 8C Chair, in which the latter indicating that she now had a “different impression” of the application. From this, the ANC 8A Chair concluded that ANC 3C would have submitted a letter in opposition had its Chair known then what she knew now.

18. Through a letter dated July 18, 2012, Counsel for the Applicant requested the Commission to accept a response by the Applicant to the ANC letter. (Ex. 39.) The request asserted that the ANC’s submission had gone beyond the scope of the Commission’s request. The Chairman of the Zoning Commission granted the request.
19. In its response, the Applicant took exception to being characterized as insensitive, argued that external factors, such as tightening credit and stricter underwriter, have posed barriers to home ownership notwithstanding the low interest rates, and noted that the Anacostia housing submarket suffered a far greater loss in value as a result of the economic downturn than the District as a whole. The Applicant closed by noting that it will continue marketing the 80 for-sale units at prices between \$250,000 and \$350,000 notwithstanding that the average home sale price in Anacostia as of April of this year was \$132,431. (Ex. 39.)

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 6

OP Report

20. On May 7, 2012, OP submitted its recommendation of the current requested modifications. OP cited the fact that approval of the requested modifications would allow the Applicant to complete the development in a timely manner and retain its HOPE VI funding. In doing so, the Applicant would “fulfill its aim of providing housing and services for a large underserved population” OP noted that it was concerned with the potential relocation of the trash storage originally provided for the motor court units of the PUD. OP was concerned that relocation of that trash storage under the current proposed modification could pose access problems for the residents of the motor court units. (Ex. 25.) Slide No. 30 of the Applicant’s PowerPoint entitled Trash Dumpster Area Detail shows enhanced landscaping around the dumpsters that responds to OP’s comments. (Ex. 32, Tab A.)

DDOT Report

21. On May 9, 2012, DDOT submitted a report indicating that it supported the original PUD submission as well as the previous modifications and that the proposed modifications do not propose any significant changes from DDOT’s standpoint. (Ex. 26.) Therefore, DDOT recommended approval of the proposed modifications.

Proposed and Final Action

22. On July 30, 2012 the Commission took proposed action, which authorized the transmission of the application to the National Capital Planning Commission (“NCPC”) for the 30-day period of review required by § 492 of the District Charter.
23. By delegated action dated August 30, 2012, the NCPC Executive Director found that the proposed map amendment would not be inconsistent with the Comprehensive Plan for the National Capital, nor would it have an adverse impact on any other federal interest.
24. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on September 10, 2012.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (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 of quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” (11 DCMR § 2400.2.)

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 7

2. Because the modifications proposed by the Applicant could not be approved by the Zoning Administrator pursuant to § 2409.6, the Applicant submitted the proposed modifications to the Commission for approval. And because the modifications were not so minor as to permit their review under the Commission's Consent Calendar procedure, 11 DCMR § 3030, they were processed as a second-stage application. (11 DCMR § 2409.9.)
3. As was the case for the original approval, the Commission, as part of its approval of a modification may grant or impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, or any other applicable zoning requirement.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The modified PUD continues to meet the minimum area requirements of § 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan is embodied in the Zoning Regulations and Map of the District of Columbia.
7. The PUD, as modified, remains consistent with the Comprehensive Plan.
8. The project benefits and amenities, as modified, remain reasonable tradeoffs for the requested development flexibility.
9. The Commission is required under § 3(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC.

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 8

10. As noted, ANCs 8A and 8C submitted written reports. ANC 8A opposes the modification because of the replacement of home ownership units with rental units, the increase in the number of affordable units, and its belief that the decrease in parking space would result in adverse impacts on curbside parking and pedestrian safety. The Commission responds as follows:
 - (a) The ANC's opposition to the reduction in home ownership units is not relevant to this proceeding. There was no condition in the order approving this PUD mandating any ratio of home ownership to rental units. None of the modifications sought pertain to this issue and none is needed. Although the Applicant proffered that the "revitalization plan features a housing mix tailored to homeowners and renters with a wide spectrum of incomes." (Z.C. Order No. 07-35, Finding of Fact No. 20(a)), the Commission finds that this continues to be the case with the retention of the 80 home ownership units;
 - (b) The grant of the modification will not result in an "upgraded housing project". The number of public housing units will not increase and the affordable units will be marketed to a similar income group as the 80 home ownership units now under construction; and
 - (b) As reflected in Finding of Fact number 21, the elimination of 17 parking spaces will not have an adverse impact on curbside parking or pedestrian safety. Seventeen units will also be eliminated so that only a slight increase in the ratio of parking spaces to units will result. In addition, the Commission credits the Applicant's traffic expert that rental housing is less associated with car ownership.
11. ANC 8C submitted a report in support of the modification. The Commission concurs with ANC 8C's finding that the proposed modifications will facilitate the completion of this important project. ANC 8A's assertion that ANC 8C's Chair has changed her view is no basis for invalidating ANC 8A's report. Only a second letter rescinding the first could accomplish that, and none was received. The Commission also rejects the implicit suggestion of ANC 8A that ANC 8C should not be given great weight because of an impending boundary change. The Commission interprets the ANC statute as requiring it to give great weight based upon the ANC boundaries that exist on the date of its decision.
12. 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. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.
13. The application for the modified PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

Z.C. ORDER No. 07-35C
Z.C. CASE No. 07-35C
PAGE 9

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for modifications to a PUD approved pursuant to Z.C. Order Nos. 07-35, 07-35A, and 07-35B and orders the revision to four of the prior conditions of approval as follows:

1. Condition No. 1 of Z.C. Order No. 07-35 is hereby revised to read:

1. The PUD shall be developed in accordance with the site plans submitted as Exhibits 51 and 64 as set forth in Zoning Commission Order No. 07-35, as modified by Exhibit 3 in the record of Zoning Commission Case No. 07-35A and as further modified by Exhibit 3 included in the record of this case.

2. Condition No. 2 of Z.C. Order No. 07-35 is hereby revised to read:

2. In accordance with the plans cited above, the approved PUD shall consist of a total of 327 dwelling units, distributed as follows by building type:

(a)	An apartment building	104
(b)	Single-family Stacked Townhouses	52
(c)	Single-family Townhouses	115
(d)	Manor homes, with four units in each of the 14 buildings	56
	Total dwelling units	327

3. Condition No. 4 of Z.C Order No. 07-35 is hereby revised to read:

4. Approximately seventy-five percent (75%) of the dwelling units will be reserved and made affordable to households having 60% or less of Area Median Income, and approximately twenty-five percent (25%) will be moderate-income units serving households having incomes between 60% and 80% of AMI in accordance with the requirements of the public agencies providing financial subsidies for this purpose.

4. Condition No. 5 of Z.C. Order No. 07-35, as revised in Z.C. Order No. 07-35A, is hereby revised to read:

Z.C. ORDER NO. 07-35C
Z.C. CASE NO. 07-35C
PAGE 10

5. There shall be a minimum of 238 off-street parking spaces provided in the project.

All other conditions in Z.C. Order No. 07-35 remain in full force and effect.

On July 30, 2012, upon the motion of Commissioner May, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to approve; 3rd Mayoral appointee position vacant, not voting).

On September 10, 2012, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-0** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; 3rd Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 18, 2013.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS**

TIME AND PLACE: **Each Monday @ 6:00 P.M. that a Public Meeting is
Scheduled to be Held for the Remainder of the
Calendar Year & January 13, 2014
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001**

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act (“Act”)(D.C. Official Code § 2-576), hereby provides notice it will hold closed meetings, either in person or by telephone conference call, at the time and place noted above, regarding cases noted on the agendas for meetings to be held for the remainder of this calendar year and January 13, 2014, in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate, but not voting, on the contested cases, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY,
AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT
OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN,
SECRETARY TO THE ZONING COMMISSION.**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS**

TIME AND PLACE: **Tuesday, February 26, 2013, @ 9:3 a.m.**
Office of Zoning Conference Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

The Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act (“Act”)(D.C. Official Code § 2-576), hereby provides notice it will hold a closed meeting at the time and place noted above for the purpose of receiving training as permitted by D.C. Official Code § 2-575(b)(12).

**ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY,
AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT
OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN,
SECRETARY TO THE ZONING COMMISSION.**

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

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In the Matter of:)
)
Fraternal Order of Police/Metropolitan)
Police Department Labor Committee,)
)
Petitioner,)
)
)
v.)
)
District of Columbia)
Metropolitan Police Department,)
)
Respondent.)
<hr/>)

PERB Case No. 11-A-08

Opinion No. 1340

DECISION AND ORDER

I. Statement of the Case

Petitioner Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union” or “FOP”) filed an Arbitration Review Request (“Request”) seeking review of an arbitration award (“Award”) in which Arbitrator James Conway found that Respondent Metropolitan Police Department (“MPD”) did not violate the parties’ collective bargaining agreement (“CBA”) when it temporarily adjusted the hours of the Third District Power Shift for operational reasons. (Award at 13). In its Request, FOP alleges the Award on its face is contrary to law and public policy. (Request at 2). MPD did not file an opposition to the Request.

The Arbitrator was presented with the following issues:

- (1) Did MPD’s action in unilaterally changing the tours of duty for members of the Third District Power Shift violate Articles 4¹ and/or 24² of the [CBA], Special Order 99-20, or related provisions of the D.C. Code?

¹ Article 4 (“Management Rights”) of the parties’ CBA states:

The Department shall retain the sole right, authority, and complete discretion to maintain the order and efficiency of the public service entrusted to it, and to operate and manage the affairs of the Metropolitan

Decision and Order
PERB Case No. 11-A-08
Page 2 of 5

(2) If so, what is the appropriate remedy?

(Award at 3).

The issue before the Board is whether “the award on its face is contrary to law and public policy.” D.C. Code §1-605.02(6).

II. Discussion

A. The Award

The Arbitrator found the following facts:

On March 30, 2007, the Third District posted a new work schedule notifying members of the “Power Shift” shift that effective April 15, 2007, their new reporting times would be changed from 1930 to 2130 hours. On April 12, 2007, members of the shift submitted [a group grievance] alleging violation of [CBA] Articles 4 – “Management Rights” – and 24 – “Scheduling” – of the [CBA], as well as Special Order 99-20 – “Watch and Days Off Work Schedule.” Specifically, the grievance asserted that Article 4 required the MPD to act in accordance with applicable laws, rules, and regulations; that Special Order 99-20 provides that the assignment of members to watches and days off must be in accordance with the CBA; and that Article 24 provides that members will be assigned days off and tours that are either fixed or rotating on a known schedule in accordance with their preferences and seniority. By the changes announced, the grievance

Police Department in all aspects including, but not limited to, all rights and authorities held by the Department prior to the signing of this Agreement.

Such management rights shall not be subject to then negotiated grievance procedure or arbitration. The Union recognizes that the following rights, when exercised in accordance with the applicable laws, rules, and regulations, which in no way are wholly inclusive, belong to the Department:

1. To direct employees of the Department;
2. To determine the mission, budget, organization, number of employees, number, type, and grade of employees assigned, the work project, tour of duty, methods and processes by which such work is performed, technology needed, internal security practices, or relocation of facilities...

² Article 24, Section 1 (“Scheduling”) of the parties’ CBA states:

Each member of the Bargaining Unit will be assigned days off and tours of duty that are either fixed or rotated on a known regular schedule. Schedules shall be posted in a fixed and known location. Notice of any changes to their days off or tours of duty shall be made fourteen (14) days in advance. If notice is not given of changes fourteen (14) days in advance the member shall be paid, at his or her option, overtime pay or compensatory time at the rate of time and one-half, in accordance with the provision of the Fair Labor Standards Act. The notice requirement is waived for those members assigned to the Executive Protection Unit and the Office of Professional Responsibility.

Decision and Order
PERB Case No. 11-A-08
Page 3 of 5

maintained, [MPD] had scheduled the group for days off and tours different than those bid for and assigned in violation of those terms and regulations.

(Award at 2-3).

