



District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes Law 20-43, School Transit Subsidy Temporary Amendment Act of 2013
- DC Council passes Resolution 20-367, Fiscal Year 2015 Budget Submission Requirements Resolution of 2013
- DC Council schedules a public oversight roundtable on the “Status of Plans to Revise School Boundaries and Feeder Patterns for District of Columbia Public Schools”
- DC Public Charter School Board schedules informal public hearings on the renewal of charter agreements for the Booker T. Washington Public Charter School and the Perry Street Preparatory Public Charter School
- Metropolitan Police Department (MPD) establishes a renewal process for firearms registered with the MPD
- Office of the Chief Financial Officer publishes increases in the 2014 standard deduction, personal exemption, homestead deduction, and trash collection credit amounts
- Public Service Commission schedules a public interest hearing to consider the settlement agreement filed by the Office of the People's Counsel and Starion Energy PA, Inc.

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act*, District of Columbia Official Code, §§2-501 *et seq.*, as amended.

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

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COUNCIL OF THE DISTRICT OF COLUMBIA**NOTICE****D.C. LAW 20-41****“Extension of Time to Dispose of Hine Junior High
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Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-353 on first and second readings July 10, 2013 and September 17, 2013, respectively. Following the signature of the Mayor on September 27, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-158 and was published in the October 18, 2013 edition of the D.C. Register (Vol. 60, page 14714). Act 20-158 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-158 is now D.C. Law 20-41, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

Dec. 2,3,4

COUNCIL OF THE DISTRICT OF COLUMBIA**NOTICE****D.C. LAW 20-42****“Fire and Emergency Medical Services Major Changes
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Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-399 on first and second readings July 10, 2013 and September 17, 2013, respectively. The legislation was deemed approved without the signature of the Mayor on October 8, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-159 and was published in the October 18, 2013 edition of the D.C. Register (Vol. 60, page 14716). Act 20-159 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-159 is now D.C. Law 20-42, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

Dec. 2,3,4

COUNCIL OF THE DISTRICT OF COLUMBIA**NOTICE****D.C. LAW 20-43****“School Transit Subsidy Temporary Amendment Act of 2013”**

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-405 on first and second readings July 10, 2013 and September 17, 2013, respectively. Following the signature of the Mayor on September 30, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-160 and was published in the October 18, 2013 edition of the D.C. Register (Vol. 60, page 14718). Act 20-160 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-160 is now D.C. Law 20-43, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

Dec. 2,3,4

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-44

“Chief Financial Officer Compensation Temporary Amendment Act of 2013”

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-391 on first and second readings July 10, 2013 and September 17, 2013, respectively. Following the signature of the Mayor on October 4, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-183 and was published in the October 25, 2013 edition of the D.C. Register (Vol. 60, page 14957). Act 20-183 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-183 is now D.C. Law 20-44, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

- Oct. 16,17,18,21,22,23,24,25,28,29,30,31
- Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22
- Dec. 2,3,4

COUNCIL OF THE DISTRICT OF COLUMBIA**NOTICE****D.C. LAW 20-45****“CCNV Task Force Temporary Act of 2013”**

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-396 on first and second readings July 10, 2013 and September 17, 2013, respectively. Following the signature of the Mayor on October 4, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-184 and was published in the October 25, 2013 edition of the D.C. Register (Vol. 60, page 14959). Act 20-184 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-184 is now D.C. Law 20-45, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 16,17,18,21,22,23,24,25,28,29,30,31
Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22
Dec. 2,3,4

COUNCIL OF THE DISTRICT OF COLUMBIA**NOTICE****D.C. LAW 20-46****“Income Tax Secured Bond Authorization Act of 2013”**

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-256 on first and second readings July 10, 2013 and September 17, 2013, respectively. Following the signature of the Mayor on October 4, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-185 and was published in the October 25, 2013 edition of the D.C. Register (Vol. 60, page 14962). Act 20-185 was transmitted to Congress on October 16, 2013 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-185 is now D.C. Law 20-46, effective December 5, 2013.



PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Oct. 16,17,18,21,22,23,24,25,28,29,30,31

Nov. 1,4,5,6,7,8,12,13,14,15,18,19,20,21,22

Dec. 2,3,4

ENROLLED ORIGINAL

A RESOLUTION

20-363

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To declare the existence of an emergency, due to Congressional review, with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to limit the number of medical marijuana cultivation centers and dispensaries that may locate in an election ward in the District and prohibit locating medical marijuana cultivation centers in certain Retail Priority Areas.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Medical Marijuana Cultivation Center Second Congressional Review Emergency Declaration Resolution of 2013”.

Sec. 2. (a) In January, the Council enacted the Medical Marijuana Cultivation Center Emergency Amendment Act of 2013 (D.C. Act 20-4; 60 DCR 2790) (“emergency legislation”), and in March, the Medical Marijuana Cultivation Center Temporary Amendment Act of 2013 (D.C. Act 20-13; 60 DCR 3962) (“temporary legislation”), which amended the Legalization of Marijuana for Medical Treatment Initiative of 1999 to prohibit locating medical marijuana cultivation centers in certain Retail Priority Areas.

(b) In October, the Council enacted the Medical Marijuana Cultivation Center Amendment Act of 2013 (D.C. Act 20-206; 60 DCR 15484) (“permanent legislation”), which amended the Legalization of Marijuana for Medical Treatment Initiative of 1999 to limit the number of medical marijuana cultivation centers and dispensaries that may locate in an election ward in the District and to prohibit locating medical marijuana cultivation centers in Retail Priority Areas.

(c) The temporary legislation expired on December 12, 2013, before the permanent legislation is projected to become law.

(d) It is important that the provisions of the temporary legislation continue in effect, without further interruption, until the permanent 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 Medical Marijuana Cultivation Center Second Congressional Review Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-367

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

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, 2015, 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, 2015, 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 2015 Budget Submission Requirements Resolution of 2013”.

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 April 3, 2014, 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, 2015.

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 2014 approved budget and for the fiscal year 2015 proposed budget.

ENROLLED ORIGINAL

(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 2012 and 2013, 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 2014 approved budget and for the fiscal year 2015 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 2012 and 2013, including a presentation of any variance between fiscal year appropriations and expenditures, as well as projections for the fiscal year 2014 approved budget and for the fiscal year 2015 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

ENROLLED ORIGINAL

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 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;

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- (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.

(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 2015, including the proposed Fiscal Year 2015 Budget Request Act, and any other legislation that is necessary for implementation of the proposed budget for the District for fiscal year 2015;

(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 2013;
- (ii) Approved amounts for fiscal year 2014; and
- (iii) Proposed amounts for fiscal year 2015;

(C) A table of all intra-district funds included in the fiscal year 2015 budget, including the receiving and transmitting agency, and whether there is 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 2014 or which would undergo a proposed budget restructuring in fiscal year 2015, that shows the agency's allocations before the restructuring under the new or proposed structure;

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(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) A table showing each agency's actual fringe rate and amount for fiscal years 2012 and 2013, the approved rate and amount for fiscal year 2014, and the proposed rate and amount for fiscal year 2015.

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, 2014, all performance accountability reports for fiscal year 2013 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 70-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

20-368

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-130 of \$9,055,941 of local funds budget authority from the District Retiree Health Contribution to the Department of Public Works.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-130 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-130 in the amount of \$9,055,941 of local funds budget authority from the District Retiree Health Contribution to the Department of Public Works.

(b) The Council disapproves the \$9,055,941 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-369

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-132 of \$49,271 of local funds budget authority from the District Retiree Health Contribution to the Office of Veterans Affairs.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-132 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-132 in the amount of \$49,271 of local funds budget authority from the District Retiree Health Contribution to the Office of Veterans Affairs.

(b) The Council disapproves the \$49,271 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-370

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-134 of \$800,000 of local funds budget authority from the District Retiree Health Contribution to the Department of General Services.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-134 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-134 in the amount of \$800,000 of local funds budget authority from the District Retiree Health Contribution to the Department of General Services

(b) The Council disapproves the \$800,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-371

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-135 of \$94,265 of local funds budget authority from the District Retiree Health Contribution to the Department of Health Care Finance.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-135 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-135 in the amount of \$94,265 of local funds budget authority from the District Retiree Health Contribution to the Department of Health Care Finance.

(b) The Council disapproves the \$94,265 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-372

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-136 of \$880,000 of local funds budget authority from the District Retiree Health Contribution to the Office of the State Superintendent of Education.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-136 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-136 in the amount of \$880,000 of local funds budget authority from the District Retiree Health Contribution to the Office of the State Superintendent of Education.

(b) The Council disapproves the \$880,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-373

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-137 of \$790,788 of local funds budget authority from the District Retiree Health Contribution to the Department of Motor Vehicles.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Reprogramming No. 20-137 Disapproval Resolution of 2013".

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-137 in the amount of \$790,788 of local funds budget authority from the District Retiree Health Contribution to the Department of Motor Vehicles.

(b) The Council disapproves the \$790,788 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-374

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-138 of \$275,000 of local funds budget authority from the District Retiree Health Contribution to the District of Columbia Public Library.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Reprogramming No. 20-138 Disapproval Resolution of 2013".

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-138 in the amount of \$790,788 of local funds budget authority from the District Retiree Health Contribution to the District of Columbia Public Library.

(b) The Council disapproves the \$790,788 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-375

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-139 of \$50,000 of local funds budget authority from the District Retiree Health Contribution to the Executive Office of the Mayor.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-139 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-139 in the amount of \$50,000 of local funds budget authority from the District Retiree Health Contribution to the Executive Office of the Mayor.

(b) The Council disapproves the \$50,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-376

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-140 of \$300,000 of local funds budget authority from the District Retiree Health Contribution to the Department of Public Works.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-140 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-140 in the amount of \$300,000 of local funds budget authority from the District Retiree Health Contribution to the Department of Public Works.

(b) The Council disapproves the \$300,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-377

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-141 of \$242,000 of local funds budget authority from the District Retiree Health Contribution to the District Department of the Environment.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-141 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-141 in the amount of \$242,000 of local funds budget authority from the District Retiree Health Contribution to the District Department of the Environment.

(b) The Council disapproves the \$242,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-378

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To disapprove reprogramming request No. 20-142 of \$3,000,000 of local funds budget authority from the District Retiree Health Contribution to the District of Columbia Office on Aging.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Reprogramming No. 20-142 Disapproval Resolution of 2013”.

Sec. 2. (a) Pursuant to section 47-363 of the District of Columbia Official Code, the Mayor transmitted to the Council reprogramming request No. 20-142 in the amount of \$3,000,000 of local funds budget authority from the District Retiree Health Contribution to the District of Columbia Office on Aging.

(b) The Council disapproves the \$3,000,000 reprogramming request.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-379

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To declare the existence of an emergency with respect to the need to amend the Firearms Control Regulations Act of 1975 to extend to January 1, 2016, the date for implementation of the microstamping requirement for semiautomatic pistols.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Microstamping Implementation Emergency Declaration Resolution of 2013”.

Sec. 2. (a) D.C. Law 17-372, the Firearms Registration Amendment Act of 2008, added to the firearms law a requirement that newly-manufactured semiautomatic pistols be “microstamp-ready.”

(b) Microstamping creates microscopic markings on a cartridge after a firearm is fired that identify the make, model, and serial number of the firearm, allowing law enforcement to identify a firearm the first time it is used in a crime.

(c) In 2007, California became the first state to require microstamping on all new models sold in the state.

(d) The District’s microstamping requirement was initially to be implemented in 2011, in order to incorporate best practices learned from California’s experience. However, D.C. Law 18-377, the Criminal Code Amendment Act of 2010, delayed the applicability date from January 1, 2011, until January 1, 2013. At that time, California had only recently issued regulations on microstamping. Because California was only beginning to put microstamping into practice, the Council voted to delay the District’s implementation in order to allow the model being developed in California to be further refined.

(e) D.C. Law 19-170, the Firearms Amendment Act of 2012, again delayed—to January 1, 2014—implementation of microstamping in the District after the process faced further delay in California due to patents on the technology. Implementation was postponed because of the very small nature of the District’s market. The view was that once California, a much larger market, implements microstamping, it would become more feasible for implementation in the District.

(f) This year, the patent issues were resolved and the law went into effect in California. Because California is only now beginning to implement the microstamping requirements, for the same reasons as stated above, it is necessary to again delay the implementation of the District’s

ENROLLED ORIGINAL

microstamping requirement to allow for more time for the requirement and implementation to take hold in California.

(g) The law must be amended now to delay the implementation requirement from January 1, 2014, to January 1, 2016, given that the current implementation date is approaching.

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 Microstamping Implementation Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-380

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To declare the existence of an emergency with respect to the need to order the closing of a portion of a public alley in Square 858, bounded by I Street, N.E., 6th Street, N.E., H Street, N.E., and 7th Street, N.E., in Ward 6.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Closing of a Portion of the Public Alley in Square 858, S.O. 12-03336, Emergency Declaration Resolution of 2013".

Sec. 2. (a) The Council has considered, on first reading on December 3, 2013, and final reading on December 17, 2013, Bill 20-388, the Closing of a Portion of the Public Alley in Square 858, S.O. 12-03336, Act of 2013, following mark-up by the Committee of the Whole.