First, the Arbitrator found Article 4 of the CBA to be a “robust declaration of negotiated powers deemed necessary for [MPD] to discharge its obligations to the public.” (Award at 8). Article 4 gives MPD the “sole right, authority, and complete discretion’ to efficiently manage its affairs, including ‘to determine the... tour of duty... by which such work is performed.’” *Id.*

Next, the Arbitrator considered FOP’s argument that MPD violated the CBA by changing the hours the Power Shift members had bid for without notice to FOP. (Award at 8). Noting that MPD posted the new schedules in a “fixed and known location” fourteen days in advance, the Arbitrator found it clear that “no provision of Article 24 has been identified requiring advance notice of such changes to the Union.” *Id.*

Finally, the Arbitrator addressed FOP’s contention that bargaining was required because MPD’s actions were not in accordance with applicable laws, rules, and regulations – particularly Special Order 99-20³. (Award at 8-9). The Arbitrator summarized Special Order 99-20 as providing that the assignment of members to watches and days off will be (i) based on operational needs; (ii) will be done in accordance with the procedures set forth therein; and (iii) will be done in a manner consistent with the provisions of the CBA. (Award at 10). The Arbitrator found nothing in Special Order 99-20 that could be construed as limiting MPD’s authority to establish or adjust tours of duty, and found that the parties’ CBA takes precedence in any conflict between the CBA and Special Order 99-20. *Id.* The Arbitrator concluded that the new Power Shift work schedule did not violate Special Order 99-20. (Award at 12-13).

B. Analysis

The Comprehensive Merit Personnel Act (“CMPA”) authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6) (2001 ed.).

³ The relevant portion of Special Order 99-20 states:

Change of watch or days off assignments will not normally be made except as deemed appropriate based upon operational needs and in accordance with the bargaining unit contract. Circumstances may include the following:

1. Officers or sergeants placed on Administrative Leave, Extended Sick Leave, Limited Duty, or Non-Contract as they deem appropriate.
2. Operational needs of the districts such as covering special events or circumstances, and only for the duration of the event and in accordance with the existing collective bargaining agreements.

Decision and Order
PERB Case No. 11-A-08
Page 4 of 5

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. See *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); see also *District of Columbia Public Schools and American Fed'n of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *Fraternal Order of Police/Dep't of Corrections Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

By submitting the grievance to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based." *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004). Disagreement with the arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law or public policy. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984).

In its Request, FOP alleges that the Award is contrary to law and public policy because MPD's actions were prohibited by the CBA, and because MPD failed to negotiate with FOP over the new Power Shift schedule. (Request at 5, 7).

Specifically, FOP contends that the Arbitrator failed to consider Article 24, Section 2 of the CBA, which states that "[t]he Chief or his/her designee may suspend Section 1 on a Department wide basis or in an operational unit for a declared emergency, for crime, or for an unanticipated event." (Request at 5). FOP alleges that MPD failed to comply with Article 24, Section 1 because it failed to notify FOP of the scheduling changes, and that MPD's failure to notify FOP was not due to a declared emergency, crime, or unanticipated event. (Request at 5-6).

To the contrary, the Arbitrator found that MPD complied with Article 24, Section 1 by posting the new schedules in a "fixed and known" location fourteen days prior to the effective date. (Award at 8). Further, Article 24, Section 1 requires notice to the *employees*, not FOP, though the Arbitrator "pass[ed] without comment the question of whether it may have promoted sound labor relations to provide notice to the FOP." *Id.* As MPD had not suspended Article 24, Section 1, there was no need for Article 24, Section 2's declaration of an emergency, crime, or an unanticipated event. FOP's allegation is simply a disagreement with the Arbitrator's findings,

Decision and Order
PERB Case No. 11-A-08
Page 5 of 5

and as such is not a sufficient basis for concluding that the Award is contrary to law or public policy. *See Metro. Police Dep't*, Slip Op. No. 85.

Additionally, FOP alleges that the Award violates law and public policy because MPD failed to negotiate the Power Shift scheduling changes. (Request at 7). FOP contends that tours of duty are a term and condition of employment, and unilateral changes in terms and conditions of employment violate D.C. Code § 1-617.04(a)(5). (Request at 9). FOP is correct that a unilateral change to the terms and conditions of employment violates law and public policy, but the Arbitrator found that Article 4 grants management the right to determine tours of duty. (Award at 8). Further, Article 4 dovetails with D.C. § 1-617.08(a)(5)(A), which grants management the "sole right" to determine "the mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty." FOP disagrees with the Arbitrator's conclusion on this issue, and the Board will not modify or set aside the Award on that basis. *See Metro. Police Dep't*, Slip Op. No. 85.

Therefore, FOP's Arbitration Review Request is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

November 9, 2012

CERTIFICATE OF SERVICE

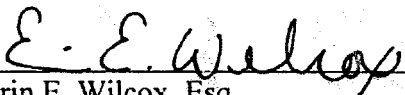
This is to certify that the attached Decision and Order in PERB Case No. 11-A-08 was transmitted via U.S. Mail and e-mail to the following parties on this the 9th day of November, 2012.

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Erin E. Wilcox, Esq.
Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:
District of Columbia
Metropolitan Police Department,
Petitioner,
v.
Fraternal Order of Police/Metropolitan
Police Department Labor Committee,
Respondent.
PERB Case No. 11-A-10
Opinion No. 1341

DECISION AND ORDER

I. Statement of the Case

Petitioner, District of Columbia Metropolitan Police Department ("Petitioner" or "MPD") filed an Arbitration Review Request ("Request") seeking review of an arbitration award ("Award") in which the Arbitrator found that MPD must reinstate Grievant Robert Dixon, Jr. ("Grievant"). (Award at 8). In its Request, MPD alleges the Arbitrator was without or exceeded her authority, and that the Award on its face is contrary to law and public policy. (Request at 2). Respondent, Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Respondent" or "FOP") filed an Opposition to the Arbitration Review Request ("Opposition").

Arbitrator Lucretia Dewey Tanner was presented with the following issues:

- (1) [D]id the adverse action panel make sufficient factual findings;
(2) Did substantial evidence exist to find the Grievant guilty; and
(3) Was termination an appropriate penalty.

(Award at 1).

The Arbitrator found that: (1) the Grievant should be reinstated to his former status, with seniority, to the time of his termination; (2) the termination be removed from the Grievant's

Decision and Order
PERB Case No. 11-A-10
Page 2 of 5

personnel records; (3) the Grievant's sick leave be restored and reinstated; (4) any money the Grievant withdrew from the pension fund be refunded at the Grievant's option with no penalties incurred; and (5) the Grievant's returning pay should reflect all pay increases he would have received if he had remained with MPD, and the increases should be paid in a lump sum, with the current pay at the current rate for the Grievant's rank. Further, the Arbitrator determined that the parties should share attorneys' fees. (Award at 8).

The issues before the Board are whether "the arbitrator was without or exceeded his or her jurisdiction," and whether "the award on its face is contrary to law and public policy." D.C. Code §1-605.02(6).

II. Discussion

A. Facts

The Arbitrator found that on February 19, 2006, the Grievant was arrested by the Maryland State Police and charged with first degree assault and second degree assault for intentionally following and ramming his vehicle into a vehicle containing his wife and a companion. (Award at 1-2). The Grievant was brought before a judicial officer in the District Court of Maryland for Prince George's County and charged with first and second degree assault. (Award at 2). Additionally, a final protective order was issued against the Grievant, and he was released under bond. *Id.* The charge of first degree assault was later dropped. *Id.*

On June 16, 2006, the Grievant was served with notice of a proposal to terminate his employment with the MPD. (Award at 2). The charges were "conduct unbecoming," conviction, and "failure to obey orders and directives (failure to make timely and proper notification of his arrest and or criminally charged for any misconduct in any jurisdiction)." *Id.* The Grievant requested a hearing, and a hearing took place on August 30 and September 7, 2006. (Award at 3). Prior to the hearing, the Grievant submitted a letter to the FOP certifying that he had attended eighteen consecutive sessions "relating to skills enabling him to behave in an appropriate manner." *Id.* The hearing panel found the Grievant guilty of the charges against him, and recommended termination. *Id.* The Grievant's appeal was denied, and the Grievant was terminated effective December 8, 2006. *Id.*

B. Position of MPD before the Board

In its Request, MPD contends that the Arbitrator failed to address all of the issues presented to her, thereby modifying the provisions of the parties' collective bargaining agreement ("CBA"). MPD goes on to state that:

[t]he Arbitrator devotes one paragraph to discussion of the basis for reaching her conclusion. Although the paragraph does address issue number three, whether or not termination is the appropriate remedy, there is no mention of issues one and two. The Award makes clear that the Arbitrator did not determine termination to be an appropriate remedy for

Decision and Order
PERB Case No. 11-A-10
Page 3 of 5

the Grievant's misconduct. The Award also makes clear that awarding Grievant five years of back pay for the time he was in terminated status represents too great a windfall. However, absent any discussion regarding issues one and two, the parties are forced to draw their own conclusions regarding these issues.

(Request at 6) (internal citations omitted). From this, MPD concludes that the Arbitrator's decision not to award back pay for the Grievant's five year "suspension" supports MPD's position that the Arbitrator, "despite finding substantial evidence to justify arriving at a conclusion contrary to the Panel's conclusion, also found that substantial evidence exists in support of the Panel's guilty findings for some, if not all, of the charges and specifications." (Request at 6).

Further, MPD contends that substantial evidence supporting the MPD panel's findings means that reinstating the Grievant would violate an explicit, clearly articulated public policy against reinstating an officer found guilty of engaging in felonious misconduct. (Request at 6-7). MPD contends that the fact that all criminal charges against the Grievant were dropped does not justify the Arbitrator's finding that termination was not an appropriate remedy because District Personnel Manual § 1603.5(a) allows for disciplinary action for "[a]ny act or omission which constitutes a criminal offense, **whether or not such act or omission results in a conviction.**" (Request at 7) (emphasis in original). MPD cites to *Boston v. Boston Police Patrolmen's Association* for the position that "[f]or an arbitration award to violate public policy, it need not violate the letter of the statute; rather, felonious misconduct sufficiently meets the standard," as well as that "[i]t is the felonious misconduct, not a conviction of it, that is determinative." 824 N.E.2d 855, 862 (Mass. 2005).

Additionally, MPD alleges that the Award is susceptible to more than one interpretation, and is therefore ambiguous. (Request at 8). MPD asks that the Award be vacated or, at minimum, remanded for clarification. *Id.*

C. Position of FOP before the Board

In its Opposition, FOP contends that MPD has failed to identify any public policy that is violated by the Award, and that MPD has not articulated a reason for its allegation that the Arbitrator lacked the authority to rescind the termination and reinstate the Grievant. (Opposition at 3). FOP alleges that MPD's Request "amounts to nothing more than a mere disagreement with the Arbitrator's decision." (Opposition at 5).

FOP disputes MPD's allegation that substantial evidence exists in support of the MPD panel's guilty verdict because the Arbitrator declined to award the Grievant full back pay. (Opposition at 4). Instead, FOP states that the Arbitrator "clearly concluded after review that the decision to find Grievant guilty of the underlying charges and specifications was faulty." *Id.* In support, FOP quotes from the Award: "[i]t appears to this Arbitrator that there are sufficient contradictions in the record to arrive at a differing conclusion... The charge that Mrs. Dixon's car was not rammed is not apparent from the photos. Further, testimony indicates that [the

Decision and Order
PERB Case No. 11-A-10
Page 4 of 5

companion] turned the car into the Grievant's vehicle." (Opposition at 4) (*quoting* Award at 7). The Arbitrator's language that "termination is not an appropriate penalty," and the fact the Arbitrator mentioned that the charges against the Grievant were dropped, do not overcome the lack of substantial evidence to support the MPD panel's conviction. (Opposition at 5).

D. Analysis

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6) (2001 ed.).

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Metro. Police Dep't and Fraternal Order of Police/Metro. Police Dep't Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); *see also District of Columbia Public Schools and American Fed'n of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *FOP/DOC Labor Committee v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

By submitting the grievance to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based." *District of Columbia Metro. Police Dep't v. Fraternal Order of Police/ Metro. Police Dep't Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *District of Columbia Metro. Police Dep't and Fraternal of Police, Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004). Disagreement with the arbitrator's findings is not a sufficient basis for concluding that an award is contrary to law or public policy. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 31 DC Reg. 4159, Slip Op. No. 85, PERB Case No. 84-A0-05 (1984).

In the instant case, MPD has failed to specify applicable law and definite public policy that mandates the Arbitrator arrive at a different result. As the Court of Appeals has stated, the Board must "not be led astray by our own (or anyone else's) concept of 'public policy' no matter how tempting such a course might be in any particular factual setting." *District of Columbia Department of Corrections v. Teamsters Union Local 246*, 54 A.2d 319, 325 (D.C. 1989). In the absence of a clear violation of law and public policy evidence on the face of the Award, the Board may not modify or set aside the Award as contrary to law and public policy. Therefore, MPD's allegation must be dismissed.

Decision and Order
PERB Case No. 11-A-10
Page 5 of 5

Additionally, MPD alleges that because the Arbitrator failed to address the issues presented to her, she modified the provision of the CBA and thus exceeded her jurisdiction. (Request at 6). This argument represents a mere disagreement with the Arbitrator's decision, and cannot form the basis for modifying or overturning the Award. *Metro. Police Dep't, Slip Op. No. 85 (1984)*. Therefore, this allegation must be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

November 9, 2012

CERTIFICATE OF SERVICE

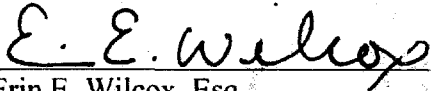
This is to certify that the attached Decision and Order in PERB Case No. 11-A-10 was transmitted via U.S. Mail and e-mail to the following parties on this the 9th day of November, 2012.

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Erin E. Wilcox, Esq.
Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:)	
)	
Leonard Watson,)	
)	PERB Case No. 12-U-32
Complainant,)	
)	Opinion No. 1342
v.)	
)	AMENDED
District of Columbia Housing Authority)	
)	
and)	
)	
American Federation of Government)	
Employees, Local 2725,)	
)	
Respondents.)	

DECISION AND ORDER

I. Statement of the Case

Complainant Leonard Watson ("Mr. Watson" or "Complainant") filed an unfair labor practice complaint ("Complaint") and an amended unfair labor practice complaint ("Amended Complaint") against Respondents District of Columbia Housing Authority ("DCHA") and American Federation of Government Employees, Local 2725 ("Local 2725" or "Union"), alleging violations of D.C. Code § 1-617.03 and 1-617.04(b)(2). (Amended Complaint at 3). Specifically, Mr. Watson alleges that DCHA "[failed] to "honor a collective bargaining agreement" with the Union when it did not pay bargaining union members a 2.970% increase beginning on October 1, 2011. (Amended Complaint at 1-2). Additionally, Mr. Watson alleges that Local 2725 President Eric Bunn engaged in "complicit behavior in that he unilaterally waived... bargaining members' property rights..." (Amended Complaint at 1).

DCHA filed an Answer and Motion to Dismiss ("DCHA Answer") on October 12, 2012. In its Answer, DCHA admits that it has not paid the 2.970% pay increase, and further states that pursuant to a Memorandum of Understanding between DCHA and Local 2725, DCHA has requested that the parties reopen negotiations regarding wages, and that the issue is currently the

Decision and Order
PERB Case No. 12-U-32
Page 2 of 3

subject of a grievance. (DCHA Answer at 2). DCHA raises the affirmative defenses that the Complaint fails to state a claim upon which relief can be granted, Adrienne Todman is not a proper party to the Complaint, PERB lacks jurisdiction over this matter, and the Complaint is untimely. (DCHA Answer at 3). DCHA requests that the Board dismiss the Complaint with prejudice. *Id.*

Local 2725 filed an Answer and Motion to Dismiss on October 4, 2012 (“Local 2725 Answer”). In its Answer, Local 2725 admits that DCHA did not pay the 2.970% pay increase, and that the matter is the subject of pending arbitration. (Local 2725 Answer at 2). Local 2725 denies that Eric Bunn is the exclusive representative of any unit of employees. (Local 2725 Answer at 3). Local 2725 raises the affirmative defenses that the Complaint fails to state a claim upon which relief may be granted, Eric Bunn is not a proper party to the Complaint, the Board lacks jurisdiction over the matter, the requested remedy is not available at PERB, and the Complaint is untimely. *Id.* Local 2725 requests the Board dismiss the Complaint. (Local 2725 Answer at 4).

II. Discussion

Complainant alleges that:

[o]n February 4, 2011, [Local 2725] entered into a Memorandum of Understanding (“MOU”) with the DCHA to amend Article 37 of the collective bargaining agreement. Pursuant to Section C of the MOU, DCHA agreed to pay an increase to the bargaining unit employees of 2.970%, effective October 1, 2011. To date, DCHA has failed to honor the terms of the MOU.

(Amended Complaint at 2). Further, Complainant asks the Board to “order both Respondents to reach an immediate agreement and pay the 2.970% increase to all affected collective bargaining unit members retroactively back to October 2011.” (Amended Complaint at 3).

The Board cannot grant Mr. Watson’s request because the Amended Complaint is untimely.

Board Rule 520.4 states that unfair labor practice complaints shall be filed “not later than 120 days after the date on which the alleged violations occurred.” The Board does not have jurisdiction to consider unfair labor practice complaints outside of the 120-day window. *See, e.g., Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995) (“[T]ime limits for filing appeals with administrative adjudicative agencies... are mandatory and jurisdictional.”).

The Board has held that the 120-day period for filing a complaint begins when the Complainant knew or should have known of the acts giving rise to the violation. *Pitt v. D.C. Department of Corrections, et al.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (Dec. 24, 2009). DCHA failed to honor the terms of the MOU on October 1, 2011,

Decision and Order
PERB Case No. 12-U-32
Page 3 of 3

when it did not pay the 2.970% increase to bargaining unit members. On that date, Complainant knew or should have known of the non-compliance which gave rise to the instant violation. The Amended Complaint, filed over ten months after October 1, 2011, is untimely and thus beyond the Board's jurisdiction. Therefore, the Amended Complaint must be dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Leonard Watson's Amended Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

November 9, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Amended Decision and Order in PERB Case No. 12-U-32 was transmitted via U.S. Mail and e-service to the following parties on this the 30th day of November, 2012.

Ms. Nicola Grey, Esq.
Office of the General Counsel
DC Housing Authority
1133 North Capitol St., NE
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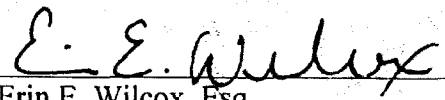
U.S. MAIL and E-SERVICE

Ms. Brenda Zwack, Esq.
O'Donnell, Schwartz & Anderson, PC
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Suite 1200
Washington, D.C. 20005

U.S. MAIL and E-SERVICE

Mr. Leonard Watson
2437 Wagner St., SE
Washington, DC 20020

U.S. MAIL


Erin E. Wilcox, Esq.
Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
The National Association of Government)	
Employees, Local R3-07)	
)	
)	PERB Case No. 10-U-32
Complainant,)	
)	Opinion No. 1343
v.)	
)	
The Government of the District of Columbia)	
Office of Unified Communications;)	
Mr. Bennie Coates, Supervisor)	
)	
)	
Respondents.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

In its complaint (the "Complaint"), the National Association of Government Employees, Local R3-07 (the "Complainant" or the "Union") alleges that Mr. Bennie Coates, while serving as a supervisor in the Office of Unified Communications (the "Agency"), interfered with the efforts of Union officials to perform their official functions. The Complaint alleges that this interference violated D.C. Code 1-617.04(a)(1) and (2), as well as the collective bargaining agreement ("CBA") between the Union and the Agency.

The Agency filed its Answer to Unfair Labor Practice Complaint (the "Answer") asserting that the Public Employee Relations Board (the "Board") is without authority to resolve what is essentially a collective bargaining contract dispute between the Agency and the Union. Also, the Agency asserted that the underlying facts are in dispute.

The issues before the Board are whether the proper parties are before the Board, whether this Board has jurisdiction over the alleged violations of the CBA, and how this matter should proceed.

Decision and Order
PERB Case No. 10-U-32
Page 2

II. Discussion

A. Capacity of Mr. Bennie Coates

The Complaint alleges that Mr. Coates committed the alleged violations in his official capacity and seeks his removal from that capacity. (Complaint, pages 2 and 3). In *Fraternal Order of Police v. District of Columbia*, Slip Op. No. 1118, PERB Case No. 08-U-41 (Aug. 19, 2011), the Board quoted a decision of the Superior Court opining that a suit against an officer or agent of the government in his official capacity is a suit against the government, not against the officer or agent, and that when the government is named as a defendant, the addition of an officer or agent in his official capacity is “redundant and an inefficient use of judicial resources.” *Id.* at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009)). Therefore, the Board held that “[s]uits against the District officials in their official capacity should be treated as suits against the District.” *Id.* at 5.

The Comprehensive Merit Personnel Act empowers the Board to “[d]ecide whether unfair labor practices have been committed and issue an appropriate remedial order.” D.C. Code § 1-605.02(3). The presence of Mr. Coates as an additional respondent does not assist the Board in deciding whether an unfair labor practice has been committed. In short, it is “redundant and an inefficient use of judicial resources.” *Fraternal Order of Police*, Slip Op. No. 1118 at pp. 4-5 (quoting *AFGE Local 1403 v. District of Columbia*, Case 2008-CA-8472 (July 21, 2009)).

Therefore, Mr. Coates should be dismissed as a named respondent.

B. Alleged Unfair Labor Practice

In its Complaint, the Union has made factual allegations about actions taken by the Agency. (E.g. Complaint, at 2-3). In its Answer, the Agency has asserted that those factual allegations are incorrect (Answer, at 2-4). The Board believes that is a matter best determined after the establishment of a factual record, through an unfair labor practice hearing.

Therefore, all claims against Mr. Coates are not properly before the Board and should be dismissed. The remaining factual issues may be established through an unfair labor practice hearing, unless resolved through mediation.

ORDER

IT IS HEREBY ORDERED THAT:

1. Mr. Bennie Coates is dismissed as a respondent.
2. The unfair labor practice claim by the National Association of Government Employees, Local R3-07, is best determined by establishment of a factual record through an unfair

Decision and Order
PERB Case No. 10-U-32
Page 3

labor practice hearing. That dispute will first be submitted to the Board's mediation program to allow the parties the opportunity to reach a settlement by negotiating with one another with the assistance of a Board appointed mediator.

3. The parties will be contacted to schedule the mandatory mediation within seven (7) days of the issuance of this Decision and Order.
4. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

November 8, 2012

Decision and Order
PERB Case No. 10-U-32
Page 4

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-32 is being transmitted via U.S. Mail and electronic mail to the following parties on this the 9th day of November, 2012.

RosaMary Davenport
National Representative
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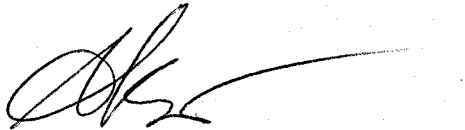
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Vincent Fong
President
NAGE Local R3-07
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Clinton, MD 20735

U.S. MAIL

Nina McIntosh
Jonathan O'Neill
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District of Columbia
Office of Labor Relations
And Collective Bargaining
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Washington, D.C. 20001

U.S. MAIL



Adessa Barker
Administrative Assistant

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
District of Columbia Metropolitan Police)	
Department)	
)	PERB Case No. 12-A-05
	Petitioner,)	
)	Opinion No. 1344
	v.)	
)	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee (on behalf of)	
Crystal Dunkins))	
	Respondent.)	
_____)	

DECISION AND ORDER

Grievant Crystal Dunkins ("Grievant") was terminated by the D.C. Metropolitan Police Department ("MPD" or "Petitioner") on charges arising out of her arrest for assault, child abuse, and allowing a child to be confined and unattended. Arbitrator Herbert Fishgold set aside the termination and reduced it to a 30-day suspension. The MPD appeals to the Board from that arbitration award ("Award").

I. Statement of the Case

The arbitrator found the following facts:

The incident at issue occurred in November 2006, at which time Officer Dunkins had been a member of the MPD for over 12 years. She was then a single mother of two girls - Jasmond (age 7) and Diamond (age 9), and lived with them in Waldorf, Maryland. Both Jasmond and Diamond attended Wade Elementary School in Waldorf, and lived close enough to walk to school each morning.