(b) The alley closing legislation will facilitate the development of a residential building with ground floor retail in Square 858. The alley closing requires the recordation of a covenant establishing new portions of the alley system by easement as shown on the Surveyor's plat in S.O. 12-03336, and the applicant agrees to maintain such new portions of the alley system established by easement. The reconfigured alley system results in an improved alley system for traffic flow through and around the square. In addition, this development will have a positive fiscal impact on the District of Columbia through the generation of substantial new property tax revenues and new residential income tax, will provide affordable housing, and will result in important streetscape improvements. The development will also create approximately 350 jobs during the peak of construction and additional permanent jobs after completion of the project.

(c) The Advisory Neighborhood Commission ("ANC") 6C, the ANC within which the project is located, unanimously voted to support the alley closing and the establishment of an alley easement.

(d) Approval of emergency legislation will allow the construction of the proposed development to proceed expeditiously. Securing the alley closing approval is essential for the applicant to move forward in a timely manner with the development in accordance with its financing and lease commitments.

ENROLLED ORIGINAL

Sec. 3 The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Closing of a Portion of the Public Alley in Square 858, S.O. 12-03336, Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-381

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To declare the existence of an emergency with respect to the need to approve multiyear Contract No. DCKA-2012-C-0018 with Xerox State & Local Solutions, Inc. to perform asset management services for parking meters in the District.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCKA-2012-C-0018 Emergency Declaration Resolution of 2013".

Sec. 2. (a). The Office of Contracting and Procurement, on behalf of the District Department of Transportation, proposes to enter into a multiyear agreement with Xerox State & Local Solutions, Inc. to provide asset management services for parking meters.

(b) The estimated total expenditure under this multiyear contract is in the not-to-exceed amount of \$33,208,100.00 for years 1 through 5.

(c) Council Approval is necessary to allow the District to receive the benefit of these vital services from Xerox State & Local Solutions, Inc.

(d) The critical services provided under the proposed multiyear contract can be obtained only through an award to Xerox State & Local, Inc.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. DCKA-2012-C-0018 Emergency Approval Resolution of 2013 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-382

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2013

To approve, on an emergency basis, multiyear Contract No. DCKA-2012-C-0018 with Xerox State & Local Solution, Inc. to provide asset management services for parking meters.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. DCKA-2012-C-0018 Emergency Approval Resolution of 2013”.

Sec. 2. Pursuant to section 451(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)(3)), the Council approves Contract No. DCKA-2012-C-0018, a multiyear agreement with Xerox State & Local Solutions, Inc. to provide asset management services for parking meters within the District, in the amount of \$33,308,100.

Sec. 3. Transmittal.

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

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This resolution shall take effect immediately.

**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
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BILLS

B20-615 Closing of a Portion of the Public Alley and Acceptance of Dedication of Land for Alley Purposes in Square 75, S.O. 12-03806, Act of 2013

Intro. 12-13-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

B20-616 Carver 2000 Senior Mansion Real Property Tax Abatement Amendment Act of 2013

Intro. 12-13-13 by Councilmember Alexander and referred to the Committee on Finance and Revenue

B20-618 High School Commencement Participation Act of 2013

Intro. 12-17-13 by Councilmembers Alexander, Bowser, and Orange and referred to the Committee on Education

B20-619 Justice for Ex-Spouses Act of 2013

Intro. 12-17-13 by Councilmembers Bowser, Wells, Orange, and Bonds and referred to the Committee on Judiciary and Public Safety

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS con't

- B20-620 Free Transportation for Summer Youth Amendment Act of 2013

Intro. 12-17-13 by Councilmember Bowser and referred to the Committee on Transportation and the Environment
- B20-621 Access to Youth Employment Programs Amendment Act of 2013

Intro. 12-17-13 by Councilmember Bowser and referred to the Committee on Business, Consumer, and Regulatory Affairs
- B20-622 Housing Assistance Program for Unsubsidized Seniors Act of 2013

Intro. 12-17-13 by Councilmembers Wells, McDuffie, and Bonds and referred to the Committee on Economic Development
- B20-623 Police Officer and Firefighter Retention and Wage Fairness Act of 2013

Intro. 12-17-13 by Councilmembers Wells and Evans and referred to the Committee of the Whole
- B20-624 Public School Teachers Income Exclusion Act of 2013

Intro. 12-17-13 by Councilmember Orange and referred to the Committee on Finance and Revenue
- B20-625 Caring for Students with Diabetes Act of 2013

Intro. 12-17-13 by Councilmember Orange and referred to the Committee on Education
- B20-626 Virginia Ali Way Designation Act of 2013

Intro. 12-17-13 by Councilmember Graham and referred to the Committee of the Whole
- B20-627 Post-Employment Benefits Trust Fund Jurisdiction Amendment Act of 2013

Intro. 12-17-13 by Chairman Mendelson and referred to the Committee of the Whole

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

PROPOSED RESOLUTIONS

B20-628 Higher Education Licensure Commission Amendment Act of 2013

Intro. 12-16-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

PR20-601 Sense of the Council for a Hearing on the CSX Virginia Avenue Tunnel Project Resolution of 2013

Intro. 12-17-13 by Councilmembers Wells and Catania and referred to the Committee of the Whole

PR20-602 Sense of the Council Discouraging In-Flight Cell Phone Calls Resolution of 2013

Intro. 12-17-13 by Councilmember Orange and referred to the Committee on Business, Consumer, and Regulatory Affairs

PR20-603 Not-for-Profit Hospital Corporation Board of Directors Dr. Konrad L. Dawson Appointment Resolution of 2013

Intro. 12-17-13 by Chairman Mendelson and Councilmember Alexander and referred to the Committee on Health

PR20-604 Office of Employee Appeals Patricia Hobson Wilson Confirmation Resolution of 2013

Intro. 12-16-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

PR20-605 Board of Trustees of the University of the District of Columbia Dr. Anthony C. Tardd Confirmation Resolution of 2013

Intro. 12-17-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR20-606 Board of Trustees of the University of the District of Columbia Joshua S. Wyner Confirmation Resolution of 2013

Intro. 12-17-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

**Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Hearing**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

RESCHEDULED

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC HEARING ON:

**Bill 20-40, the "Organ Donors Saves Lives Act of 2013"
Bill 20-485, the "Meridian International Center Real Property Tax Abatement Act of 2013"
Bill 20-190, the "Disabled Veterans Homestead Exemption Act of 2013"**

Monday, January 13, 2014

10:15 a.m.

**Room 500 - John A. Wilson Building
1350 Pennsylvania Avenue, NW; Washington, D.C. 20004**

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public hearing to be held on Monday, January 13, 2014 at 10:15 a.m., in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

Bill 20-40, the "Organ Donors Saves Lives Act of 2013" would provide a tax credit for up to \$25,000 related to live organ donation expenses incurred during the tax year in which the live organ donation occurs, and to classify leave for organ donation as medical leave under the District of Columbia Family and Medical Leave Act of 1990.

Bill 20-485, the "Meridian International Center Real Property Tax Abatement Act of 2013" would amend Chapter 10 of Title 47 of the District of Columbia Official Code to exempt from taxation certain real property (Lots 806, 808, 809 in Square 2568; and Lots 2369-2401, 2413-2417, 2423, 2441, and 2442 in Square 2567) so long as it is used in carrying on the purposes and activities of Meridian International Center.

B20-190, the "Disabled Veterans Homestead Exemption Act of 2013" would amend section 47-850 of the District of Columbia Official Code to provide that a veteran who is classified as having a total and permanent disability or is paid at the 100% disability rating level as a result of unemployability shall be exempt from a portion of the property taxes assessed on his or her primary residence that qualifies as homestead and is owned by a veteran.

The Committee invites the public to testify at the hearing. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:15 a.m. on Friday, January 10, 2014. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia; 1350 Pennsylvania Ave., N.W.; Suite 114; Washington D.C. 20004. This hearing is rescheduled from December 11, 2013.

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

REVISED

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

on

Bill 20-240, the "Better Prices, Better Quality, Better Choices for Health Coverage Amendment Act of 2014"

**Wednesday, January 29, 2014
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a hearing on Bill 20-240, the "Better Prices, Better Quality, Better Choices for Health Coverage Amendment Act of 2014". The public hearing will be held at 11:00 a.m. on Wednesday, January 29, 2014 in Room 412 of the John A. Wilson Building. **Please note that this hearing notice has been revised to reflect a change in the date of the hearing.**

The stated purpose of Bill 20-240 is to amend the Health Benefit Exchange Authority Establishment Act of 2011 to promote meaningful choice, provide enhanced benefits, and build a competitive private insurance marketplace for the residents and small business owners of the District of Columbia by not limiting the number of qualified health plans in the Exchange, requiring health plans to offer plan options at the bronze, silver and gold metal levels, developing at least one standardized plan option at each metal level to promote meaningful choice, creating one large marketplace that provides the same leverage as large companies, and defining habilitative services to include keeping or improving functioning, including autism.

Those who wish to testify should contact Melanie Williamson, Legislative Counsel, at (202) 741-2112 or via e-mail at mwilliamson@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, January 27, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, January 27, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Melanie Williamson, Room 115 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, February 12, 2014.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC HEARING**

1350 Pennsylvania Avenue, NW, Suite 119, Washington, DC 20004

**COUNCILMEMBER DAVID A. CATANIA
CHAIRMAN, COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING**

on

Interscholastic Athletics and Bill 20-0469 "Title IX Athletic Equity Act of 2013"

on

**Wednesday, January 22, 2014 at 10:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David A. Catania, Chairman of the Committee on Education, announces the scheduling of a Public Hearing by the Committee on Education on interscholastic athletics and Bill 20-0469, the "Title IX Athletic Equity Act of 2013". The public hearing will take place at 10:00 a.m. on Wednesday, January 22, 2014 in room 412 of the John A. Wilson Building.

The purpose of the public hearing is to provide the public an opportunity to comment on the state of interscholastic athletics in the public school sector and legislation which would, in part: require the Mayor to develop a strategic plan by August 1, 2014, and every five years thereafter, to come into compliance with Title IX and promote athletic equity; designate a District-wide Title IX Coordinator and school-based coordinators; and appoint an NCAA Eligibility and Athletic Scholarship Coordinator, who would emphasize outreach to female students.

Those who wish to testify are asked to telephone the Committee on Education, at (202) 724-8061, or e-mail Jamaal Jordan, Staff Assistant, at jjordan@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business on Friday, January 17, 2014. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. If submitted by the close of business on January 21, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to three minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, February 5, 2014.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Suite 119, Washington, DC 20004

**COUNCILMEMBER DAVID A. CATANIA
CHAIRMAN, COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE**

on

Options Public Charter School

on

**Tuesday, January 14, 2014, at 2:00 p.m.
Room 120, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David A. Catania, Chairman of the Committee on Education, announces the reconvening of a Public Oversight Roundtable by the Committee on Education for Options Public Charter School. The public oversight roundtable will take place at 2:00 p.m. on Tuesday, January 14, 2014, in room 120 of the John A. Wilson Building.

On December 16, 2013, the DC Public Charter School Board (PCSB) voted in favor of a proposal to begin revocation proceedings against Options Public Charter School in response to “a pattern of fiscal mismanagement.” The purpose of this public oversight roundtable is to hear from District education officials about the recent PCSB vote and any next steps, including, but not limited to, plans to ensure the dissolution of the charter in the most efficient manner. The roundtable will also cover any plans to support the transition of students to a new and appropriate educational setting and an update from the PCSB, on any plans developed since the Committee’s October 25, 2013 roundtable to ensure effective oversight of public charter school governance and compliance with applicable laws.

Testimony at the public oversight roundtable is by invitation only. The public may provide written statements to be included as part of the official record. Copies of written statements should be submitted to the Committee on Education, via email to jjordan@dccouncil.us or by mail to Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. Written statements should be submitted to the Committee on Education no later than 5:00 p.m. on Friday, January 24, 2014, when the hearing record closes.

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON EDUCATION
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, NW, Suite 119, Washington, DC 20004**

**COUNCILMEMBER DAVID A. CATANIA
CHAIRMAN, COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE**

on

**The Status of Plans to Revise School Boundaries and Feeder Patterns for District of Columbia
Public Schools**

on

**Monday, January 27, 2014, at 10:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember David A. Catania, Chairman of the Committee on Education, announces the scheduling of a Public Oversight Roundtable by the Committee on Education on the status of plans to revise school boundaries and feeder patterns for District of Columbia Public Schools. The public oversight roundtable will take place at 10:00 a.m. on Monday, January 27, 2014, in room 412 of the John A. Wilson Building.

The purpose of the public oversight roundtable is to hear from District education officials on the status of plans to revise school boundaries and feeder patterns for District of Columbia Public Schools. A similar hearing was held on November 15, 2013 and the Committee will continue to hold these oversight roundtables throughout the year, as District education officials review school assignment policies and attendance zones.

Testimony at the public oversight roundtable is by invitation only. The public may provide written statements to be included as part of the official record. Copies of written statements should be submitted to the Committee on Education, Council of the District of Columbia, Suite 119 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. Statements may also be submitted via email to Jamaal Jordan, Committee Staff Assistant, at jjordan@dccouncil.us. Written statements should be submitted to the Committee on Education no later than 5:00 p.m. on Friday, February 7, 2014 when the hearing record closes.