On Thursday, November 16, 2006, while at school, Jasmond was sent to see the school nurse because her arms were hurting. Sally Krevey, the school nurse, noticed several lengthy marks on both arms, which she believed to have been inflicted by a long, thin object. At approximately noon Ms. Krevey called Officer Dunkins concerning the marks on Jasmond's arms. During that brief conversation, Grievant stated, "You don't have to go any

Decision and Order
PERB Case No. 12-A-05
Page 2

further, I beat her." Ms. Krevey then informed Walter Williams, the pupil personnel worker for Charles County Public Schools, about her observation. He then examined Jasmond and determined that the marks were made by a belt.

Detective Scott Fetterolf, from the Special Victims Unit for the Charles County Sheriff's Office and Daniele Kennedy, a child protective service investigator, went to the school the next day to investigate. They spoke with Jasmond, who told them that Grievant beat her with a belt because she and her sister went outside when Grievant had told them to stay inside while she ran an errand. Both Fetterolf and Kennedy, upon examining Jasmond's arms, agreed that the injuries looked like bruises from being beaten by a belt intentionally.

Jasmond further told them that her mother beat Diamond with a belt and regularly left them at home alone; that Grievant is not at home in the mornings when the girls need to go to school, and that they dress and feed themselves, and then walk to school. After school, according to Jasmond, they walk home by themselves, and they are alone until Grievant returns around 5:30pm. Diamond confirmed her sister's story.

On November 20, 2006, following the end of the school day, Detective David Kelly and Ms. Kennedy went to Grievant's home to check on the well-being of Jasmond and Diamond. Jasmond answered the door, and told them that Diamond would be right back, and that they were home alone. When Diamond returned, Kennedy called Grievant and asked her to return home. Shortly thereafter, Grievant returned home and began yelling at the girls for letting Kelly and Kennedy into the house.

They then questioned Grievant about her methods of discipline, and leaving children her daughters' age at home alone, which was against the law. Grievant told them, "Yeah I beat her" and "I'll [probably] beat them again." It was obvious to Kelly and Kennedy that Grievant was very upset by their being there. They then left Grievant's residence and did not place her under arrest at the time.

Thereafter, on November 21, 2006, Detective Fetterolf placed Grievant under arrest, and she was subsequently charged with (1) first degree assault; (2) second degree assault; (3) second degree child abuse; (4) reckless endangerment; and (5) confining an unattended child. In a pre-sentence agreement, the State of Maryland agreed to dismiss all charges in exchange for a guilty plea of confining an unattended child, and agreeing to complete a parental training course in exchange for five years' probation.

The MPD then issued a Notice of Proposed Adverse Action, issued by former MPD Assistant Chief Sharon Cockett, charging Grievant with one charge each of conduct unbecoming an office[r] and committing an act that constitutes a crime. Each charge was supported by specifications and allegations that Grievant failed to properly care for her children. The proposed penalty was termination.

Grievant was served with a copy of the Notice, and on March 9, 2007, she requested a departmental hearing. On April 12, 2007 and May 1, 2007, Grievant appeared before an Adverse Action Panel to contest her proposed removal. The Panel found Grievant guilty of all charges and specifications based on the documentary and testimonial evidence

Decision and Order
PERB Case No. 12-A-05
Page 3

presented by the Department. The Panel then recommended a total of 30 days suspension without pay.

Grievant then appealed the Panel's decision, and Assistant Chief Cockett of the Office of Human Services (ACHS) reviewed the Panel's findings and conclusions, and determined that the recommended penalty, which reduced the original proposed termination, was inconsistent with the misconduct. After weighting all aggravating and mitigating Douglas factors affecting penalty, [Assistant Chief] Cockett decided to affirm the original proposed penalty of termination, and so issued a Final Notice of Adverse Action.

(Award at pp. 2-4).

The arbitrator found that Assistant Chief Cockett did not have authority to increase the Adverse Action Panel's recommended penalty from a 30-day suspension to a termination. Accordingly, the arbitrator reduced the penalty to a 30-day suspension and ordered the Grievant reinstated with back pay and benefits, less 30 days. Petitioner filed an arbitration review request ("Request") contending that the Award is contrary to law and public policy. *See* D.C. Code §1-605.02 (6). The Request is now before the Board for disposition.

I. Discussion

A. The Award

The arbitrator resolved a conflict between part VI(K)(8) of MPD General Order 120.21(formerly 1202.1) ("G.O. 120.1") and title 6A, chapter 10, §1001.5 of the D.C. Municipal Regulations ("§1001.5"). G.O. 120.1 provides in pertinent part that "[a]fter reviewing the Hearing Tribunal's¹ proposed decision, the Assistant Chief, OHS, may . . . issue a decision (Final Notice of Adverse Action) affirming . . . the action, as originally proposed in the Notice of Proposed Adverse Action."

"Thus," the arbitrator wrote, "the plain language of the controlling General Order permits [the assistant chief of the Office of Human Services] to impose the penalty proposed in the Notice even if the Panel recommends a lesser penalty." (Award at p. 6). In contrast, §1001.5 does not give that option: "Upon receipt of the trial board's finding and recommendations, and no appeal to the Mayor has been made, the Chief of Police may confirm the finding and impose the penalty recommended, reduce the penalty, or may declare the board's proceedings void and refer the case to another regularly appointed trial board." The arbitrator held that §1001.5 "is a municipal regulation that the Department must follow because it takes preceden[ce] over internal guidelines." (Award at p. 5).

The MPD argued that §1001.5 had been annulled by the Comprehensive Merit Personnel Act ("CMPA"), which made the law establishing trial boards, D.C. Code §5-133.6, inapplicable to police officers appointed after January 1, 1980. D.C. Code § 1-632.03(a)(1)(Z). Arbitrator Fishgold found that that issue had been well analyzed by Arbitrator Wolf in *FOP/MPD Labor*

¹ G O. 120.21 defines the term "Hearing Tribunal" to include "Trial Boards as defined in D.C. Official Code § 5-133.06 (Trial Boards), Adverse Action Panels, and Departmental Hearing Panels. . . ."

Decision and Order
PERB Case No. 12-A-05
Page 4

Committee v. MPD (MacDonald), FMCS Case No. 060706-57644-A (M. Wolf 2007), concluding, "as did Arbitrator Wolf, for the reasons articulated in his thoughtful decision, . . . that . . . Section 1001.5 is applicable to this Grievant and this provision of the regulations takes precedence over General Order 1202.1." (Award at p. 9).

B. Contentions of the Petitioner

The Petitioner in its Request objects to Arbitrator Fishgold's reliance on the earlier decision of Arbitrator Wolf: "[T]he other arbitration award is of absolutely no consequence because '[a]rbitration decisions do not create binding precedent even when based on the same collective bargaining agreement.' *D.C. Metro. Police Dep't v. D.C. Public Empl. Relations Bd.*, 901 A.2d 784, 790 (D.C. 2006)(citing *Hotel Ass'n of Washington, D.C. Inc. v. Hotel & Restaurant Employees Union, Local 25*, 963 F.2d 388, 389-91 (D.C. 1992))." (Request at pp. 6-7).

The Petitioner notes that Arbitrator Fishgold and the Grievant acknowledged that the CMPA, D.C. Code 1-632.03(a)(1)(Z), rescinded the statute that established trial boards. Section 1001.5 is a regulation concerning the procedures of trial boards adopted pursuant to that rescinded statute. Therefore, §1001.5 is a nullity. That being the case, nothing prevented Assistant Chief Cockett from imposing the higher penalty proposed in the notice of adverse action, and G.O. 120.21 expressly permitted that choice. Therefore, the MPD concluded, the Award is contrary to law and public policy, namely, the CMPA, which abolished the enabling statute for the regulation upon which the Award relies.

C. Analysis

The MPD is correct that Arbitrator Wolf's decision is not binding precedent, but the MPD as well as Arbitrator Fishgold should have noted that this Board affirmed that decision, albeit summarily, in *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Maurice MacDonald)*, 59 D.C. Reg. 3974, Slip Op. No. 928, PERB Case No. 07-A-04 (2008). An analysis of the statutes and regulations in question confirms the result in *MacDonald*.

The statute establishing trial boards for the purpose of hearing charges preferred against members of the MPD was enacted by Congress in 1906, 34 Stat. 221 (1906), in amendments to an earlier act.² The statute is presently codified in the District of Columbia Official Code at §5-133.06 ("Trial Boards"). Rules of procedure before trial boards, including §1001.5, were adopted in 1972. D.C. Mun. Regs. Subdiv. 6-A, §§ 1000.1-1001.7; 18 D.C. Reg. 417 (Feb. 7, 1972).

As the Petitioner stresses, the CMPA, enacted in 1979, made a number of statutes, including the statute establishing trial boards (D.C. Code § 5-133.06), inapplicable to "to police officers and firefighters appointed after" January 1, 1980. D.C. Code §1-632.03(a)(1). At the same time, the CMPA also directed the mayor to issue rules and regulations to establish a disciplinary system. D.C. Code §1-616.51. The mayor delegated his rulemaking authority under

² An Act Relating to the Metropolitan police of the District of Columbia, 31 Stat. 819 (1901).

Decision and Order
PERB Case No. 12-A-05
Page 5

the CMPA to the director of the Office of Personnel and the chief of police. Mayor's Order 2000-83.

Pursuant to those authorities, the director of the Office of Personnel and the chief of police adopted chapter 16 of the D.C. Municipal Regulations. ("General Discipline and Grievances"), 47 D.C. Reg. 7024 (Sept. 1, 2000). The new regulations included §1601.5(a), which provides:

Any procedures for handling corrective or adverse actions involving uniformed members of the Metropolitan Police Department, or the Fire and Emergency Medical Services Department (FEMSD) at the rank of Captain or below provided by law, or by regulations of the respective departments in effect on the effective date of these regulations, including but not limited to procedures involving trial boards, shall take precedence over the provisions of this chapter to the extent there is a difference.

This provision reflects that, contrary to Petitioner's assertions, the older regulations involving procedures of trial boards were still "in effect" after 1980. Even if §1001.5 were adopted pursuant to a repealed statute, it is incorporated by reference by §1601.5(a), which was adopted pursuant to statute that has not been repealed. Moreover, under §1601.5(a) the trial board regulations are not only still in effect, but also they take precedence over the new regulations to the extent there is a difference between the two. On the question raised by this case there is no difference: neither § 1001.5 nor the new regulations adopted pursuant to the CMPA permit the assistant chief to increase the recommended penalty. Section 1613 provides:

1613.1 The deciding official, after considering the employee's response in the report and recommendation of the hearing officer pursuant to section 1612, when applicable, shall issue a final decision.

1613.2 The deciding official shall either sustain the penalty proposed, reduce it, remand the action with instruction for further consideration, or dismiss the action with or without prejudice, but in no event shall he or she increase the penalty.

Thus, § 1613.2 precludes a deciding official from increasing the penalty recommended by a hearing officer by whatever name. If § 1613.2 did not preclude increasing the penalty, then § 1001.5 would supersede it and still preclude the assistant chief from increasing the penalty. Arbitrator Wolf correctly determined in *MacDonald* that "if 6A DCMR Section 1001.5 did not apply to this case, then 6 DCMR Section 1613.2 prevails." *MacDonald*, Slip Op. No. 928 at p. 4, PERB Case No. 07-A-04. All of these regulations supersede a General Order of the MPD. See *District of Columbia v. Henderson*, 710 A.2d 874, 877 (D.C. 1998).

If a recommended penalty appears insufficient, the regulations give the assistant chief the option of remanding the case, but they do not give her the option of increasing the penalty on her own. Accordingly, the Award's reduction of the penalty imposed on the Grievant is consistent

Decision and Order
PERB Case No. 12-A-05
Page 6

with the CMPA as well as the D.C. Municipal Regulations and is not contrary to law or public policy. Therefore, the Award is sustained.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Arbitration Award is sustained. Therefore, the arbitration review request of the Metropolitan Police Department is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

November 8, 2012

Decision and Order
PERB Case No. 12-A-05
Page 7

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-A-05 is being transmitted via U.S. Mail to the following parties on this the 13th day of November, 2012.