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

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

on

**PR20-523, the "Director of the Department of Health Joxel Garcia Confirmation
Resolution of 2013"**

**Wednesday, January 8, 2014
11:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public roundtable on PR20-523, the "Director of the Department of Health Joxel Garcia Confirmation Resolution of 2013". The public roundtable will be held at 11:00 a.m. on Wednesday, January 8, 2014 in Room 412 of the John A. Wilson Building.

The stated purpose of Proposed Resolution 20-523 is to confirm the Mayoral appointment of Joxel Garcia as the Director of the Department of Health of the District of Columbia.

Those who wish to testify should contact Rayna Smith, Committee Director, at (202) 741-2111 or via e-mail at rsmith@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, January 6, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, January 6, 2014, the testimony will be distributed to Councilmembers before the public roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the public roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Rayna Smith, Room 115 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, January 22, 2014.

**Council of the District of Columbia
COMMITTEE ON GOVERNMENT OPERATIONS
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004**

**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS**

ANNOUNCES A PUBLIC ROUNDTABLE ON

**PR20-0553, THE "PUBLIC EMPLOYEE RELATIONS BOARD CHARLES J. MURPHY CONFIRMATION
RESOLUTION OF 2013"**

**PR20-0554, THE "PUBLIC EMPLOYEE RELATIONS BOARD CARTER M. DELORME
CONFIRMATION RESOLUTION OF 2013" AND**

**PR20-0604, THE "OFFICE OF EMPLOYEE APPEALS PATRICIA HOBSON WILSON CONFIRMATION
RESOLUTION OF 2013"**

**Tuesday, January 14, 2014, 11:00 AM
Room 120, John A. Wilson Building
1350 Pennsylvania Ave., NW
Washington, D.C. 20004**

Councilmember Kenyan R. McDuffie, Chair of the Committee on Government Operations, announces a public roundtable to consider the nomination of M. Carter DeLorme and the renomination of Charles J. Murphy to the Public Employee Relations Board (PERB) and the nomination of Patricia Hobson Wilson to the Office of Employee Appeals (OEA). The public roundtable will be held on Tuesday, January 14, 2014, at 11:00 A.M., in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The Public Employee Relations Board (PERB) and the Office of Employee Appeals (OEA) are independent agencies of the District of Columbia created by the Comprehensive Merit Personnel Act of 1978 (CMPA) (D.C. Law 2-139; D.C. Official Code § 1-601.01, *et seq.*). PERB has exclusive jurisdiction over labor-management disputes between District agencies and labor organizations that represent agency employees. OEA is tasked with adjudicating employee appeals and rendering impartial decisions. OEA's jurisdiction encompasses appeals of agency decisions such as: (a) a performance rating which results in the removal of the employee; (b) an adverse action for cause which results in removal, reduction in grade, or suspension for ten days or more; (c) a reduction-in-force; or (d) a placement on enforced leave for ten days or more.

Individuals and representatives of organizations wishing to testify should contact Kate Mitchell, Legislative Counsel, at (202) 724-8155, or kmitchell@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Friday, January 10, 2014. Persons presenting testimony may be limited to 3 minutes in order to permit each witness an opportunity to be heard.

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 on Government Operations, Council of the District of Columbia, Suite G-11 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, or to kmitchell@dccouncil.us. The record will close by the close of business January 29, 2014.

**Council of the District of Columbia
Committee on Finance and Revenue
Notice of Public Roundtable**

John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004

**COUNCILMEMBER JACK EVANS, CHAIR
COMMITTEE ON FINANCE AND REVENUE**

ANNOUNCES A PUBLIC ROUNDTABLE ON:

**PR 20-564, the "Commission on the Arts and Humanities Rogelio A. Maxwell
Confirmation Resolution of 2013"**

**PR 20-565, the "Commission on the Arts and Humanities Alma Hardy Gates Confirmation
Resolution of 2013"**

Monday, January 13, 2014

10:00 a.m.

Room 500 - John A. Wilson Building

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

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Monday, January 13, 2014 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 20-564, the "Commission on Arts and Humanities Rogelio A. Maxwell Confirmation Resolution of 2013" would confirm the reappointment of Rogelio A. Maxwell as member of the Commission on Arts and Humanities, for a term to end June 30, 2016.

PR 20-565, the "Commission of the Arts and Humanities Alma Hardy Gates Confirmation Resolution of 2013" would confirm the reappointment of Alma Hardy Gates as member of the Commission on Arts and Humanities, for a term to end June 30, 2016.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Aide at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 10:00 a.m. on Friday, January 10, 2014. Witnesses should bring 15 copies of their written testimony to the hearing. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

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

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

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

Reprog. 20-143: Request to reprogram \$600,000 of Capital Funds Budget from the Department of Consumer and Regulatory Affairs and the Department of General Services to the Department of Corrections was filed in the Office of the Secretary on December 18, 2013. This reprogramming ensures that DCOA will meet the unique needs of healthy and frail seniors in the District.

RECEIVED: 14 day review begins December 19, 2013

Correction*

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 20, 2013
 Petition Date: *February 3, 2014
 Roll Call Hearing Date: February 18, 2014
 Protest Hearing Date: April 9, 2014

License No.: ABRA-093865
 Licensee: PQ Mt. Vernon, Inc
 Trade Name: Le Pain Quotidien
 License Class: Retailer’s Class “D” Restaurant
 Address: 433 Massachusetts Avenue NW
 Contact: Stephen J. O’Brien, 202-625-7700

WARD 6

ANC 6E

SMD 6E05

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 April 9, 2014.

NATURE OF OPERATION

New communal table restaurant and bakery store with total occupancy load of 68. Sidewalk Café with seating for 26 and Summer Garden with seating for 44.

HOURS OF OPERATION FOR INSIDE PREMISES, SIDEWALK CAFÉ AND SUMMER GARDEN

Sunday through Saturday 7am-10pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR INSIDE PREMISES, SIDEWALK CAFÉ AND SUMMER GARDEN

Sunday through Saturday 8am-10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 27, 2013
Petition Date: February 10, 2014
Hearing Date: February 24, 2014
Protest Date: April 23, 2014

License No.: ABRA-093961
Licensee: HQ Hotel TRS, LLC
Trade Name: Marriott Marquis
License Class: Retailer’s Class “C” Hotel
Address: 901 Massachusetts Ave., NW
Contact: Michael Fonseca, Esq. 202-625-7700

WARD 2

ANC 2F

SMD 2F06

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on April 23, 2014.

NATURE OF OPERATION

Full service luxury hotel with 1200 guest rooms with four restaurants. Sidewalk Cafe on Massachusetts Avenue with 47 seats and two outdoor Summer Gardens located as followed: Rooftop 260 seats and Concierge Terrace 70 seats with a total occupancy of load 330. Endorsement for entertainment, dancing and cover charge

HOURS OF OPERATION

Sunday through Saturday 24 hours

HOURS OF SALES AND SERVICE OF ALCOHOLIC BEVERAGE

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

HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGE ON SIDEWALK CAFÉ

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

HOURS OF OPERATION AND SALES/SERVICE/CONSUMPTION OF ALCOHOLIC BEVERAGE ON TWO SUMMER GARDENS

Sunday through Thursday 8 am – 11 pm and Friday & Saturday 8 am – 12 am

HOURS OF ENTERTAINMENT

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

*****Correction**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: December 20, 2013
Petition Date: February 3, 2014
Hearing Date: February 18, 2014
Protest Date: April 9, 2014

License No.: ABRA-093868
Licensee: Premier Wines, LLC
Trade Name: Premier Wines
License Class: Retailer’s Class “A”
Address: 2414 Douglas St. NE
Contact: Paul Pascal 202-544-2200

WARD 5

ANC 5C

SMD 5C02

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on April 9, 2014.

NATURE OF OPERATION

Retailer’s Class A Store

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION

Sunday through Saturday 8 am – 8 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

12/27/2013

Notice is hereby given that:

License Number: ABRA-092168

License Class/Type: C Restaurant

Applicant: Rira Georgetown, LLC

Trade Name: Rira Irish Pub

ANC: 2E05

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

3123 - 3125 M ST NW, WASHINGTON, DC 20007

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

2/10/2014

HEARING WILL BE HELD ON

2/24/2014

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

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am - 2 am	9 pm - 12:30 am
Monday:	11 am - 2 am	11 am - 2 am	9 pm - 12:30 am
Tuesday:	11 am - 2 am	11 am - 2 am	9 pm - 12:30 am
Wednesday:	11 am - 2 am	11 am - 2 am	9 pm - 12:30 am
Thursday:	11 am - 2 am	11 am - 2 am	9 pm - 12:30 am
Friday:	11 am - 3 am	11 am - 3 am	10 pm - 2:30 am
Saturday:	11 am - 3 am	11 am - 3 am	10 pm - 2:30 am

FOR FURTHER INFORMATION CALL (202) 442-4423

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF INFORMAL PUBLIC HEARING**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice, dated Friday, December 20, 2013, of an informal public hearing regarding whether PCSB should renew Booker T. Washington Public Charter School’s (“Booker T. Washington PCS”) charter agreement for a fifteen-year period. The hearing will be held on Tuesday, January 14, 2014 at 6:00 PM at Booker T. Washington PCS, located at 1346 Florida Avenue, NW. Booker T. Washington PCS requested an informal hearing about its charter renewal application on Friday, December 20, 2013. The School Reform Act requires PCSB to hold an informal hearing no later than 30 days after receiving a hearing request (DC ST § 38-1802.12(d)(3)(B)). For further

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF INFORMAL PUBLIC HEARING**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice, dated Friday, December 20, 2013, of an informal public hearing regarding whether PCSB should renew Perry Street Preparatory Public Charter School’s (“Perry Street Prep PCS”) charter agreement for a fifteen-year period. The hearing will be held on Thursday, January 16, 2014, at 6:00 PM at Perry Street Prep PCS, located at 1800 Perry Street, NE. Perry Street Prep PCS requested an informal hearing about its charter renewal application on Tuesday, December 17, 2013. The School Reform Act requires PCSB to hold an informal hearing no later than 30 days after receiving a hearing request (DC ST § 38-1802.12(d)(3)(B)). For further information, please contact Ms. Sarah Medway, Charter Agreement Specialist, at 202-328-2660.

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, MARCH 4, 2014
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 ONE

18717 **Application of Jared S. Pettinato**, pursuant to 11 DCMR § 3104.1, for a
ANC-1A special exception for a deck addition to a one-family row dwelling under
 section 223, not meeting the lot occupancy (section 403) and rear yard
 (section 404) requirements in the R-4 District at premises 3416 13th
 Street, N.W. (Square 2838, Lot 27).

WARD TWO

18719 **Application of Pierre DeLucy and Jodie McLean**, pursuant to 11
ANC-2D DCMR § 3104.1, for a special exception for a rear addition to a one-
 family row dwelling under section 223, not meeting the lot occupancy
 (section 403), court (section 406) and nonconforming structure (subsection
 2001.3) requirements in the R-1-B District at premises 1814 24th Street,
 N.W. (Square 2506, Lot 38).

WARD SIX

18720 **Application of Ben and Pia Cacioppo**, pursuant to 11 DCMR § 3104.1,
ANC-6A for a special exception to construct a one-story garage with mezzanine
 under section 223, not meeting the lot occupancy (section 403)
 requirements in the R-4 District at premises 723 13th Street, N.E. (Square
 1027, Lot 119).

WARD THREE

18718 **Application of Lenore Pool and Tennis Club Inc.**, pursuant to 11
ANC-3F DCMR § 3104.1, for a special exception for a community center building
 including a tennis court and swimming pool (last approved under BZA

Revised 12-19-13

BZA PUBLIC HEARING NOTICE
MARCH 4, 2014
PAGE NO. 2

Order No. 14619) under section 209, in the R-1-A District at premises 4201 Lenore Lane, N.W. (Square 2246, Lot 27).

WARD FOUR

THIS APPLICATION WAS CONTINUED FROM THE OCTOBER 22, 2013 MEETING SESSION, AND DECEMBER 17, 2013 PUBLIC HEARING SESSION:

18654 **Application of Craig and Laura Hickein**, pursuant to 11 DCMR §
ANC-4C 3104.1, for a special exception for an addition to a one-family detached
dwelling under section 223, not meeting the lot area (section 401), lot
occupancy (section 403) and nonconforming structure (subsection 2001.3)
requirements in the R-4 District at premises 4008 3rd Street, N.W. (Square
3313, Lot 100).

WARD ONE

18716 **Appeal of Christina and Mark Parascandola**, pursuant to 11 DCMR §§
ANC-1B 3100 and 3101, from a decision by the Department of Consumer and
Regulatory Affairs to permit a restaurant in the R-5-B District at premises
2000 15th Street, N.W. (Square 189, Lot 59).

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,

BZA PUBLIC HEARING NOTICE

MARCH 4, 2014

PAGE NO. 3

441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, 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

METROPOLITAN POLICE DEPARTMENT**NOTICE OF FINAL RULEMAKING**

The Chief of the Metropolitan Police Department (Chief), pursuant to the authority under Section 712 of the Firearms Control Regulations Act of 1975 (Act), effective March 31, 2009 (D.C. Law 17-372; D.C. Official Code § 7-2507.11) (2013 Supp.), hereby gives notice of the adoption of amendments to Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking establishes a renewal process for firearms that, under the Act, were required to be registered with the Metropolitan Police Department (MPD) before January 1, 2011. MPD records indicate approximately 30,000 firearm registrations would be subject to the renewal requirement. Registrants would renew their firearm registrations over the course of two years, with the renewal dates based on the registrant's date of birth. Under the Act, any firearm registration that fails to renew shall be cancelled.

The rulemaking establishes a simple, streamlined process for renewal in new Section 2326: A registrant would be required to appear in person at MPD headquarters; submit fingerprints; confirm possession of the previously-registered firearm, home address, and continued compliance with the Act's registration requirements.

The rulemaking establishes a three-month window for registrants to renew, with an additional 30-day grace period. Registrants that renew more than 30 days, but fewer than 90 days, after the three-month window would pay twice the amount of the \$13 registration fee. Registrants that fail to renew 90 or more days after the end of the three-month renewal window would have their firearm registration cancelled, be treated as a new registrant, and their firearm would be subjected to Section 202 of the Act.

The rulemaking also clarifies the requirements in Section 2319 for executors or administrators of estates that contain a firearm and updates the process and requirements in Section 2320 for registration of a pistol.

In addition, the rulemaking corrects legal citations to the current edition of the D.C. Official Code and updates the fees in Section 2331 related to registration.

A Notice of Proposed Rulemaking was previously published in the *D.C. Register* on November 16, 2013 at 60 DCR 15875. Two comments were received in response to the proposed rulemaking.

The first comment raised a grammatical question regarding the drafting of two sentences. As a result, a minor change to clarify intent was made to Section 2326.4(a) and (b) to delete the phrase "fails to renew" and replace it with the phrase "renews".

The second comment raised concerns with the requirements of Sections 2505.5 and 2309.1(g) regarding registration renewals every three years and disqualification for registration for

violations of D.C. Official Code § 50-2201.05b (2012 Repl.) or any law in the District or other jurisdiction regarding driving under the influence of drugs or alcohol, respectively. However, both of these sections’ requirements are found within the Act and cannot be changed or negated by the Notice of Proposed Rulemaking. Additionally, the second comment raised general questions regarding the District’s policy on firearms regulation and statutory research. As both sets of issues are beyond the scope of the Notice of Proposed Rulemaking, no additional changes have been made to the proposed rulemaking.

The Chief took final action on these rules on December 18, 2013. These final rules will be effective upon publication of this notice in the *D.C. Register*.

Chapter 23 (Guns and Other Weapons) of Title 24 (Public Space and Safety) of the DCMR is amended as follows:

Section 2305 (REGISTRATION OF FIREARMS: GENERAL PROVISIONS) is amended to read as follows:

2305 REGISTRATION OF FIREARMS: GENERAL PROVISIONS

- 2305.1 The provisions of §§ 2305 through 2326 are issued by the Chief of Police (the “Chief”) pursuant to the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code §§ 7-2501.01 *et seq.* (2012 Repl. & 2013 Supp.)) (the “Act”), specifically § 206(b) of the Act, to prescribe procedures for registration of firearms.
- 2305.2 The Director is authorized by the Act to prescribe all forms required to implement the Act. All the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions that are on each form or that are issued with respect to each form.
- 2305.3 The Chief shall register no more than one (1) pistol per registrant during any thirty- (30-) day period; provided, that this restriction shall apply only to the initial registration of a pistol and not to the renewal of the registration of a pistol.
- 2305.4 The Chief may permit a person first becoming a District resident to register more than one (1) pistol if those pistols were lawfully owned in another jurisdiction for a period of six (6) months prior to the date of application.
- 2505.5 Under § 207a of the Act (D.C. Official Code § 7-2502.07a (2013 Supp.)), a registration certificate issued by the Chief shall be valid for three (3) years from the date of issuance and must be renewed pursuant to § 2326 of this chapter.

Section 2306 (DESTRUCTIVE DEVICES) is amended to read as follows:

2306 DESTRUCTIVE DEVICES

- 2306.1 Any person may request the Director to make a determination whether a device falls within the exception to the definition of “destructive device” set forth in § 101(7)(E)(iv) of the Act (D.C. Official Code § 7-2501.01(7)(E)(iv) (2013 Supp.)).

- 2306.2 Each request for a determination shall be in writing, state the name and address of the manufacturer(s) of the device, accurately describe the device, and give the reasons the requestor believes the device qualifies for placement on the list.
- 2306.3 No person requesting a determination for a device already possessed by the requestor shall be charged with a violation of the Act prior to the adoption of a final rule.

Section 2307 (CRIMINAL DISQUALIFICATIONS FOR REGISTRATION) is amended to read as follows:

2307 CRIMINAL DISQUALIFICATIONS FOR REGISTRATION

- 2307.1 For the purposes of §§ 203(a)(2), 203(a)(3), and 203(a)(4) of the Act, the following records shall be used to determine whether there is prima facie evidence of a disqualification:
- (a) A criminal history record information (as defined in 28 CFR § 20.3(d)) with a disposition showing a conviction or a sentence (including a suspended sentence, probation, incarceration, or a fine); or
 - (b) A court record showing a conviction or a sentence.
- 2307.2 Only convictions rendered by the courts of the several states, territories, possessions, and federal tribunals, including those of the military, shall be considered.
- 2307.3 The pendency of an appeal, or of any other judicial or non-judicial review, shall not be considered until the entry of a final order setting aside the conviction. Non-judicial review includes the pardon authority of the jurisdiction where the conviction was obtained.
- 2307.4 The time period preceding an application for registration shall be computed by using the date of the applicant's signature on form P.D. 219 as the end of the period of time to be computed.

Section 2309 (OTHER DISQUALIFICATIONS FOR REGISTRATION) is amended to read as follows:

2309 OTHER DISQUALIFICATIONS FOR REGISTRATION

- 2309.1 A firearm shall not be registered if the applicant meets any of the following conditions:
- (a) The entry of a judgment or consent order or decree of negligence in any civil suit concerning the discharge of a firearm resulting in death or serious injury to a human being without regard to the filing of criminal charges, or the finding by a coroner of negligent homicide, shall be considered an adjudication of negligence to establish the disqualifier in § 203(a)(8) of the Act. For the purposes of this subsection, "serious injury"

shall be deemed to have occurred where the victim remains in a hospital in excess of forty-eight (48) hours;

- (b) [RESERVED];
- (c) The existence of a record described in § 2307.1 showing a conviction which makes a person ineligible to possess a pistol under D.C. Official Code § 22-4503 (2013 Supp.) shall establish that the person is disqualified from possessing a rifle or shotgun under § 203(a)(9) of the Act;
- (d) A court record showing the applicant is a respondent in an intrafamily proceeding in which a civil protection order was issued against the applicant, unless the applicant can demonstrate by a certified court record establishing that the order has expired or has been rescinded for a period of five (5) years;
- (e) A court record showing the applicant is a respondent in which a foreign protection order (as defined in D.C. Official Code § 16-1041(2) (2012 Repl.)) was issued against the applicant, unless the applicant can demonstrate by a certified court record establishing that the order has expired or has been rescinded for a period of five (5) years;
- (f) Arrest records within the five (5) years immediately preceding the application, showing that the applicant has had a history of violent behavior. For purposes of this subsection, “history of violent behavior” includes, but is not limited to, arrests for violation of D.C. Official Code § 22-407 (2012 Repl.), regarding threats to do bodily harm, or D.C. Official Code § 22-404 (2012 Repl.), regarding assaults and threats, any crime of violence as defined in D.C. Official Code § 23-1331(4) (2013 Supp.), or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm;
- (g) Two (2) or more violations of D.C. Official Code 50-2201.05b (2012 Repl.) or any law in the District or another jurisdiction restricting driving under the influence of drugs or alcohol; or
- (h) Any other provision enumerated in D.C. Official Code § 7-2502.03(a) (2013 Supp.).

Section 2311 (KNOWLEDGE OF FIREARMS AND TRAINING REQUIREMENTS) is amended to read as follows:

2311 KNOWLEDGE OF FIREARMS AND TRAINING REQUIREMENTS

- 2311.1 Knowledge of the laws of the District pertaining to firearms, and knowledge of the safe and responsible use of firearms, shall be tested through a written examination.
- 2311.2 Under compelling circumstances, an oral test may be administered in place of the written test.
- 2311.3 The type of test and its content shall be at the sole discretion of the Director.

- 2311.4 [RESERVED].
- 2311.5 [RESERVED].
- 2311.6 Rifles and shotguns shall be considered the same type of firearm for the purposes of testing.
- 2311.7 If an applicant fails an examination, he or she shall be allowed one (1) retest without charge.
- 2311.8 A fee equal to that submitted with the original application may, at the discretion of the Director, be assessed for the second retest and for each subsequent retest.
- 2311.9 An applicant shall complete a firearms training and safety class provided by the Chief or submit evidence of compliance with § 203(a)(13)(B) of the Act.

Section 2312 (FINGERPRINTS AND PHOTOGRAPHS) is amended to read as follows:

2312 FINGERPRINTS AND PHOTOGRAPHS

- 2312.1 Each person registering a firearm or renewing a registration pursuant to § 2326 shall be fingerprinted, unless all of the following apply:
 - (a) [RESERVED];
 - (b) The applicant’s fingerprints on file are, in the opinion of the Director, of the required quality; and
 - (c) The applicant offers sufficient identification to establish the applicant’s identity as the same person whose fingerprints are already on file.
- 2312.2 Each person registering a firearm shall be photographed, at no charge, by the Director and the photograph shall be included as part of the registration application.

Section 2313 (PERSONAL APPEARANCE AND FILING TIME) is amended to read as follows:

2313 PERSONAL APPEARANCE AND FILING TIME

- 2313.1 In accordance with § 203 of the Act (D.C. Official Code § 7-2502.04(c) (2013 Supp.)), each applicant for a registration certificate shall personally present the required form at the Firearms Registration Section, during operating hours.
- 2313.2 Multiple applications submitted at one (1) time shall be accepted on the basis of a single personal appearance.
- 2313.3 The Director may waive the requirement for a personal appearance in emergency situations, including cases where the applicant is out of the country, in the hospital, or not ambulatory; provided, that the application shall be accepted for processing, but shall not be approved until the applicant appears in person.

- 2313.4 If the condition preventing the personal appearance is permanent or continuing in nature, the Director may, in his or her discretion, satisfy this requirement by interviewing the applicant at a place convenient to the applicant.
- 2313.5 When a personal appearance is not made, an appropriate notation shall be made on the application showing that fact, together with the name, address, phone number, and relationship to the applicant of the person presenting the application on the person's behalf.
- 2313.6 A person other than the president or chief executive of an organization may submit an application if that person presents with the application a letter on the organization's official letterhead signed by the president or chief executive of the organization, stating the name of the person appearing, that person's position within the organization, and the identity of the weapon he or she is authorized to present for registration.
- 2313.7 When submitting an application, an applicant shall not have the firearm to be registered in his or her possession.
- 2313.8 The Director may require an applicant to return with the firearm if it appears to the Director that any of the following conditions may apply:
- (a) That the person is unqualified or incapable of safe and responsible possession or use of the firearm;
 - (b) That the firearm may be unregisterable, defective, or in a dangerous condition or state of disrepair; or
 - (c) That the information relating to the weapon on the application is incorrect, misleading, or incomplete.
- 2313.9 A person shall be deemed to be in compliance with the personal notification requirements of § 206(a) of the Act (D.C. Official Code § 7-2502.06(a) (2013 Supp.)) if he or she, immediately after bringing a firearm into the District, telephonically notifies the Firearms Registration Section at 202-727-4275.

Section 2315 (APPROVAL PERIOD) is amended to read as follows:

2315 APPROVAL PERIOD

- 2315.1 The sixty- (60-) day period for issuance of a certificate under § 207 of the Act (D.C. Official Code § 7-2502.07(b) (2012 Repl.)) may be extended for good cause in the event that the investigation into the applicant's qualifications has not been completed.
- 2315.2 Reasons that an extension may be granted for good cause shall include the following:
- (a) Non-receipt of the results of an F.B.I. fingerprint check;
 - (b) Non-receipt of responses from other law enforcement agencies queried about the applicant;

- (c) Lost, mutilated, or destroyed records requiring reproduction or replacement; or
 - (d) A substantial question concerning the applicant's eligibility that requires further inquiry.
- 2315.3 Any extension taken shall not exceed thirty (30) calendar days.
- 2315.4 The applicant shall be notified of the extension by letter.
- 2315.5 An application shall be automatically held in abeyance if the applicant has any other certificate pending, or becomes liable to revocation on any other certificate.
- 2315.6 An application that has been held under § 2315.5 shall be approved or denied in accordance with the time limits set forth in this section, after the termination of the revocation proceeding.
- 2315.7 Except as provided in § 2315.5, any application not expressly approved or denied within the following periods shall be deemed to be denied for the purpose of appealing to the Director:
- (a) Within the sixty- (60-) day period required in the Act, unless the period is extended for good cause shown in accordance with this section; or
 - (b) At the end of the thirty- (30-) day extension period under this section.