Andrea Comentale
441 Fourth St. NW, suite 1180 North
Washington, DC 20001

VIA U.S. MAIL

Marc L. Wilhite
Pressler & Senftle P.C.
1432 K St. NW, 12th Floor
Washington, DC 20005

VIA U.S. MAIL



Adessa Barker
Administrative Assistant

This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
)	
American Federation of)	
Government Employees, AFL-CIO)	
Local 2978,)	
)	
	Petitioner,)	
)	PERB Case No. 10-U-42
and)	
)	Slip Opinion No. 1345
District of Columbia)	
Department of Health,)	
)	
	Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

On July 19, 2010, the American Federation of Government Employees, AFL-CIO, Local 29 (“AFGE”, “Complainant” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Department of Health (“DOH,” “Respondent” or “Agency”). On August 6, 2010, Respondent filed an Answer (“Answer”).

The Union alleges a violation of the Comprehensive Merit Personnel Act (the “CMPA”), D.C. Code §1-617.04(a)(5)¹ when the Agency decided to terminate the worker’s Alternative Work Schedules (“AWS”) on March 29, 2010. (See Complaint at p. 3). The Agency denies violating the CMPA.

The Union’s Complaint and the Agency’s Answer are before the Board for disposition.

II. Discussion

The Department of Health is an agency of the District of Columbia. Karen P. Watts is Bureau Chief, Perinatal and Infant Health (PIHB), Department of Health, Community Health Administration (“CHA”). (See email, February 22, 2010). The Union alleges that on January

¹ The District, its agents, and representatives are prohibited from: (5) refusing to bargain collectively in good faith with the exclusive representative.

Decision and Order
PERB Case No. 10-U-42
Page 2

26, 2010, Ms. Watts held her regularly scheduled staff meeting without mentioning an alternative work schedule change. Later that afternoon, she allegedly held a 2:00 p.m. meeting with the nurses and family support workers' units and told them if their work didn't improve, the AWS would be revoked. Then, according to the Union, on February 24, 2010, Ms. Watts held a regularly scheduled staff meeting with all units and told them that the AWS was being revoked. The revocation went into effect on March 29, 2010. (See Complaint at p.3).

The Union alleges that the revocation was a "change in conditions of employment." (See email from Ms. Sabrina Lewis, March 5, 2010). The Union further stated that: "Upon notification the Union intends to demand to bargain on the impact of this decision on bargaining unit employees." (See id.).

The Agency alleges that "impact and effect" bargaining is not required. (See March 9, 2010 letter from Dean Aqui, of the District of Columbia Office of Labor Relations). The Agency also alleges that management discussed the AWS Guidelines with the Union before they were implemented in April, 2008. According to the Respondent, discussions were held at monthly meetings between the Union and Sandra Robinson of the CHA. Respondent maintains that such meetings "satisfy the contractual requirements of Section 3[of the collective bargaining agreement]." (See id. at p.1). The Respondent further notes that the **Agency** exceeded the one-week notice requirement of Section 5 of the collective bargaining agreement and provided more than 4 weeks' notice of the revocation. (See id. at p.2).

Finally, the Agency concluded: "Based on the above, I concluded that there is no need for impact and effect bargaining. As you are aware, under the Public Employee Relations Board case precedent, once a matter has been the subject of bargaining, there is no obligation to reopen that matter during the term of the contract. However, in an effort to develop good labor management relations, the Office of Labor Relations and Collective Bargaining will meet with union representatives to hear any specific concerns that the union has regarding the termination of the AWS within PIHB." (See id. at p.2). The Agency requested that the Union contact them. (See id.).

The Union asks that PERB find that the Agency committed an unfair labor practice and order that the Agency reinstate AWS, pay the Union's costs in the matter and post an appropriate notice to employees. (See Complaint at p.8).

The Board has held that while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). Furthermore, the Board views

Decision and Order
PERB Case No. 10-U-42
Page 3

contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action. *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

The validation, *i.e.* proof, of the alleged statutory violation is what proceedings before the Board are intended to determine. *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

In the present case, Complainant alleges an unfair labor practice on the part of Respondent by its failure to bargain the "impacts and effects" of a change in working conditions for staff members of DOH, specifically the revocation of the AWS program. Complainant alleges a violation of D.C. Code §1-617.4 (a) (5), which provides that an agent of the District of Columbia cannot refuse to bargain in good faith with the exclusive representative of a union. Without addressing the underlying merits of whether the Respondent was correct in its assertion regarding the obligation of the Agency to negotiate "impacts and effects," the Board finds that Respondent did agree to meet with the Union. (See Dean Aqui's letter at p. 2). Further, nothing in the record indicates that the Union did, in fact, attempt to follow-up with or contact the Agency for such a meeting. Thus, the Board finds that the Complainant has failed to provide the requisite proof of an alleged statutory violation.

In light of this, the Board directs that the Complaint be dismissed for failure to state a cause of action.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainants' Unfair Labor Practice Complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

February 23, 2012

Decision and Order
PERB Case No. 10-U-42
Page 4

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-42 is being transmitted via U.S. Mail to the following parties on this the 14 day of November, 2012.

Robert Mayfield
PO Box 76588
Washington, D.C. 20013

U.S. MAIL

Debra Allen-Williams
Dean Aqi
District of Columbia Office of Labor
Relations and Collective Bargaining
441 4th Street, NW, Suite 820 North
Washington, D.C. 20001

U.S. MAIL



Adessa Barker
Administrative Assistant

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

_____)	
In the Matter of:)	
))	
Fraternal Order of Police/Metropolitan Police)	
Department Labor Committee (on behalf of)	
Joseph Stimmel),)	
))	
Complainant,)	PERB Case No. 00-U-33
))	
v.)	Opinion No. 1346
))	
District of Columbia Metropolitan Police)	
Department)	
))	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

An arbitrator sustained a grievance filed on behalf of Officer Joseph Stimmel ("Grievant") and ordered that he "be restored to his former position with back pay and all benefits restored." On March 20, 2000, counsel for the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "Complainant") sent the Metropolitan Police Department ("Department" or "Respondent") a letter asserting that the Grievant's back pay should have, but did not, include an amount for the overtime which the Grievant would have received had he been working. The letter calculated what that amount would be based on what the Grievant had earned in prior years. (Complaint Attachment 8). The Union received no reply to the letter and on July 18, 2000 filed its complaint. The complaint alleges that "[t]he back pay award did not include any premium pay which Officer Stimmel would have received had he been working. Specifically, the back pay did not include any overtime pay which Officer Stimmel would have earned." (Complaint at p. 3, ¶ 5). The complaint further alleges that Department's failure to comply with the arbitration award by not paying overtime was an unfair labor practice. (*Id.* at pp. 3-4).

Decision and Order
PERB Case No. 00-U-33
Page 2

The Department's answer to the complaint denied "the allegations of paragraph 5 with regard to premium pay owed to Officer Stimmel" and asserted that the complaint was untimely and that the Board had no authority to enforce arbitration awards. (Amended Answer at p. 1).

The case was referred to a hearing examiner, who conducted a hearing and received post-hearing briefs. The Union's post-hearing brief argued that under the District Personnel Manual overtime is a type of premium pay and back pay is to include premium pay. The Union cited cases decided under the Federal Back Pay Act consistent with the Union's position. The Union further claimed that the method of calculation it had proposed was reasonable and that the Department had not objected to it at the hearing. The Department responded that the Union had acknowledged the inapplicability of the Federal Back Pay Act. The Department asserted that its payroll manager interpreted the rules to authorize back pay only when the job description states that a specific number of overtime hours are expected and maintained that the payroll manager's interpretation was entitled to deference.

The hearing examiner found that the complaint was untimely and failed to state an unfair labor practice claim. He recommended that the complaint be dismissed with prejudice.

II. Discussion

Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The hearing examiner reasoned that the pending cause of action was the Union's because the Union, and not the Grievant, was a party to the arbitration.¹ Thus, the 120-day filing period of Rule 520.4 could not begin until the Union knew, or should have known, the facts to which it objected. (Hearing Examiner's Report of Findings and Recommendations ("Report") at p. 4). The Grievant testified that he contacted the Union in February 2000 and told the Union's attorney then that overtime was not factored into his back pay. The hearing examiner observed that "[t]he precise date in February on which this contact occurred is not clear from the record." (*Id.* at 5). The hearing examiner averred that even if the Grievant's contact with the Union occurred on the very latest date that the testimony would support—on the last day of February—the filing of the Union's complaint on July 18, 2000 was nevertheless untimely. (*Id.*)

The hearing examiner went on to state that "[e]ven if the Complaint had been timely filed, Respondent's action would still not constitute violations of DCC § 1-618.4(a)(1) or (5)." (*Id.*) Arbitration is a contractual rather than a statutory arrangement. In addition, the hearing examiner noted that the Public Employee Relations Board ("Board") had held in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 39 D.C. Reg. 9617, Slip Op. No. 295, PERB Case No. 91-U-18 (1992), that the Board has authority to enforce its orders but not the orders of third parties such as arbitrators. The hearing examiner also noted that the Board had found no unfair labor practice where an

¹In addition, only the exclusive bargaining agent has standing to bring an action alleging that refusal to comply with an undisputed arbitration award constitutes a breach of the duty to bargain in good faith. *Forrester v. Am. Fed'n of Gov't Employees, Local 2725*, 46 D.C. Reg. 4048, Slip Op. No. 577 at p. 5, PERB Case No. 98-U-01 (1998).

Decision and Order
PERB Case No. 00-U-33
Page 3

agency had not refused to implement the arbitration award at issue but rather disputed the union's interpretation of the award's terms with regard to computation of back pay. (Report at p. 5)(citing *Int'l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. No. 622, PERB Case No. 99-U-30 (2000)); see also *Psychologists Union Local 3758, 1199 v. D. C. Dep't of Mental Health*, 59 D.C. Reg. 9770, Slip Op. No. 1260 at p. 3, PERB Case No. 06-U-40 (2012) (finding that there was no genuine dispute over the terms of an award and consequently failure to comply with the award was an unfair labor practice). The hearing examiner concluded, "In the instant Complaint, there is a dispute over interpretation of regulations rather than over facts, but the legal issue is much the same as in the above-cited PERB decisions." (Report at p. 6).

Accordingly, the hearing examiner's findings and recommendations were:

- 1) The Complaint was untimely filed under PERB Rule 520.4
- 2) The Complaint should be dismissed with prejudice.

(*Id.*).

No exceptions were filed to the hearing examiner's recommendation that the complaint be dismissed. Pursuant to D.C. Code § 1-605.02(3) and Board Rule 520.14, the Board has reviewed the findings, conclusions and recommendations of the hearing examiner and the entire record. A review of the record reveals that the hearing examiner's findings and conclusions are supported by evidence, are reasonable and consistent with Board precedent regarding standing, timeliness, and alleged non-compliance with awards. Accordingly, pursuant to Rule 520.14 we adopt the Hearing Examiner's findings and recommendations and dismiss the complaint.

ORDER

IT IS HEREBY ORDERED THAT:

1. The unfair labor practice complaint is dismissed.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

December 20, 2012

Decision and Order
PERB Case No. 00-U-33
Page 4

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 00-U-33 is being transmitted via U.S. Mail to the following parties on this the 21st day of December, 2012.

Kenneth D. Bynum
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VIA U.S. MAIL

Dean S. Aqui
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VIA U.S. MAIL



Adessa Barker
Administrative Assistant

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

<hr/>)	
In the Matter of:)	
)	
Fraternal Order of Police/Department of)	
Corrections Labor Committee,)	
(on behalf of Hugh Cummings))	
)	
	Petitioner,)	
)	PERB Case No. 10-A-22
	v.)	
)	Opinion No. 1347
)	
District of Columbia Department of Corrections,)	
)	
	Respondent.)	
)	
<hr/>)	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Department of Corrections Labor Committee ("Union" or "Petitioner") filed an arbitration review request ("Request") in the above-captioned matter. The Union seeks review of an arbitration award ("Award") that denied a grievance filed on behalf of Cpl. Hugh Cummings ("Grievant") with the District of Columbia Department of Corrections ("DOC" or "Agency").