Section 2317 (LOST, STOLEN, OR DESTROYED CERTIFICATES) is amended to read as follows:

2317 LOST, STOLEN, OR DESTROYED CERTIFICATES

- 2317.1 Upon discovering the loss, theft, or destruction of a registration certificate or firearm, the holder of the certificate shall immediately communicate this fact in writing or in person to the Firearms Registration Section in accordance with § 208 of the Act (D.C. Official Code § 7-2502.08 (2013 Supp.)).
- 2317.2 Each written communication concerning a certificate shall contain sufficient information to identify the holder.
- 2317.3 The filing of an offense report or complaint of a crime with respect to the loss, theft, or destruction of the certificate or weapon shall be deemed to be in compliance with this section.
- 2317.4 The holder of a destroyed, lost, or stolen certificate shall be issued a duplicate certificate without charge.
- 2317.5 The reissued certificate shall be prominently marked as a duplicate, and the issuance of the duplicate certificate shall automatically invalidate the lost, destroyed, or stolen certificate.

Section 2318 (MODIFICATION OF CERTIFICATES) is amended to read as follows:

2318 MODIFICATION OF CERTIFICATES

- 2318.1 If the information contained in the certificate is no longer accurate due to the holder's changed circumstances, the holder shall, in accordance with § 208 of the Act (D.C. Official Code § 7-2502.08 (2013 Supp.)), submit the certificate and a statement concerning the changes.
- 2318.2 A duplicate certificate showing the changes as reported shall be issued without charge.
- 2318.3 Issuance of the duplicate certificate shall automatically invalidate the previously held certificate.

Section 2319 (EXECUTORS AND ADMINISTRATORS) is amended to read as follows:

2319 EXECUTORS AND ADMINISTRATORS

- 2319.1 The executor or administrator of an estate in the District of Columbia containing a firearm shall notify the Firearm Registration Section of his or her appointment or qualification, as the case may be, not later than thirty (30) days after the appointment or qualification and, until the lawful distribution of any such firearm, shall be subject to § 301(b) of the Act.
- 2319.2 The notice required under § 2319.1 shall include the following:
- (a) The name, mailing address, and telephone number of the executor or administrator;
 - (b) The registration number of the firearm, if available, or a description of the firearm including, the make, model, and serial number; and
 - (c) The name and address of the decedent.
- 2319.3 Persons qualified to file a petition for distribution or for waiver of administration under Chapter 7 of Title 20 of the D.C. Official Code shall be considered to be executor or administrator of the small estate for the purposes of this section.
- 2319.4 If the Director determines that the firearm was not registered or was otherwise possessed in violation of the Act, the Director shall so notify the executor or administration in writing.
- 2319.5 If the executor or administrator receives a notification issued under § 2319.4, he or she shall, within seven (7) days of receiving the notification:
- (a) Surrender the firearm to the Firearm Registration Section;
 - (b) Lawfully remove the firearm from the District;
 - (c) Lawfully dispose of the firearm; or
 - (d) Submit a written appeal to the Director of the determination issued under § 2319.4.
- 2319.6 The executor or administrator shall not distribute any firearm in an estate to an heir or legatee that resides in the District unless the person to inherit or receive the

firearm has first obtained a valid registration certification for the firearm. The registration application shall include a statement by the applicant that he or she seeks to gain possession of a firearm which is part of an estate and shall include the information required under § 2319.2.

2319.7 For an heir or legatee that resides outside the District, the executor or administrator shall notify the Firearm Registration Section, in writing, that the firearm in the estate has been distributed to a person living outside the District.

Section 2320 (PROCEDURES AND REQUIREMENTS FOR REGISTRATION OF A PISTOL FOR THE PURPOSE OF SELF-DEFENSE WITHIN APPLICANT’S HOME) is amended to read as follows:

2320 PROCEDURES AND REQUIREMENTS FOR REGISTRATION OF A PISTOL FOR THE PURPOSE OF SELF-DEFENSE WITHIN APPLICANT’S HOME

2320.1 In addition to satisfying all other firearms registration requirements in this chapter, an applicant for a registration certificate for a pistol to be used for the purpose of self-defense within that person’s home shall comply with all the procedures and requirements of this section. In the event of any irreconcilable conflict between this section and any other regulations regarding the registration of a pistol, this section shall control.

2320.2 The Director may register a pistol so long as the pistol is not an assault weapon, or a machine gun as those terms are defined in § 101(3A) and (10) of the Act (D.C. Official Code § 7-2501.01(3A) & (10) (2013 Supp.)), or an unsafe firearm prohibited under § 504 of the Act (D.C. Official Code § 7-2504.04 (2012 Repl.)).

2320.3 An applicant seeking to register a pistol he or she will purchase from a firearms dealer pursuant to this section shall:

- (a) Acquire the firearm registration application (P.D. 219) either from any licensed firearms dealer in the District of Columbia, or in person at the Firearms Registration Section at the Metropolitan Police Department headquarters, or by mailing a request with a self-addressed, stamped envelope to Firearms Registration Section, Metropolitan Police Department, 300 Indiana Avenue, NW, Washington, D.C. 20001;
- (b) Obtain assistance necessary to complete the application by presenting the firearm registration application to a firearms dealer licensed under federal law either:
 - (1) Located inside the District if the firearm is purchased within the District; or
 - (2) Located outside the District if the firearm is purchased outside the District;
- (c) Appear in person at MPD headquarters to take these steps:

- (1) Report to the Firearms Registration Section with the completed firearm registration application and provide the following:
 - (A) [RESERVED];
 - (B) A valid driver’s license or a letter from a physician attesting that the applicant has vision at least as good as that required for a driver’s license; and
 - (C) Residency verification, such as a District of Columbia driver’s license or identification card, a current rental agreement, or a deed to property that includes a home;
- (2) Complete a firearm registration test;
- (3) If successful on the test, pay all applicable fees at the MPD cashier, including thirty-five dollars (\$35) for fingerprinting and thirteen dollars (\$13) for a firearm registration; and
- (4) Present a fee receipt and submit to fingerprinting.
- (d) Await notification from the Firearms Registration Section via mail, telephone, or other electronic communication on whether all statutory and regulatory requirements for registration have been satisfied;
- (e) Upon notification that all statutory and regulatory requirements for registration have been satisfied, an applicant shall either:
 - (1) Return to the Firearms Registration Section to complete the registration process and obtain the approved firearms registration certificate; or
 - (2) Choose to receive the completed firearms registration certificate by mail; and
- (f) Present the approved firearm registration application to the dealer licensed under federal law or, if federal law such as 18 U.S.C. § 922 prohibits the dealer from delivering the pistol to the applicant because the dealer is not within the District of Columbia, have that firearms dealer transport the pistol to a dealer located within the District, where the applicant will take delivery of the pistol.

2320.4 [RESERVED].

2320.5 An applicant seeking to register a pistol legally possessed in another jurisdiction pursuant to this section shall follow the procedure laid out in Paragraphs (a), (c), (d), and (e) of § 2320.3, in that order. If the applicant does not transport the pistol immediately to the Firearms Registration Section upon bringing it into the District, the applicant shall contact the Firearms Registration Section by calling 202-727-4275, providing notification that a pistol from another jurisdiction has been brought into the District, and then begin the application process within forty-eight (48) hours of such notification.

2320.6 [RESERVED].

- 2320.7 In the event of the loss, theft, or destruction of the registration certificate or of a registered pistol, a registrant shall immediately file a police report and shall also:
- (a) Immediately notify the Firearms Registration Section in writing of the loss, theft, or destruction of the registration certificate or of the registered pistol (including the circumstances, if known) upon discovery of such loss, theft, or destruction; and
 - (b) Immediately return to the Firearms Registration Section the registration certificate for any pistol which is lost, stolen, or destroyed.
- 2320.8 [RESERVED].
- 2320.9 When permitted under this section to transport a pistol, the pistol shall be unloaded, and neither the pistol nor any ammunition being transported shall be readily accessible or directly accessible from the passenger compartment of the transporting vehicle.
- 2320.10 If the transporting vehicle does not have a compartment separate from the driver's compartment, the pistol or ammunition shall be contained in a locked container other than the glove compartment or console, and the pistol shall be unloaded.
- 2320.11 If the transportation is in a manner other than in a vehicle, the pistol shall be:
- (a) Unloaded;
 - (b) Inside a locked container; and
 - (c) Separate from any ammunition.

Section 2321 (QUALIFICATIONS AND PROCEDURES TO OBTAIN A FIREARMS DEALER'S LICENSE) is amended to read as follows:

2321 QUALIFICATIONS AND PROCEDURES TO OBTAIN A FIREARMS DEALER'S LICENSE

- 2321.1 A person is eligible to become a licensed dealer of firearms if that person:
- (a) Is eligible to register a firearm under this chapter;
 - (b) Is eligible under federal law to engage in such business; and
 - (c) Has not previously violated any statutory duty of a licensed dealer if that person earlier was a licensed dealer.
- 2321.2 The license issued to a firearms dealer shall be valid for a period of not more than one (1) year from the date of issuance.
- 2321.3 To deal firearms lawfully, the holder of a firearms dealer's license must also comply with any other license or zoning procedures required by law, including having a certificate of occupancy and a basic business license issued by the Department of Consumer and Regulatory Affairs in accordance with applicable provisions in the District of Columbia Municipal Regulations.

- 2321.4 Prior to applying to the Firearms Registration Section for a firearm dealer's license, an applicant must first obtain a Federal Firearms Dealer's License issued by the Bureau of Alcohol, Tobacco, and Firearms.
- 2321.5 Each application for a dealer's license and renewal shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain:
- (a) All information required by § 203 of the Act (D.C. Official Code § 7-2502.03 (2013 Supp.));
 - (b) The address where the applicant conducts or intends to conduct his/her business;
 - (c) Whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and
 - (d) Such other information as the Chief may require including, but not limited to, fingerprints and photographs of the applicant.

Section 2323 (DISTRICT ROSTER OF HANDGUNS DETERMINED NOT TO BE UNSAFE) is amended to read as follows:

2323 DISTRICT ROSTER OF HANDGUNS DETERMINED NOT TO BE UNSAFE

- 2323.1 The Metropolitan Police Department shall establish the District Roster of Handguns Determined Not to be Unsafe (District Roster). Pursuant to § 504(e)(4) and 504(f) of the Act (D.C. Official Code § 7-2505.04 (e)(4) & (f) (2012 Repl.)), the District Roster shall constitute the roster of pistols that may be manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia notwithstanding § 504(a) of the Act, and that may be owned or possessed within the District of Columbia notwithstanding § 504(b) of the Act.
- 2323.2 The District Roster shall include:
- (a) Any pistol that is on the California Roster of Handguns Certified for Sale (also known as the California Roster of Handguns Determined Not to be Unsafe) (California Roster), pursuant to California Penal Code § 12131, as of January 1, 2009, unless such pistol is an unregistrable firearm pursuant to § 202 of the Act (D.C. Official Code § 7-2502.02 (2013 Supp.));
 - (b) Any pistol that was listed on the California Roster prior to January 1, 2009, which was, or is subsequently, removed from the California Roster for any reason not related to the pistol's safety;
 - (c) Any pistol listed on the January 1, 2009, Maryland Department of State Police Official Handgun Roster, as of January 1, 2009, published as Attachment A to this section, unless such pistol is an unregistrable firearm pursuant to § 202 of the Act (D.C. Official Code § 7-2502.02 (2013 Supp.)); and

- (d) Any pistol listed on the Commonwealth of Massachusetts Executive Office of Public Safety and Security Approved Firearms Roster, as of April 2, 2009, published as Attachment B to this section, unless such pistol is an unregistrable firearm pursuant to § 202 of the Act (D.C. Official Code § 7-2502.02 (2013 Supp.)).
- 2323.3 A pistol shall be deemed to be included on the District Roster if another pistol made by the same manufacturer is already listed and the unlisted pistol differs from the listed firearm only in one (1) or more of the following features:
- (a) Finish, including, but not limited to, bluing, chrome-plating, oiling, or engraving.
- (b) The material from which the grips are made.
- (c) The shape or texture of the grips, so long as the difference in grip shape or texture does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.
- (d) Any other purely cosmetic feature that does not in any way alter the dimensions, material, linkage, or functioning of the magazine well, the barrel, the chamber, or any of the components of the firing mechanism of the pistol.
- 2323.4 Any applicant seeking to have a pistol registered under § 2323.3 shall provide to the Chief all of the following:
- (a) The model designation of the listed firearm.
- (b) The model designation of each firearm that the applicant seeks to have registered under this section.
- (c) A statement, under oath, that each unlisted pistol for which registration is sought differs from the listed pistol only in one (1) or more of the ways identified in § 2323.3 and is in all other respects identical to the listed pistol.
- 2323.5 Any decision refusing registration pursuant to this section may be appealed to the Chief pursuant to § 210 of the Act (D.C. Official Code § 7-2502.10 (2012 Repl.)), and thereafter to the Office of Administrative Hearings, pursuant to D.C. Official Code § 2-1831.03(b-2) (2012 Repl.). In any such appeal, the applicant shall bear the burden of demonstrating that the Chief's decision should be reversed and registration permitted.
- 2323.6 The make and model of any pistol registered pursuant to §§ 2323.3 through 2323.5 shall be recorded by the Metropolitan Police Department in such a manner to allow the Chief to waive the requirements of § 2323.4 in the event an additional applicant seeks registration for an identical pistol.

Section 2324 (INTERPRETATION OF ASSAULT WEAPONS DEFINITION) is amended to read as follows:

2324 INTERPRETATION OF ASSAULT WEAPONS DEFINITION

- 2324.1 Section 101 Paragraph 3A of the Act (D.C. Official Code § 7-2501.01(3A) (2013 Supp.)) defined the term “assault weapon” and § 202(a)(6) of the Act (D.C. Official Code § 7-2502.02(a)(6) (2013 Supp.)) declared that an “assault weapon” may not be registered in the District.
- 2324.2 In those instances where the definition of “assault weapon” refers to a firearms manufacturer or description without including a specific model reference, the term “assault weapon” shall be interpreted to include only those firearms produced by such manufacturer, or possessing such description, that share characteristics similar to the firearms enumerated in § 101 Paragraph 3A(A)(i)(I) through (III) of the Act (D.C. Official Code § 7-2501.01 (3A)(A)(i)(I) through (III) (2013 Supp.)), or possess any of the enumerated characteristics listed in § 101 Paragraph 3A(A)(i)(IV) through (VIII) and 3A(A)(ii) through (iii) of the Act (D.C. Official Code § 7-2501.01(3A)(A)(i)(IV) through (VIII) and (3A)(A)(ii) through (iii) (2013 Supp.)).
- 2324.3 A firearm that is produced by a manufacturer or possesses a description that is included in the definition of “assault weapon” referred to in § 2324.1, but which does not share characteristics similar to the enumerated firearms or the enumerated characteristics described in § 2324.2, may be registered; provided, that the firearm is not otherwise prohibited from registration under District or Federal law or regulation.

Section 2325 (PRE-1985 PISTOLS) is amended to read as follows:**2325 PRE-1985 PISTOLS**

- 2325.1 Any pistol with a single action firing mechanism manufactured prior to 1985 shall be exempt from the application of § 504 of the Act (D.C. Official Code § 7-2505.04 (2012 Repl.)).
- 2325.2 Any pistol manufactured prior to 1985, not subject to § 2325.1, shall be deemed included on the District Roster established pursuant to § 2323.

A new Section 2326 is added to read as follows:**2326 RENEWAL OF FIREARM REGISTRATION**

- 2326.1 Pursuant to § 207a of the Act, a registration certificate shall expire three (3) years after the date of issuance, unless renewed in accordance with the Act and this section or otherwise stated in law or regulation.
- 2326.2 Firearms registered before January 1, 2011 shall be renewed as follows:
- (a) A registrant shall appear in person at the Firearms Registration Section and submit an attestation containing the following information:

- (1) Confirmation that the registrant continues to possess the firearm or firearms that were previously registered;
- (2) The registrant's current residential address; and
- (3) Confirmation that the registrant is compliant with each of the registration requirements under § 203(a) of the Act (D.C. Official Code § 7-2502.03(a) (2013 Supp.)).

(b) A registrant shall also submit to being fingerprinted.

2326.3 Registrants subject to § 2326.2 shall be required to renew their registration pursuant to the following schedule based on the registrant's date of birth:

- (a) If born between January 1 and February 15, the renewal period is between January 1, 2014 and March 31, 2014;
- (b) If born between February 16 and March 31, the renewal period is between April 1, 2014 and June 30, 2014;
- (c) If born between April 1 and May 15, the renewal period is between July 1, 2014 and September 30, 2014;
- (d) If born between May 16 and June 30, the renewal period is between October 1, 2014 and December 31, 2014;
- (e) If born between July 1 and August 15, the renewal period is between January 1, 2015 and March 31, 2015;
- (f) If born between August 16 and September 30, the renewal period is between April 1, 2015 and June 30, 2015;
- (g) If born between October 1 and November 15, the renewal period is between July 1, 2015 and September 30, 2015; and
- (h) If born between November 16 and December 31, the renewal period is between October 1, 2015 and December 31, 2015.

2326.4 If a registrant fails to renew his or her registration during the renewal period listed in § 2326.3, the registrant shall be subject to the following:

- (a) If the registrant renews within thirty (30) days of the end of renewal period listed in § 2326.3, the renewal shall be processed as if submitted on time;
- (b) If the registrant renews more than thirty (30) days but fewer than ninety (90) days after the end of the renewal period listed in § 2326.3, the registrant shall pay twice the amount of the firearm registration fee listed in § 2331.1; and
- (c) If the registrant fails to renew ninety (90) days or more after the end of the renewal period listed in § 2326.3:
 - (1) The registrant's registration shall be cancelled;
 - (2) The registrant shall be treated as a new registrant subject to §§ 2305 through 2313; and

- (3) The firearm shall be subject to § 202 of the Act.

Section 2331 (FEES) is amended to read as follows:

2331 FEES

- 2331.1 The following fees shall be charged in connection with the services provided under this chapter:
- (a) Accident reports – \$ 3.00;
 - (b) Arrest records – \$7.00;
 - (c) Fingerprints – \$35.00;
 - (d) Firearm registration – \$13.00;
 - (e) [RESERVED]; and
 - (f) Transcript of records – \$3.00.

Section 2399 (DEFINITIONS) is amended to read as follows:

2399 DEFINITIONS

- 2399.1 When used in this chapter, and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent of the Act or this chapter, the following terms shall have the meanings ascribed:

Act – the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code §§ 7-2501.01 *et seq.* (2012 Repl. and 2013 Supp.)).

Chief – the Chief of the Metropolitan Police Department.

Dealer – any person engaged in the business of buying, selling, or otherwise dealing in firearms, ammunition, or destructive devices at wholesale or retail; any person engaged in the business of repairing, testing, or analyzing firearms; any person engaged in the business of making or fitting special barrels, stocks, or trigger mechanisms for firearms or destructive devices; or any person repairing, testing, analyzing, or making any destructive device or ammunition.

Director – the commanding officer or acting commanding officer of the Police Business Services Division of the Metropolitan Police Department or their delegates.

Explosive or explosives – any chemical compound or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportion, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator, or any part of the compound or mixture, may cause a sudden generation of highly heated gasses that results in gaseous pressures capable of producing destructive effects on

contiguous objects or of destroying life or limb. (Art. 9, § 3 of the Police Regulations).

Firearms Registration Section – a part of the Police Business Services Division of the Metropolitan Police Department, located in 300 Indiana Avenue, N.W., Washington, D.C. 20001.

Home – the principal place of residence of an individual in the District and limited to the interior of a house, condominium unit, cooperative unit, apartment, houseboat, or a mobile home, so long as that structure is not capable of unassisted movement. The term home does not include any common areas of any condominium unit, cooperative unit, or apartment.

Intrafamily offense – shall have the same meaning as provided in D.C. Official Code § 16-1001(8) (2012 Repl.).

Licensed dealer – a deadly weapons dealer licensed under the Act and this chapter.

Machine gun – means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term “machine gun” shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

Pistol – any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

Supervisor – the person in charge of the Firearms Registration Section.

D.C. DEPARTMENT OF HUMAN RESOURCES**NOTICE OF PROPOSED RULEMAKING**

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008; and in accordance with the provisions of Titles VIII and VIII-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-608.01 and 1-608.01a (2012 Repl. & 2013 Supp.)), as amended by the Foster Care Youth Employment Amendment Act of 2012 (the Act), effective July 13, 2012 (D.C. Law 19-162; 59 DCR 5713), hereby gives notice of the intent to amend Section 825 (Reserved), of Chapter 8 (Career Service), of Subtitle B, Title 6 (Government Personnel) of the District of Columbia Municipal Regulations (DCMR), upon their approval by the Council of the District of Columbia (Council), and in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The provisions allow for a 10-point hiring preference to be awarded to an applicant for a Career Service position, 18 to 21 years of age, who is in foster care or who is within 5 years of leaving foster care. In addition, Section 899 (Definitions) is being amended to add definitions for the terms "foster care," "foster child" and "ward of the state." Upon adoption, these rules will amend Chapter 8, Career Service, of Subtitle B of Title 6 of the DCMR, published at 30 DCR 2555 (May 27, 1983) and amended at 30 DCR 4608 (September 9, 1983), 31 DCR 2715 (June 1, 1984), 32 DCR 1857 (April 5, 1985), 32 DCR 2473 (May 3, 1985), 32 DCR 2953 (May 24, 1985) (Errata), 33 DCR 4299 (July 18, 1986), 35 DCR 1087 (February 19, 1988), 36 DCR 6069 (August 25, 1989), 37 DCR 3952 (June 15, 1990), 37 DCR 7117 (November 9, 1990), 42 DCR 3520 (July 7, 1995), 45 DCR 451 (January 23, 1998), 45 DCR 1641 (March 20, 1998), 47 DCR 2419 (April 7, 2000), 48 DCR 8973 (September 28, 2001), 49 DCR 1859 (March 1, 2002), 49 DCR 6842 (July 19, 2002), 49 DCR 8368 (August 30, 2002), 49 DCR 9298 (October 11, 2002) (Errata), 51 DCR 9706 (October 15, 2004), 51 DCR 10410 (November 12, 2004), 53 DCR 3248 (April 21, 2006), 54 DCR 725 (January 26, 2007); 54 DCR 9556 (October 5, 2007), 55 DCR 7731 (July 18, 2008), 56 DCR 271 (April 3, 2009), 56 DCR 3685 (May 8, 2009), 56 DCR 6162 (August 7, 2009); and 59 DCR 4840 (May 11, 2012).

The title of Section 825 is changed from "Reserved" to "Foster Care Youth Employment Preference", and new provisions are added to read as follows:

- 825.1 Pursuant to D.C. Law 19-162, the "Foster Care Youth Employment Amendment Act of 2012," effective July 13, 2012 (D.C. Act 19-372; 59 DCR 5713, May 25, 2012), a person who applies for competitive employment in the Career Service and who at the time of application is 18 to 21 years of age, is in foster care, or who is within 5 years of leaving foster care, may be awarded a 10-point hiring preference, unless the person declines the preference points.

- 825.2 An applicant must meet the following requirements at the time of application to be awarded the hiring preference in accordance with Subsection 825.1:
- (a) Be within five (5) years of leaving foster care under the Child and Family Services Agency (CFSA) and is a resident of the District; or
 - (b) Is currently in the foster care program of CFSA; and
 - (c) Between the ages of 18 and 21 years of age regardless of residency.
- 825.3 An applicant claiming the hiring preference pursuant to Subsection 825.1 shall:
- (a) Submit proof of eligibility for the foster care youth employment preference by submitting a letter or other documentation from CFSA or the Family Court of D.C. Superior Court showing that the applicant is currently in foster care or showing the date the applicant left court supervisor; and
 - (b) Be eligible to receive any other hiring preference under the District of Columbia Government Comprehensive Merit Personnel Act of 1978 if a *bona fide* resident of the District.
- 825.4 An employee who applies for a competitive promotion in the Career Services and who at the time of application is 18 to 21 years of age and in foster care, or who is within 5 years of leaving foster care and is a resident of the District of Columbia, may be awarded a hiring preference of ten (10) points, unless the employee declines the preference points.

Section 899, “Definitions”, of Chapter 8 of the D.C. Personnel Regulations is amended to add the definitions for the terms “foster care,” “foster child” and “ward of the state.”

Foster Care - 24 hour substitute care for children placed away from their parents or guardians for whom the Child and Family Services Agency has placement care and responsibility.

Foster Child - a child who comes under the jurisdiction of the Superior Court of the District of Columbia pursuant to D.C. Official Code 16-2320, or whose parents’ rights have been relinquished pursuant to D.C. Official Code § 4-1406. Per subsection 825.3(a), an individual claiming the preference may have documentation from CFSA or the Family Court of the D.C. Superior Court that identifies them as a “foster child.”

Ward of the State – A person between the age of 18-21 years old who is currently committed to the Mayor as a ward of the District of Columbia or previously deemed a ward within the past five (5) year from the date of

application for employment, pursuant to D.C. Official Code § 4-114. Per Subsection 825.3(a), an individual claiming the preference may have documentation from CFSA or the Family Court of the D.C. Superior Court that identifies them as a “ward of the state.”

Comments on these proposed regulations should be submitted, in writing, within thirty (30) days of the date of the publication of this notice to Eboni Gatewood-Crenshaw, Associate Director, D.C. Department of Human Resources, 441 4th Street, N.W., Suite 330 South, Washington, D.C. 20001, or via email at eboni.gatewood-crenshaw@dc.gov. Persons with questions regarding the proposed rulemaking should call (202) 727-1558. Additional copies of these proposed rules are available from the above address.

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. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 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) (2012 Repl.)), hereby gives notice of the repeal of Section 935 entitled “Occupational Therapy Services” and adoption, on an emergency basis, of a new Section 1926, entitled “Occupational Therapy Services” of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR.