II. Discussion

A. The Award

The matter before the Public Employee Relations Board ("Board" or PERB") arises from a grievance filed by the Union on behalf of the Grievant challenging the Agency's termination of his employment for allegedly assaulting an inmate in the Male Receiving and Discharge Unit on April 26, 2007, and thereby violating D.C. regulations and the D.C. criminal code. (Award at p. 2).

On December 7, 2009, and April 8-9, 2010 Arbitrator Gail Smith held a hearing at which

Decision and Order
PERB Case No. 10-A-22
Page 2

testimony was received. (Award at p. 2). Following the arbitration hearing, both parties submitted briefs in support of their positions. Based on the testimony, evidence, and briefs, the Arbitrator found that:

The Grievant is a correctional officer who began work for the Agency on October 10, 1989. . . . The Grievant primarily worked in the Male [Receiving and Discharge] Processing section of the jail. The Grievant's job duties included screening and strip search of "new intakes," "court returns," fingerprinting, picture taking and escorts.

During his tenure with the Agency, the Grievant received, on average, excellent annual performance evaluations. The Grievant did not have any history of disciplinary actions prior to his termination.

(*Id.* at p. 3).

The Arbitrator found that on April 26, 2007, the Grievant was assigned to work the third shift in the Male Receiving and Discharge Unit. (*Id.* at p. 4). During his shift, an altercation occurred between two inmates temporarily located in a holding cell. The inmates were separated and placed in individual cells. The Grievant approached the cell containing the aggressor inmate Taylor. An argument developed between inmate Taylor and the Grievant, during which inmate Taylor was observed reaching through the cell bars in an attempt to make contact with the Grievant. (*Id.*). The exchange escalated, with the Grievant reporting that he was grabbed and spat upon by inmate Taylor. (*Id.* at p. 9). Witnesses for the Agency testified that during the scuffle the Grievant repeatedly struck inmate Taylor's arms with a pair of handcuffs. (*Id.* at pp. 5-8).

As a result of the April 26 incident, "[o]n April 27, 2007, DOC placed the Grievant on administrative leave. DOC Director Devon Brown sent a request to [the Office of Internal Affairs ("OIA")] to investigate the incident involving the Grievant and inmate Taylor." (*Id.* at p. 11). An OIA investigator reviewed the reports of witnesses of the April 26 incident and also conducted interviews of the witnesses and the Grievant. (*Id.* at p. 11). "In [the] final report dated August 29, 2007, [the i]nvestigator concluded that the Grievant assaulted inmate Taylor without justification and intentionally struck inmate Taylor on the left forearm several times with a pair of handcuffs positioned in the Grievant's hand like brass knuckles, resulting in contusions and abrasions to inmate Taylor's left forearm. At the time of the assault, the inmate was secured in a confined area and did not present an immediate physical threat to the Grievant or to any other DOC staff or inmate." (*Id.* at pp. 11-12).

In addition, the Arbitrator noted that the investigator had concluded that:

the Grievant's use of force was unjustified, excessive and violated the DOC Use of Force Program Statement 5010.9C and the D.C.

Decision and Order
PERB Case No. 10-A-22
Page 3

Criminal Code Assault Statute 22-404.

OIA sent its Internal Affairs report to the DOC Department of Human Resources who in turn sent the report to Warden William Smith. . . .

On October 17, 2007, Warden Smith sent a letter to the Grievant that notified the Grievant of his proposed removal from office within twenty days. The proposed removal was for: "Malfeasance, to wit: any on duty or employment related act or omission that interferes with the efficiency or integrity of government operations."

The Grievant requested a hearing on his proposed removal from DOC. . . . A hearing was held on October 17, 2007. . . . On December 4, 2007, Hearing Officer Sheri S[a]luga issued her recommendation that the Grievant be terminated from employment.

On December 13, 2007, DOC Director Devon Brown issued a final notice of removal of the Grievant from his position. Director Brown determined that the Grievant's termination was warranted based on the OIA and hearing officer's reports. In rendering his final decision, Director Brown also relied on Douglas Factors¹ (1), (5), (6) and (9). With respect to Factor (1) which is consideration of the nature and seriousness of the offense, and its relation to the employee's duties, including whether the offense was intentional, Director Brown stated that: "Your behavior constitutes an aggressive and intentional act of use of force, without provocation and a violation of Program Statement 5010.9D, Use of Force and Application of Restraints, dated July 15, 2007."

As to Factor (5) which is the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties, Director Brown stated that: "Acts of the instant nature impugn[sic] an employee's integrity and credibility. It also creates and fosters an environment of revenge, because inmates will find a way to physically attack staff if we do not police the inexcusable actions of employees."

With respect to Factor (6) concerning consistency of the

¹ The Douglas Factors are mitigating and aggravating factors assessed in determining the appropriate level of employee discipline. See *Douglas v. Veterans Admin.*, 5 M.S.P.B. 280 (1981).

Decision and Order
PERB Case No. 10-A-22
Page 4

penalty imposed with those imposed upon other employees for the same or similar offenses, Director Brown noted that the Agency has consistently terminated employees for committing assaults on inmates. As to Factor (9) which is to consider the clarity with which the employee was on notice of any rules that were violated in committing the offense, Director Brown stated that: "Officer Cummings is a Senior Correctional Officer and therefore, he either knew or should have known that behavior of this nature was impermissible."

(*Id.* at pp. 12-14).

The Arbitrator found that "[t]he parties stipulated to the issue as follows: Was the Grievant terminated for cause? If not, what shall be the remedy?" (*Id.* at p. 3). In making her determination, the Arbitrator stated that:

Article 11 entitled "Discipline (Corrective/Adverse Actions)" of the [CBA] and D.C. Official Code Section 1-616.51(1) . . . provide that discipline shall be imposed for cause, as defined in the District Personnel Manual ("DPM"). According to DPM 1603.3(e), "cause" includes "(a)ny on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law." Chapter 2, Section 2.4 of the DOC Basic Regulations for Employees also provides that "correctional personnel are not permitted to use physical force on an inmate except in clear instances of self-defense or for the obvious protection of life or property.

According to DPM Section 1603.9, the Agency has the burden of proof to establish cause. I find that the Agency established cause to discipline the Grievant for assaulting inmate Taylor. Whether or not inmate Taylor grabbed the Grievant's protective vest and sp[a]t at the Grievant, I find that the Grievant used his handcuffs as brass knuckles and struck the inmate several times on the inmate's left arm that went beyond any reasonable use of force for any purpose under these circumstances.

(*Id.* at p. 16).

Having determined that the Grievant was terminated for cause, the Arbitrator also determined that the penalty of termination was warranted. (*Id.* at p. 18). The Arbitrator noted that the Union maintained that the Agency violated article 11, section 14 of the CBA, which provides:

Decision and Order
PERB Case No. 10-A-22
Page 5

The Employer agrees that disciplinary action shall not be punitive but based on conduct or performance deficiencies. The selection of the appropriate penalties shall be based on progressive discipline principles consistent within the department. Consideration shall be given to any mitigating or aggravating circumstances that have been determined to exist.

(*Id.* at p. 18).

The Arbitrator rejected the Union's position and found that the Grievant was not justified in the use of force. (*Id.* at p. 18). Based upon the foregoing, the Arbitrator denied the Union's grievance. (*Id.* at p. 19).

The Petitioner filed the instant review of the Award, contending that the Arbitrator exceeded the jurisdiction granted by the parties' CBA and that the award is contrary to law and public policy. (Request at p. 8).

B. Jurisdiction of the Arbitrator

After reviewing the tests this Board has used in determining whether an arbitrator exceeded his jurisdiction under a collective bargaining agreement, the Petitioner acknowledges, "The only outstanding question, for the Board's consideration then is whether the arbitrator 'arguably construed' the CBA?" (Request at p. 14); *see Mich. Family Resources, Inc. v. SIEU, Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007). Although the Petitioner correctly stated the question as whether the arbitrator arguably construed the CBA, the Petitioner then proceeded to argue that the answer to that question was no because "the Arbitrator did not interpret the CBA properly." (Request at 15). The argument is its own rebuttal: the Arbitrator did construe the CBA, although perhaps not properly in the Union's view. This Board has held, and the D.C. Superior Court has affirmed, that "[i]t is not for [this Board] or a reviewing court . . . to substitute their view for the proper interpretation of the terms used in the [CBA]." *D.C. Gen. Hosp. v. Pub. Employee Relations Bd.*, No 9-92 (D.C. Super. Ct. May 24, 1993).

A consideration of the Union's specific objections demonstrates that the Arbitrator did in fact construe or apply the CBA with regard to the matters in question. The Union objects to the Arbitrator's application of the standard for cause provisions in the D.C. Personnel Manual and objects that the Arbitrator did not apply the principles of progressive discipline in article 11, section 14 of the CBA. The arbitrator quoted and discussed what she determined to be the pertinent provisions of the CBA, the D.C. Official Code, and the District Personnel Manual concerning cause. (Award at p. 16). Similarly, on the matter of progressive discipline, the Arbitrator quotes the pertinent provision of the CBA (*id.* at 18) and concludes, "In finding that termination is appropriate discipline upon the facts presented, I have taken into account the Grievant's past service history, and I have weighed it against his duties as a sworn correctional officer." (*Id.* at 19). The parties agreed to be bound by the arbitrator's interpretation and application of the CBA and related rules and regulations. *D.C. Metro. Police Dep't and F.O.P./ Metro. Police Dep't Labor Comm. (on behalf of Richard Moats)*, 59 D.C. Reg. 6115, Slip Op.

Decision and Order
PERB Case No. 10-A-22
Page 6

No. 1014 at p. 7, PERB Case No. 08-A-02 (2010).

In addition, the Union argues that “[t]he CBA expressly provides that ‘The Hearing Officer must . . . not be in the chain of command between the proposing and deciding officials.’ See Ex. A at 21, CBA, Article 11, § 9(c). Ms. Saluga is in Director Brown’s chain of command, and, therefore, she is not disinterested. . . . [T]he Arbitrator ignored the Union’s arguments on this issue. . . .” (Request at p. 15). In fact, the Arbitrator did not ignore the Union’s argument that the hearing officer was in the director’s chain of command because the Union did not allege below that she was in the chain of command. To the contrary, the Union stated in its post-hearing brief, “While she may not be in the chain of command between the proposing and deciding officials, she does report directly to the Final Decision Maker in this matter.” (Request Exhibit C at p. 31). The Union’s chain-of-command argument may not be raised for the first time on appeal to this Board. *F.O.P./Dep’t of Corrections Labor Comm. v. D.C. Dep’t of Corrections*, 59 D.C. Reg. 9795, Slip Op. No. 1271 at pp. 6-7, PERB Case No. 10-A-20 (2012).

The Union’s objection that the hearing officer reported to the final decision maker does not show a conflict between the Award and the CBA. Article 11, sections 9(C) and (D) of the CBA provide that proposed disciplinary actions are to be reviewed by a “Disinterested Designee” or a “Hearing Officer” and that “[t]he Hearing Officer must be DS-13 or higher and have no direct or personal knowledge of the matter contained in the disciplinary case, and not be in the chain of command between the proposing and deciding officials.” Nothing in article 11, section 9 bars an employee, who is outside the chain of command between the proposing and deciding officials, from serving as hearing officer because he reports to the final decision maker.

C. Law and Public Policy

The Union argues that the Award is contrary to law and public policy because: (1) “the *Douglas* factors were never properly considered”; (2) “[t]he District of Columbia Court of Appeals has held that a D.C. agency must consider all relevant Douglas Factors when making a disciplinary determination”; and (3) “[t]he Award . . . also violates Cpl. Cummings’ constitutional rights.” (Request at pp. 8 and 11)(emphasis in the original).