These emergency and proposed rules establish standards governing reimbursement for occupational therapy services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Occupational therapy services are designed to maximize independence, assist in gaining skills, prevent further disability, and maintain health. These rules amend the previously published rules by: (1) deleting Section 935 and codifying the rules in Section 1926; (2) specifying the service authorization requirement for occupational therapy services; (3) specifying the documents to be maintained for audits and monitoring reviews; and (4) establishing administrative procedures to request additional hours for occupational therapy services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of occupational therapy services. The new service authorization requirements for providers of occupational therapy services will promote more efficient service delivery management practices and enhance the quality of services. Therefore, in order to ensure that residents’ health, safety and welfare are not threatened by the lapse in access to occupational therapy services provided under the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 5, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 3, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 935 (Occupational Therapy Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1926 (Occupational Therapy Services) is added to Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1926 OCCUPATIONAL THERAPY SERVICES

- 1926.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 1926.9 (“Medicaid Providers”) and occupational therapy professionals enumerated in § 1926.8 (“professionals”) to provide occupational therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1926.2 Occupational therapy services are services that are designed to maximize independence, prevent further disability, and maintain health.
- 1926.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) prior to providing, or allowing any professional to provide, occupational therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
 - (a) The person’s need for occupational therapy services as demonstrated by a physician’s order; and
 - (b) The name of the professional who will provide the occupational therapy services.
- 1926.4 In order to be eligible for Medicaid reimbursement, each occupational therapy professional shall conduct an assessment of occupational therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 1926.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person’s caregiver, and a schedule for ongoing services. The therapy plan shall include measureable outcomes and a schedule of approved occupational therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.
- 1926.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person’s Individual Support Plan (ISP) and Plan of Care:

- (a) The date, amount, and duration of occupational therapy services provided;
- (b) The scope of the occupational therapy services provided; and
- (c) The name of the professional who provided the occupational therapy services.

1926.7 Medicaid reimbursable occupational therapy services shall consist of the following activities:

- (a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;
- (b) Implementing therapies described under the therapy plan;
- (c) Recording progress notes and quarterly reports during each visit;
- (d) Assessing the need for the use of adaptive equipment and verifying the equipment's quality and functioning;
- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines; and
- (f) Conducting periodic examinations and modified treatments for the person, as needed.

1926.8 Medicaid reimbursable occupational therapy services shall be provided by a licensed occupational therapist.

1926.9 In order to be eligible for Medicaid reimbursement, an occupational therapist shall be employed by the following providers:

- (a) An ID/DD Waiver provider enrolled by DDS; and
- (a) A Home Health Agency as defined in Section 1999 of Title 29 of the DCMR.

1926.10 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.

1926.11 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) The physician's order;

- (b) A copy of the occupational therapy assessment and therapy plan in accordance with the requirements of Sections 1926.4 and 1926.5; and
 - (c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1926.12 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 DCMR.
- 1926.13 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the Waiver service is neither replacing nor duplicating EPSDT services.
- 1926.14 Medicaid reimbursable occupational therapy services shall be limited to four (4) hours per day and one-hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional occupational therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 1926.15 The Medicaid reimbursement rate for occupational therapy services shall be sixty-five dollars (\$65.00) per hour. The billable unit of service shall be fifteen (15) minutes.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-9115, via email at DHCF Publiccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

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. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 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) (2012 Repl.)), hereby gives notice of repeal of Section 934, entitled “Physical Therapy Services” and adoption, on an emergency basis, of a new Section 1928, entitled “Physical Therapy Services” of Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules establish standards governing reimbursement for physical therapy services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and conditions of participation for providers.

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services for a five-year period beginning November 20, 2012. Physical therapy services treat physical dysfunctions or reduce the degree of pain associated with movement to prevent disability, promote mobility, maintain health and maximize independence. These rules amend the previously published rules by: (1) deleting Section 934 and codifying the rules in Section 1928; (2) specifying the service authorization requirement for physical therapy services; (3) specifying the documents to be maintained for audits and monitoring reviews; and (4) establishing administrative procedures to request additional hours for physical therapy services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of waiver participants who are in need of physical therapy services. The new service authorization requirements for providers of physical therapy services will promote more efficient service delivery management practices and enhance the quality of services. Therefore, in order to ensure that the residents’ health, safety, and welfare are not threatened by the lapse in access to physical therapy services provided pursuant to the updated service authorization and delivery guidelines, it is necessary that these rules be published on an emergency basis.

The emergency rulemaking was adopted on December 5, 2013, and became effective on that date. The emergency rules shall remain in effect for one hundred and twenty (120) days or until April 3, 2014, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Section 934 (Physical Therapy Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR is repealed.

A new Section 1928 (Physical Therapy Services) is added to Chapter 19 (Home and Community-Based Waiver Services for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the DCMR to read as follows:

1928 PHYSICAL THERAPY SERVICES

- 1928.1 This section establishes the conditions for Medicaid providers enumerated in § 1928.9 (“Medicaid Providers”) and physical therapy services professionals enumerated in § 1928.8 (“professionals”) to provide physical therapy services to persons enrolled in the Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities (ID/DD Waiver).
- 1928.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability, promote mobility, maintain health and maximize independence.
- 1928.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) prior to providing, or allowing any professional to provide physical therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
 - (a) The ID/DD Waiver participant’s need for physical therapy services as demonstrated by a physician’s order; and
 - (b) The name of the professional who will provide the physical therapy services.
- 1928.4 In order to be eligible for Medicaid reimbursement, each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 1928.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person’s caregiver, and a schedule for ongoing services. The therapy plan shall include measureable outcomes and a schedule of approved physical therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.
- 1928.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person’s Individual Support Plan (ISP) and Plan of Care.
 - (a) The date, amount, and duration of physical therapy services provided;

- (b) The scope of the physical therapy services provided; and
- (c) The name of the professional who provided the physical therapy services.

1928.7 Medicaid reimbursable physical therapy services shall consist of the following activities:

- (a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;
- (b) Implementing therapies described under the therapy plan;
- (c) Recording progress notes and quarterly reports during each visit;
- (d) Assessing the need for the use of adaptive equipment and verifying the equipment's quality and functioning;
- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines; and
- (f) Conducting periodic examinations and modified treatments for the person, as needed.

1928.8 Medicaid reimbursable physical therapy services shall be provided by a licensed physical therapist.

1928.9 In order to be eligible for Medicaid reimbursement, a physical therapist shall be employed by the following providers:

- (a) An ID/DD Waiver Provider enrolled by DDS; and
- (b) A Home Health Agency as defined in Section 1999 of Title 29 of the DCMR.

1928.10 Each Medicaid provider shall comply with Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 DCMR.

1928.11 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) The physician's order;
- (b) A copy of the physical therapy assessment and therapy plan in accordance with the requirements of Sections 1928.4 and 1928.5; and

- (c) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.
- 1928.12 Each Medicaid provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of DCMR.
- 1928.13 If the person enrolled in the waiver is between the ages of eighteen (18) and twenty-one (21), the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the Waiver service is neither replacing nor duplicating EPSDT services.
- 1928.14 Medicaid reimbursable physical therapy services shall be limited to four (4) hours per day and one hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional physical therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 1928.15 The Medicaid reimbursement rate for physical therapy services shall be sixty-five dollars (\$65.00) per hour. The billable unit of service shall be fifteen (15) minutes.

Comments on the emergency and proposed rule shall be submitted, in writing, to Linda Elam, Ph.D., MPH, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900, Washington, D.C. 20001, via telephone on (202) 442-9115, via email at DHCF Publiccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-237
December 18, 2013

SUBJECT: Appointment – Director, Department of Behavioral Health

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), pursuant to section 5114 of the Department of Behavioral Health Establishment Congressional Review Emergency Act of 2013, effective October 17, 2013, D.C. Act 20-204, 60 DCR 15341, and in accordance with the Director of the Department of Behavioral Health Stephen T. Baron Confirmation Resolution of 2013, approved December 3, 2013 (Res. 20-0344), it is hereby **ORDERED** that:

1. **STEPHEN T. BARON** is appointed the Director of the Department of Behavioral Health and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2013-153, dated August 23, 2013.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to December 3, 2013.



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 2013-238
December 19, 2013

SUBJECT: Appointment – Chairperson, State Advisory Panel on Special Education
for the District of Columbia


ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Repl.), and in accordance with Mayor's Order 2012-48, dated April 5, 2012, it is hereby **ORDERED** that:

1. **SENORA SIMPSON** is designated as Chairperson of the State Advisory Panel on Special Education for the District of Columbia, replacing Karla Witt-Reid, and shall serve in that capacity at the pleasure of the Mayor.
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 2013-239
December 19, 2013

SUBJECT: Appointment – Board of Architecture and Interior Designers

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 1002(a) of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(a) (2013 Supp.), which established the Board of Architecture and Interior Designers, it is hereby **ORDERED** that:

1. **WANDA Y. SHERROD**, who was nominated by the Mayor on September 16, 2013, and whose nomination was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0424 on November 16, 2013, is appointed as a consumer member of the Board of Architecture and Interior Designers, replacing Anthony Muhammad, for a term to end November 13, 2016.
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 2013-240
December 19, 2013

SUBJECT: Appointment – Statewide Health Coordinating Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 4 of the Health Services Planning Program Re-establishment Act of 1996, effective April 9, 1997, D.C. Law 11-191, D.C. Official Code § 44-403 (2012 Repl.), which established the Statewide Health Coordinating Council (“Council”), it is hereby **ORDERED** that:

1. **JACQUELINE D. BOWENS**, who was nominated by the Mayor on July 2, 2013 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 20-0368 on October 27, 2013, is appointed as a member, and representative of incorporated associations of health care facilities in the District of Columbia, to the Council, to complete the remainder of an unexpired term to end February 11, 2014.
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 2013-241
December 20, 2013

SUBJECT: Appointment – Deputy Mayor for Education

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), pursuant to section 202 of the Public Education Reform Amendment Act of 2007, effective June 12, 2007, D.C. Law 17-9, D.C. Official Code § 38-191 (2012 Repl.), pursuant to section 2(a) of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01(a) (2013 Supp.), and in accordance with the Deputy Mayor for Education Abigail Smith Confirmation Resolution of 2013, deemed approved October 1, 2013, PR20-0196, it is hereby **ORDERED** that:

1. **ABIGAIL SMITH** is appointed Deputy Mayor for Education and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2013-072, dated April 4, 2013.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to October 1, 2013.



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 2013-242
December 23, 2013

SUBJECT: Appointment – Director, Department of Small and Local Business
Development

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), pursuant to section 2312 of the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005, D.C. Law 16-33, D.C. Official Code § 2-218.12 (2012 Repl.), pursuant to section 2(a) of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01(a) (2013 Supp.), and in accordance with the Director of the Department of Small and Local Business Development Robert N. Summers Confirmation Resolution of 2013, effective December 3, 2013 (Res. 20-0347), it is hereby **ORDERED** that:

1. **ROBERT N. SUMMERS** is appointed Director of the Department of Small and Local Business Development and shall serve in that capacity at the pleasure of the Mayor.
2. This Order supersedes Mayor's Order 2013-155, dated August 26, 2013.
3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to December 3, 2013.



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 2013-243
December 23, 2013

SUBJECT: Re-Establishment of the District of Columbia Commission on the Martin Luther King, Jr. Holiday

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 Repl.), it is hereby **ORDERED** that:

I. ESTABLISHMENT

This Order re-establishes the District of Columbia Commission on the Martin Luther King, Jr. Holiday ("Commission") in the executive branch of the District government.

II. PURPOSE

The Commission shall assist the Mayor on matters relating to the District's celebration of the annual public holiday commemorating the birth of Martin Luther King, Jr. celebrated on January 15th or on the third Monday in January of each year.

III. FUNCTIONS

- A. The Commission shall perform the following functions:
1. Make recommendations on activities to be sponsored by the District of Columbia government for the holiday and assist in the implementation of approved events;
 2. Encourage educational programs relating to the holiday designed to increase participation in the activities and commemorate Dr. King's legacy with a day of service; and
 3. Undertake other duties as are assigned by the Mayor.

IV. COMPOSITION

- A. The Commission shall have a maximum of twenty-three (23) voting members.
- B. The Commission may include eight (8) *ex officio* members from the following offices or agencies:
 - 1. Office of Human Rights;
 - 2. Office of the Secretary of the District of Columbia;
 - 3. Office of Community Affairs;
 - 4. District of Columbia Public Schools;
 - 5. District of Columbia Public Library;
 - 6. Serve DC;
 - 7. Commission on the Arts and Humanities;
 - 8. District of Columbia Youth Advisory Council;
 - 9. Office of Religious Affairs; or
 - 10. The Chairman of the Council of the District of Columbia, with consent, or his or her designee.
- C. The Mayor shall appoint up to fifteen (15) private citizens as Commission members. All members must be residents of the District of Columbia.

V. TERMS

- A. Each member of the Commission who is not a government employee shall be appointed for a term of two years. Members may serve until reappointed or replaced.
- B. Each member of the Commission who is a government employee shall serve only while employed in their official position and shall serve at the pleasure of the Mayor.
- C. Any member appointed by the Mayor may be removed for failure to attend three (3) consecutive meetings.

VI. COMPENSATION

Members shall serve without compensation.