The Union contends that the Agency was required to analyze all relevant *Douglas* factors, but did not properly do so and that the Arbitrator erred in concluding that the Agency did. The Union relies on *D.C. Department of Public Works v. Colbert*, 874 A.2d 353 (D.C. 2005) to support its contention.² (Request at p. 9). However, the *Colbert* case is inapplicable

²In the *Colbert* case, an employee of the Department of Public Works (“DPW”), who was discharged for inexcusable neglect of duty and insubordination, challenged the severity of the sanction. An administrative law judge (“ALJ”) determined that DPW’s decision took into account impermissible evidence and failed to consider all relevant factors. DPW appealed the matter to the Board of the Office of Employee Appeals. The Board affirmed DPW’s sanction and vacated the ALJ’s order, and an appeal was taken. The Superior Court set aside the Board’s order and reinstated the ALJ’s determination that the employer’s decision to discharge the employee was not substantially supported by permissible evidence, and DPW appealed from that ruling. The Court of Appeals held that Board’s decision vacating the ALJ’s order would be set aside because the Board failed to comply with the regulations governing the admission of evidence and there

Decision and Order
PERB Case No. 10-A-22
Page 7

because that matter involved decisions made by the Office of Employee Appeals. The Board has regularly held that nothing in the CMPA sets forth a requirement of consistency or conformity between decisions of the Office of Employee Appeals and contractual arbitral determinations. These are two completely separate procedures with two different bodies of authorities. *See D.C. Metro. Police Dep't and F.O.P./Metro. Police Dep't Labor Comm.*, 38 D.C. Reg. 6101, Slip Op. No. 228, PERB Case No. 89-A-02 (1989). Moreover, the Office of Employee Appeals and the Board are two distinct and independent agencies with separate and distinct jurisdictions. Also, in the present case, the Arbitrator's review of MPD's disciplinary action against the Grievant arises out of the parties' CBA in conjunction with D.C. Code section 1-616.51(1) and not D.C. Law 8-128 and D.C. Code sections 1-606.1 and 1-606.3 (establishing the Office of Employee Appeals). *See D.C. Metro. Police Dep't and F.O.P./Metro. Police Dep't Labor Comm. (on behalf of Desariee Haselden)*, 59 D.C. Reg. 3543, Slip Op. No. 882, PERB Case No. 06-A-13 (2008); see also *Stokes v. District of Columbia*, 502 A.2d. 1006 (D.C. 1985).

Furthermore, even if the *Colbert* case were applicable, the Board does not read the case as requiring an adjudicator to analyze an employee's discipline using all twelve *Douglas* factors, only that the adjudicator analyze the relevant *Douglas* factors. In the instant case, the Arbitrator determined that Director Brown did just that: he analyzed factors 1, 5, 6, and 9 in arriving at his final decision. (Award at pp. 13-14).

With regard to the constitutional claim, the Union maintains that the Grievant's constitutional right to due process was violated because in terminating him, DOC did not comply with its own procedures. Petitioner argues, "Government agencies are precluded from modifying or relaxing regulations that 'provide the only safeguard [employees] have against unlimited agency discretion in hiring or termination.'" (Request at p. 12) (*quoting Lopez v. FAA*, 318 F.2d 242, 247 (D.C. Cir. 2003)).

The procedures Petitioner alleges that DOC violated are in article 11, section 9 of the CBA. According to the Union, an impartial hearing and a disinterested hearing officer are required by article 11, section 9 but were denied to the Grievant. The alleged partiality of the hearing is not explained in the Request, but the Union's post-hearing brief argues that the hearing was not impartial because the Agency gave too much weight to evidence adverse to the Grievant. (Request, Exhibit C at pp. 23-30). The Union asserts without citation that the hearing officer admitted that she served at the pleasure of the Director, the deciding official, and assumes that as result she was not disinterested. Denial of a disinterested hearing officer, the Union maintains, violated the Grievant's due process rights under the CBA and the Constitution. (Request at pp. 12-13) (*citing Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980)).

The parties contracted for the Arbitrator's findings of fact upon which her award is based. *AFGE v. D.C. Bd. of Parole*, 45 D.C. Reg. 5071, Slip Op. No. 551 at p. 3, PERB Case No. 98-A-01 (1998). The arbitrator stated, "I further have considered only the facts of this record to reach my findings, and I have not given weight to the administrative conclusions of the Hearing Officer inasmuch as this is a de novo proceeding." (Award at p. 19). As any earlier errors of the Agency were remedied by the Arbitrator's de novo review of the evidence, the

were no permissible legal bases for overturning the ALJ's order.

Decision and Order
PERB Case No. 10-A-22
Page 8

Union has not demonstrated a denial of due process. *See AFGE Local 3947 and U.S. Dep't of Justice Fed. Bureau of Prisons*, 47 F.L.R.A. 1364, 1374-75 (1993).

In view of the above, PERB finds no merit to Petitioner's arguments. We find that the Arbitrator's conclusions are based on a thorough analysis and cannot be said to be clearly erroneous or contrary to law or public policy. Therefore, no statutory basis exists for setting aside the Award.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Award is sustained. Therefore, the Arbitration Review Request of the Fraternal Order of Police/Department of Corrections Labor Committee is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

December 20, 2012

Decision and Order
PERB Case No. 10-A-22
Page 9

CERTIFICATE OF SERVICE

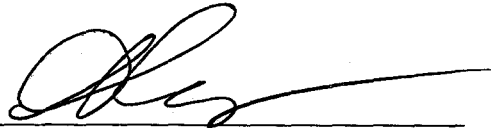
This is to certify that the attached Decision and Order in PERB Case No. 10-A-22 is being transmitted via U.S. Mail to the following parties on this the 21st day of December, 2012.

J. Michael Hannon
1901 18th St. NW
Washington, DC 20009

VIA U.S. MAIL

Natasha Campbell
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441 Fourth St. NW, suite 820 North
Washington, DC 20001

VIA U.S. MAIL



Adessa Barker
Administrative Assistant

Decision and Order
PERB Case No. 09-U-62
Page 2 of 9

examiner recommended the Agency post notices, and retained jurisdiction for sixty days for the parties to propose make-whole remedies. *Id.*

The Agency filed Exceptions with the Board ("Exceptions"), alleging that the hearing examiner "overlooked critical evidence of Respondent's legitimate business reason for reducing its workforce," specifically the budgetary restraints imposed on the Agency at the time of the RIF. (Exceptions at 2). The Union filed an opposition to the Exceptions ("Opposition"), maintaining that the Exceptions "amount to nothing more than disagreement with the hearing examiner's factual conclusions, and not how she came to that conclusion." (Opposition at 6).

The hearing examiner's Report is before the Board for disposition.

II. Background

The hearing examiner found the following facts:

Grievant was the only employee member of AFGE Local 2978 employed at the Agency. On November 19, 2008, Grievant received an admonition for allegedly refusing to drive a friend of the Chief Medical Examiner to Walter Reed Hospital after this friend gave a lecture to Agency staff.

On March 19, 2009, the Grievant and his union representative met with his first line supervisor, Management Services Officer Peggy Fogg (in person), and Chief of Staff Beverly Fields (telephonically).

Both the Grievant and his representative maintain that the purpose of the meeting was to attempt to, *inter alia*, informally resolve a grievance and discuss issues regarding a grievance alleging Grievant was working outside of his position description.

An e-mail from Beverly Fields to Union Local President Robert Mayfield dated April 9, 2009, confirms that there was a discussion of the grievance on March 19. It states in relevant part "...the agency responded only on the date the grievance was filed (March 19, 2009), stating that the grievance was untimely and relief requested was denied. The Union clearly understood the oral response as you, Mr. Mayfield, stated that based on our response, you would take the matter to arbitration."

Ms. Fields also stated in an e-mail that "[d]uring the [March 19th] discussion, you stated that the employee had a grievance regarding working outside of his position description. I informed you orally at that time that any grievance regarding this issue was

Decision and Order
PERB Case No. 09-U-62
Page 3 of 9

untimely... [t]he agency's oral response during the March 19, 2009, meeting was a denial of the grievance itself."

Joint Exhibit 1 bears a date stamp March 19, 2009, and is directed to Peggy J. Fogg. It purports to be a step one grievance challenging both the issuance of an illegal admonition as well as the requirement that the Grievant work outside his position description in violation of the collective bargaining agreement.

On April 13, 2009, [the Agency] denied the grievance as untimely. On April 23, 2009, [the Union] filed an amended grievance.

By letter dated May 21, 2009, Chief Medical Examiner Pierre-Louis denied Grievant's grievance as flawed, untimely, and without merit.

By notice dated August 28, 2009, [Grievant] was advised that effective September 30, 2009, he would be separated from service as Fleet Management Specialist CS-2101-07, pursuant to a reduction in force in the competitive area of Office of the Chief Medical Examiner, competitive level DS-2101-07-01-N.

Grievant's August 28, 2009, RIF notice, signed by Chief Medical Examiner Marie-Lydia Y. Pierre-Louis, M.D., indicated it was delivered by Peggy Fogg to the employee, who purportedly refused to sign.

On September 10, 2009, Local 2978 filed an unfair labor practice complaint challenging the reduction in force as retaliation for the Grievant having engaged in the protected act of filing and pursuing a grievance, and subsequent statements made in a March 19, 2009, meeting with Agency managers, Grievant, and his union representative, Robert Mayfield, who also serves as President of AFGE Local 2978.

On September 10, 2009, the Union filed an unfair labor practice complaint. On September 30, 2009, the Agency answered the complaint and denied the allegations.

(Report 2-5).

Decision and Order
PERB Case No. 09-U-62
Page 4 of 9

III. Discussion

A. Alleged Retaliation

The hearing examiner determined that the dispositive issues are: (1) Did the Agency engage in an unfair labor practice in violation of D.C. Code § 1-617.04(a)(1),(3), and (5) by interfering, restraining, intimidating, or retaliating against the Grievant for having engaged in protected activity; (2) Is the Agency insulated from liability by its articulated legitimate business reason for imposing its RIF of the Grievant's position, because it would have taken the employment action anyways, regardless of the protected union activity; (3) If not, what is the appropriate remedy?

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. See *American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003).

To determine whether the Agency violated D.C. Code § 1-617.04(a)(1), (3), or (5) by interfering, restraining, intimidating, or retaliating against an employee for engaging in a protected activity, the hearing examiner applied the test articulated by the National Labor Relations Board ("NLRB") in *Wright Line v. Lamoureux*, 251 N.L.R.B. 1083, 1089 (1980), enforced 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).¹ Under *Wright Line*, a complainant has the burden to establish a *prima facie* showing that an employee's protected union activity was the motivating factor in the employer's decision to discharge him. *Id.* at 1090. To establish a *prima facie* case of a violation, the union must show that the employee (1) engaged in protected union activity; (2) the employer knew about the employee's protected union activity; (3) there was anti-union animus or retaliatory animus by the employer; and (4) as a result, the employer took an adverse employment action against the employee. *Doctors Council of the District of Columbia v. D.C. Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at p. 3, PERB Case No. 99-U-06 (2000); see also *D.C. Nurses Association v. D.C. Health and Hospitals Public Benefit Corporation*, 46 D.C. Reg. 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999). The employer's employment decision must be analyzed according to the totality of the circumstances, including the history of anti-union animus, the timing of the employment action, and disparate treatment. *Doctors Council*, Slip Op. No. 636 at 3.

If the complaint establishes a *prima facie* case of a violation, the employer may rebut the inference by establishing, by a preponderance of the evidence, that the employment action would have occurred regardless of the protected union activity. *Wright Line*, 251 N.L.R.B. at 1089. The employer must show that it had a legitimate business reason for the employment action, and that it would have initiated the employment action even in the absence of protected union activity. *Wright Line*, 251 N.L.R.B. at 1089; *D.C. Nurses Association*, Slip Op. No. 583.

¹ The Board has previously adopted the NLRB's reasoning in *Wright Line*. See *Bagenstose v. D.C. Public Schools*, 38 D.C. Reg. 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991); *Ware v. D.C. Department of Consumer and Regulatory Affairs*, 46 D.C. Reg. 3367, Slip Op. No. 571, PERB Case No. 96-U-21 (1998).

Decision and Order
PERB Case No. 09-U-62
Page 5 of 9

The hearing examiner concluded that the Grievant was engaged in protected union activity when he pursued a grievance against the Agency for requiring him to perform work outside of his job description, and that the Agency was aware of this protected union activity. (Report at 18). The filing of a grievance is a protected activity under the CMPA. *See Teamsters Local Union No. 739 v. D.C. Public Schools*, 43 D.C. Reg. 5585, Slip Op No. 375 at pgs. 3-4, PERB Case No. 93-U-11 (1996). At the hearing, Agency chief of staff Beverly Fields testified that there was no discussion of the grievance at the March 19 meeting. (Report at 18-19). The hearing examiner did not find this testimony credible, particularly because it conflicted with written evidence showing that the grievance was brought up at the meeting. (Report at 18-19).

It is the function of the hearing examiner to determine issues of credibility. *Doctors Council*, Slip Op. No. 636 at p. 4. The Board finds that these findings are reasonable and supported by the record. Therefore, these conclusions are affirmed.

Next, the hearing examiner concluded that anti-union animus and retaliatory animus existed on the part of the Agency. (Report at 20-27). The hearing examiner determined that Ms. Fields' statement "well, we will just have to RIF him" was "intentional, threatening, [and] meant to discourage." (Report at 20). Further, she found that "telling an employee who is embroiled in a grievance meeting...that if he continues to pursue his anti-driving grievance he may lose his job, supports the reasonable interpretation that he has received a threat, discouragement from moving forward, or [an] intimidating statement." (Report at 22). Additionally, the hearing examiner concluded that the statements made at the March 19 meeting were made to interfere, restrain, and coerce the Grievant in the exercise of his rights under D.C. Code § 1-617.06. (Report at 26).

In reaching her conclusion on this point, the hearing examiner made credibility determinations and assessed the evidence presented to her. *Doctors Council*, Slip Op. No. 636 at p. 4. The Board finds that this finding is reasonable and supported by the record. Therefore, the conclusion is affirmed.

The hearing examiner concluded that the Grievant was terminated as a part of the RIF because of the Agency's anti-union animus and retaliatory animus. (Report at 31). In support of this conclusion the hearing examiner noted that Ms. Fields made her threat to the Grievant in March, and "the Agency appears to have made its decision quickly thereafter, having notified [the Grievant] in August." *Id.* The hearing examiner found "such a short time between threat and the RIF action demonstrates the necessary timing for a *prima facie* case of retaliation." *Id.* Additionally, the hearing examiner states that she was "struck by the lack of credibility and disregard for the truth shown before her at the hearing" in regards to Ms. Fields' statements, which, "considered with the other reported matters supports the contention that a violation occurred." (Report at 35).

In its Exceptions, the Agency alleges that the hearing examiner's analysis "is not supported by sound reasoning because she uses the third element of Wright Line (whether there is anti-union animus) to support the fourth element of Wright Line (that the anti-union animus was the basis for the subsequent employment action). (Exceptions at 7). The Agency states that:

Decision and Order
PERB Case No. 09-U-62
Page 6 of 9

The [hearing examiner] claimed that “here there is no legitimate business reason for the statements made in the March 19 meeting...” (Report at 28). The hearing examiner found that the statement regarding whether the [Grievant] was properly represented by the [Union], and the statement that if he pursues this grievance he will be rified, as the business reason. The [hearing examiner] committed a critical error in her analysis by stating that there was no legitimate business reason for the March 19 statement. The fourth element of *Wright Line* relates to whether [the Agency] had a legitimate business reason for taking the employment action. In this case, whether there was a legitimate business reason to make statements at the March 19 meeting. By merging the two steps, the [hearing examiner] did not address each element of the law. The law requires that a subsequent employment action occur as a result of the protected activity. The statements were not the employment action taken by the Agency. The RIF was. Hence, an analysis of why Respondent engaged in a RIF is critical. The failure of the [hearing examiner] to analyze the Respondent’s legitimate business reason renders the [Report] unsupported by reasoning or the record.

(Exceptions at 7-8). Further, the Agency alleges that the hearing examiner did not consider “critical evidence of the Respondent’s legitimate business reason for engaging in the reduction in force.” (Exceptions at 3). Specifically, the Agency contends that the following evidence was omitted from the Report’s factual record:

1. On June 25, 2009, a second gap closing measure was imposed on [the Agency] by the City Administrator. (Ex. 1).
2. [The Agency] had one week to cut its budget by another 10 percent (Tr. At 136, 211; Ex. 1).
3. In the first round of budget cuts, [the Agency] had eliminated all vacant positions.
4. The second round of budget cuts forced [the Agency] to cut nonessential employees. (Tr. At 212).
5. Prior to the second gap closing measure, [the Agency] had no intention of conducting a RIF or of eliminating [the Grievant’s] position. (Tr. at 212).

(Exceptions at 4). In addition, the Agency alleges that the hearing examiner failed to analyze the burden-shifting paradigm of the *Wright Line* test by ignoring the Agency’s legitimate business justification for the RIF. (Exceptions at 7). The employment action must be analyzed according to the totality of the circumstances, which in the instant case require the hearing examiner to examine the economic conditions at the time of the RIF. (Exceptions at 10).

Decision and Order
PERB Case No. 09-U-62
Page 7 of 9

In its Opposition, the Union states that the Hearing Examiner “carefully analyze[d] the whole of the evidence of how [the Grievant] was identified to be separated in reaching the conclusion, not that [the Agency] was constrained from running a RIF, but that the [Agency] had an unlawful motive in selecting [the Grievant] to be RIF-ed.” (Opposition at 5). Further, the Union contends that the Hearing Examiner focused on the statements made at the March 19 meeting as a violation of the CMPA and as evidence of animus which, “along with a number of other factors,” demonstrated that the Agency’s business reason was pretextual. *Id.* The Union states that “[t]here is no authority or rationale to support the [Agency’s] argument that a RIF is a special kind of business justification that if performed according to its procedural rules excuses what would otherwise be an unlawful separation of an employee.” (Opposition at 5-6).

In *Wright Line*, the NLRB formulated a causation test to determine violations of the National Labor Relations Act turning on employer motivation:

First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a ‘motivating factor’ in the employer’s decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

Wright Line, 251 NLRB at 1089. The Board has adopted the *Wright Line* test, stating that “under the burden shifting analysis, the Union carries the initial burden of setting forth a *prima facie* case. Once a *prima facie* showing is established, the burden will shift to the employer to demonstrate that the same action (the employee’s termination) would have taken place even in the absence of the protected conduct or activity.” *AFGE, Local 2978 v. D.C. Department of Health*, Slip Op. No. 1256 at p. 5, PERB Case No. 08-U-47 (March 27, 2012). Relevant factors in determination the employer’s motivation include a history of anti-union animus, the timing of the action, and disparate treatment. *Doctors Council*, Slip Op. No. 636 at p. 3.

In the instant case, the Hearing Examiner’s reasoning for her conclusion that the Agency’s legitimate business reason was pretextual is unclear. The Report states that “there is no legitimate business reason for the statements made in the March 19 grievance meeting – no way to take back the chilling effect and potential loss of confidence those illegal statements made on March 19.” (Report at 28). While the March 19 statements represent a separate unfair labor practice violation (see below), the issue in the *Wright Line* burden-shifting analysis is whether the Agency demonstrated a legitimate business reason for the *employment action*. See, e.g., *Rodriguez v. D.C. Metropolitan Police Department*, Slip Op. No. 954, PERB Case No. 06-U-38 (July 8, 2010); *Fraternal Order of Police/Department of Corrections Labor Committee v. D.C. Department of Corrections*, Slip Op. No. 888, PERB Case Nos. 03-U-15 and 04-U-03 (September 30, 2009).

The Board has found that a complainant’s *prima facie* showing creates “a kind of presumption that the unfair labor practice has been committed,” and that “[o]nce the showing is made the burden shifts to the employer to produce evidence of a non-prohibited reason for the

Decision and Order
PERB Case No. 09-U-62
Page 8 of 9

action against the employee. This burden, however, does not place on the employer the onus of proving that the unfair labor practice did not occur.” Instead, “the employer’s burden is limited to a rebuttal of the presumption created by the complainant’s *prima facie* showing. The First Circuit in *Wright Line* articulated this standard as ‘producing evidence to balance, not [necessarily] to outweigh, the evidence produced by the [complainant].’” *Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 888 at p. 4. The Hearing Examiner found, and the Board affirms, that the Union made a *prima facie* showing that the Grievant’s RIF was the result of anti-union and retaliatory animus. The burden then shifted to the Agency, which produced evidence that although anti-union and retaliatory animus existed, the Grievant was RIFed for economic reasons. It was then up to the Hearing Examiner to analyze the evidence of the Agency’s legitimate business reason to determine if it balanced the *prima facie* showing.

Instead, the Report includes no analysis of the Agency’s evidence of its legitimate business reason for taking the employment action against the Grievant. (Report at 29). In a paragraph titled “Legitimate Business Reason,” the Hearing Examiner states that “there is no legitimate business reason for the statements made in the March 19 grievance meeting,” (Report at 28), while under a paragraph titled “Motivation and Pretext,” she states that “[i]n the instant case, there is no legitimate reason for the statements made – and once uttered, no way to take back the chilling effect and potential loss of confidence.” (Report at 37). The March 19 statements can be used to show anti-union animus and support an allegation of intimidation and undermining the Union, but do not replace an analysis of the Agency’s proffered legitimate business reason.

Similarly, the discussions on pages 28-37 of the Report represent at “totality of the circumstances” analysis purporting to support the Hearing Examiner’s determination that the Agency did not successfully meet the *prima facie* case of retaliation. The Hearing Examiner examines the issue of the Agency’s motivation for RIFing the Grievant and determines that the stated reasons are pretextual, but without first analyzing the legitimate business reason for the RIF, the Report is incomplete. As written, the Board cannot affirm this portion of the Report as reasonable and supported by the record. The Board remands this portion of the Report back to the Hearing Examiner for an analysis of the Agency’s legitimate business purpose.

B. Alleged Intimidation and Undermining of the Union

In addition to her finding that the Grievant was RIFed in retaliation for filing a grievance, the Hearing Examiner concluded that the Agency violated the CMPA by making threatening statements at the March 19 meeting which had a “chilling effect” and created a “potential loss of confidence” in the Union’s ability to represent its members. (Report at 28). Specifically, the statement that the Grievant would be RIFed for pursuing his grievance, and the statement questioning whether the Union was the proper union to represent the Grievant, were construed as threats intended to intimidate the Grievant and undermine the Union. (Report at 24).

The Agency does not except to this determination, other than to state that the analysis of the March 19 statements do not pertain to the burden shifting paradigm of the *Wright Line* test.

Decision and Order
PERB Case No. 09-U-62
Page 9 of 9

(Exceptions at 8). In its Opposition, the Union alleges that the Agency's "exceptions muddle the Hearing Examiner's retaliation findings with her findings that [the Agency] also violated the CMPA by undermining the Union and threatening and coercing [the Grievant]." (Opposition at 7).

The Board finds that the Hearing Examiner's conclusion that the Agency violated the CMPA by making threatening the Grievant and undermining the Union is reasonable and supported by the record. Therefore, this finding is affirmed.

In conclusion, the Hearing Examiner's conclusions as to the first three elements of the *Wright Line* test are affirmed. The Board is unable to affirm the Hearing Examiner's conclusion regarding the fourth element of the *Wright Line* test due to an incomplete analysis. The Hearing Examiner's conclusion that the Agency violated the CMPA by threatening the Grievant and undermining the Union is affirmed.

ORDER

1. The Hearing Examiner's Report and Recommendation is affirmed in part.
2. The District of Columbia Office of the Chief Medical Examiner shall cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by D.C. Code § 617.04(a)(1), (3), and (5) by threatening employees with termination for pursuing grievances or undermining an exclusive representative.
3. The District of Columbia Office of the Chief Medical Examiner shall conspicuously post, within ten (10) days from the issuance of this Decision and Order, the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.
4. The District of Columbia Office of the Chief Medical Examiner shall notify the Public Employee Relations Board in writing within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly.
5. The issue of whether the District of Columbia Office of the Chief Medical Examiner presented sufficient evidence of a legitimate business reason for the employment action against the Grievant is remanded to the Hearing Examiner for analysis and a further Report and Recommendation.
6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-62 was transmitted via U.S. Mail and e-mail to the following parties on this the 2nd day of January, 2013.

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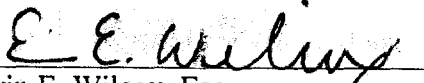
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