VII. ORGANIZATION

- A. The Secretary of the District of Columbia shall serve as the Chair of the Commission, and shall appoint a Vice Chair to lead the Commission in the absence of the Chair. The Commission may elect such other officers as are deemed necessary.

- B. The Chair may appoint subcommittees as needed, each chaired by a member of the Commission. District residents who are not members of the Commission may be invited to serve on subcommittees.

VIII. ADMINISTRATION

- A. The Office of the Secretary shall provide primary administrative and technical support to the Commission.
- B. Each department, agency, instrumentality, or independent agency of the District shall cooperate with the Commission and provide any information, in a timely manner, that the Commission requests to carry out the provisions of this Order.

IX. RESCISSION

Mayor's Order 2008-17, dated January 24, 2008 is rescinded.

- X. **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 2013-244
December 23, 2013

SUBJECT: Appointments – District of Columbia Commission on the Martin Luther King, Jr. Holiday

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) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2012 Repl.), and in accordance with Mayor's Order 2013-243, dated December 23, 2013, it is hereby **ORDERED** that:

- I. The following persons are appointed as private citizen members of the District of Columbia Commission on the Martin Luther King, Jr. Holiday ("Commission") for terms to end December 23, 2015:
 - A. **DR. WENDELL MOORE**
 - B. **EARL FOWLKES**
 - C. **JUDITH TERRA**
 - D. **AARON JONES**
 - E. **DENISE ROLARK-BARNES**
 - F. **DOUGLAS SLOAN**
 - G. **CHARLES HICKS**

- II. The following persons are appointed as *ex officio* members to the Commission and shall serve at the pleasure of the Mayor:
 - A. **REV. DEXTER NUTALL**, Director, Office of Religious Affairs;
 - B. **STEPHEN GLAUDE**, Director, Office of Community Affairs; and
 - C. **CYNTHIA BROCK-SMITH**, Secretary of the District of Columbia, Office of the Secretary of the District of Columbia.

- III. **CYNTHIA BROCK-SMITH** is appointed as Chairperson of the Commission and shall continue to serve in that capacity so long as she serves as Secretary of the District of Columbia.

- IV. **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 2013-245
December 23, 2013

SUBJECT: Appointment – Board for the Condemnation of Insanitary Buildings

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with Section 2 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, D.C. Official Code § 6-902(a-1) (2013 Supp.), and Mayor's Order 83-219, dated September 20, 1983, it is hereby **ORDERED** that:

1. **JATINDER KHOKHAR** is appointed as a member, and as Chairman, of the Board for the Condemnation of Insanitary Buildings, representing the Department of Consumer and Regulatory Affairs and shall serve at the pleasure of the Mayor or for so long as he remains an employee of the agency.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.


VINCENT C. GRAY
MAYOR

ATTEST: 
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

OFFICE OF THE CHIEF FINANCIAL OFFICER
Office of Revenue Analysis

AMENDED NOTICE of INCREASES
in the 2014 STANDARD DEDUCTION,
PERSONAL EXEMPTION, HOMESTEAD DEDUCTION
and TRASH COLLECTION CREDIT AMOUNTS

I. The Standard Deduction Amounts

Per the D.C. Code § 47-1801, et seq., the annual Standard Deduction amount (pertaining to the Individual Income Tax) for calendar year 2014 is adjusted in the following manner

Table with 2 columns: Description and Value. Rows include Washington Area Average CPI values for 2011 and 2013, and the percent change in the index during the above time period.

Therefore, effective January 1, 2014:

- the Standard Deduction amount for all filers (except for married filing separate filers) will be \$4,150.00
the Standard Deduction amount for married filing separate filers will be \$2,075.00

II. The Personal Exemption Amount

Per the D.C. Code § 47-1806, et seq., the annual Personal Exemption amount (pertaining to the Individual Income Tax) for calendar year 2014 is adjusted in the following manner

Table with 2 columns: Description and Value. Rows include Washington Area Average CPI values for 2011 and 2013, and the percent change in the index during the above time period.

Therefore, effective January 1, 2014:

- the Personal Exemption amount will be \$1,725.00

1 Annual dollar amount changes are rounded down to the nearest \$50.00 increment.

2 The standard deduction for married filing separate is 50% of the standard deduction amount for all filers.

III. The Homestead Deduction Amount

Per the D.C. Code § 47-850, et seq., the annual Homestead Deduction amount (pertaining to the Real Property Tax) for tax year 2013 is adjusted in the following manner

The Washington Area Average CPI value for Tax Year 2011:	146.04
The Washington Area Average CPI value for Tax Year 2013:	151.96
The percent change in the index during the above time period:	4.06%

Therefore, effective Tax Year 2014 (beginning October 1, 2013):
 • **the Homestead Deduction amount will be¹ \$70,200.00**

IV. The Condominium and Cooperative Trash Collection Credit Amount

Per the D.C. Code § 47-872, et seq., the annual Trash Collection Credit amount (pertaining to the Real Property Tax) for tax year 2013 is adjusted in the following manner

The Washington Area Average CPI value for Calendar Year 2012:	150.10
The Washington Area Average CPI value for Calendar Year 2013:	152.38
The percent change in the index during the above time period:	1.52%

Therefore, effective Tax Year 2014 (beginning October 1, 2013):
 • **the Trash Collection Trash Credit amount will be³ \$105.00**

A Summary of CPI-Adjusted Deduction and Exemption Amounts for 2014			
	Base Amounts	CPI Adjustment Factor*	2014 Amounts
Standard Deduction for all filers	\$4,000.00	1.0444	\$4,150.00
Standard Deduction for married filing separate (50% of Standard Deduction for all filers)			\$2,075.00
Personal Exemption	\$1,675.00	1.0444	\$1,725.00
Homestead Deduction	\$67,500.00	1.0406	\$70,200.00
Trash Collection Credit	\$103.00	1.0152	\$105.00

* Source: U.S. Bureau of Labor Statistics, data accessed December 18, 2013

³ Annual dollar amount changes are rounded to the nearest whole dollar.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024**

AGENDA

**January 7, 2014
9:00 A.M.**

- 1) Meeting Call to Order
- 2) Attendees
- 3) Comments from the Public
- 4) Minutes: Review draft of 3 December 2013
- 5) Old Business
- 6) New Business
- 7) Correspondence
 - a) Question regarding resident managers
- 8) Pursuant to § 2-575(13) the Board will enter executive session to review application(s) for licensure; and, pursuant to § 2-575(4)(A).
- 9) Action on applications discussed in executive session
- 10) Adjournment

Next Scheduled Meeting – Tuesday, 4 February 2014
Location: 1100 4th Street SW, Conference Room E300

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Architecture and Interior Design
1100 4th Street, S.W., Room 300B
Washington, D.C. 20024**

AGENDA

January 10th, 2014

1. Meeting Call to Order - 9:30 a.m.
2. Attendees
3. Comments from the Public
 - A. American Society of Interior Designers (ASID)
 - B. American Society of Landscape Architects (ASLA)
4. Executive Session (Closed to the Public)
 - A. Review of Complaints
 - B. Legal Counsel Report
 - C. Review – Proposed Legislation – Landscape Architecture
5. Minutes – Review Draft, September 6, 2013
6. Review of Applications
7. Review of Complaints/Legal Matters
8. Review of Interior Design Continuing Education Provider Submissions
9. Proposed Legislation (Landscape Architects, Architecture Firms)
10. Old Business
 - A. I.D. Forms
11. New Business
 - A. NCARB Activities – Teleconference Meeting, Region 2 - 11/06/13
 - B. CIDQ Activities – Delegates Meeting, Las Vegas, NV -11/8&9/2013
 - C. Proposed Calendar 2014
12. Review of Correspondence

**Agenda – Board of Architecture and Interior Design
January 10th, 2013
Page Two**

13. Adjourn

Next Scheduled Regular Meeting, TBD, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Barber and Cosmetology
1100 4th Street SW, Room E300
Washington, DC 20024**

Meeting Agenda

**January 6, 2014
10:00 a.m.**

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Applications for Licensure
7. Executive Session (Closed to the Public)
8. Old Business
9. New Business
10. Adjourn
11. Next Scheduled Board Meeting – February 3, 2014.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024**

Meeting Agenda

**January 9, 2014
1:00 P.M.**

1. Call to Order – 1:00 p.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Review of Correspondence
6. Applications for Licensure
7. Draft Minutes, December 2013
8. Executive Session (Closed to the Public)
9. Old Business
10. New Business
11. Adjourn
12. Next Scheduled Board Meeting – February 6, 2014 at 1:00 p.m.

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Industrial Trades
1100 4th Street SW, Room 300 A/B
Washington, DC 20024**

AGENDA

**January 21, 2014
1:00 P.M -3:30 P.M.**

- I. Call to Order**
- II. Ascertainment of Quorum**
- III. Adoption of the Agenda**
- IV. Acknowledgment of Adoption of the Minutes**
- V. Report by the Chair**
 - a) Elevator applications on PULSE
 - b) DCMR updates
 - c) New Board Member(s)
- VI. New Business**
 - a) Reciprocity with other Jurisdictions
- VII. Opportunity for Public Comments**
- VIII. Executive Session**

Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Industrial Trades Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13)

 - a) Review of applications
 - b) Recommendations from committee meetings
- IX. Resumption of Public Meeting**
- X. Adjournment**

Minutes: December 17, 2013 – NO QUORUM

Next Scheduled Board Meeting: February 18, 2014 @ 11:00 AM – 3:30 PM, Room 300A/B
Street, Washington, DC 20024

1100 4th

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**Board of Professional Engineering
1100 4th Street SW, Room E300
Washington, DC 20024**

AGENDA

**January 23, 2014
9:30 A.M.**

- 1) Meeting Call to Order
- 2) Attendees
- 3) Comments from the Public
- 4) Minutes: Review draft of 19 December 2013
- 5) Old Business
- S
- 6) New Business
- 7) Executive Session
- 8) Application Committee Report
- 9) Adjournment

Next Scheduled Meeting – Thursday, 27 February 2014 (tentative)
Location: 1100 4th Street SW, Conference Room E300

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Board of Real Estate Appraisers
1100 4th Street SW, Room 300 B
Washington, DC 20024**

AGENDA

**January 15, 2014
9:30 A.M.**

1. Call to Order - 9:30 a.m.
2. Executive Session (Closed to the Public) – 9:30 -10:30 a.m.
 - A. Legal Committee Recommendations
 - B. Legal Counsel Report
3. Attendance (Start of Public Session) – 10:30 a.m.
4. Comments from the Public
5. Minutes - Draft, December 18, 2013
6. Recommendations
 - A. Review - Applications for Licensure
 - B. Legal Committee Report
 - C. Education Committee Report
 - D. Budget Report
 - E. 2014 Calendar
 - F. Correspondence – E-mail from Emil Ali
7. Old Business
8. New Business
9. Adjourn

Next Scheduled Regular Meeting, February 19, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION**

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

January 2014

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	7	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	15	10:00 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	10	9:00am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	6	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	14	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	9	1:00pm-5:00 pm
Daniel Burton	Board of Professional Engineering	23	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	14	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	21	1:00 pm-4:00 pm
	Asbestos		
	Electrical		
	Elevators		
	Plumbing		
	Refrigeration/Air Conditioning		
	Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D.C. BOXING AND WRESTLING COMMISSION

1100 4th Street SW-Suite E500

Washington, DC. 20024

Meeting Agenda

January 14, 2014

7:00 P.M.

CALL TO ORDER & ROLL CALL

COMMENTS FROM THE PUBLIC & GUEST INTRODUCTIONS

REVIEW OF MINUTES

Minutes

UPCOMING EVENTS

1. December 29, 2013 Pro-Wrestling at the Verizon Center: WWE
2. January 25, 2014 Pro-Boxing Event at the DC Armory: Golden Boy Promotions
3. February 22, 2014 Amateur MMA Event at the Echo Stage: Operation Octagon

OLD BUSINESS

1. Mayor's Cup
2. Dr. McKnight Amateur Event: Saturday, September 19, 2014
3. Officials Training: ABC Trainers & Certification

NEW BUSINESS

1. Upcoming Amateur Events
2. Officials License Categories & Duties

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS FEBRUARY 11, 2014

**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION**

NOTICE OF PUBLIC MEETING

**District of Columbia Real Estate Commission
1100 4th Street, S.W., Room 300B
Washington, D.C. 20024**

AGENDA

January 14, 2014

1. Call to Order - 9:30 a.m.
2. Executive Session (Closed to the Public) – 9:30 -10:30 a.m.
 - A. Legal Committee Recommendations
 - B. Legal Counsel Report
3. Attendance (Start of Public Session) – 10:30 a.m.
4. Comments from the Public
5. Minutes - Draft, November 12, 2013
6. Recommendations
 - A. Review - Applications for Licensure
 - B. Legal Committee Report
 - C. Education Committee Report
 - D. Budget Report
 - E. 2014 Calendar
 - F. Correspondence
7. Old Business
 - Non-Employee IDs
8. New Business
9. Adjourn

Next Scheduled Regular Meeting, February 11, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DISTRICT OF COLUMBIA BOARD OF ELECTIONS**2014 MONTHLY MEETING SCHEDULE**

(All meetings are held at 441 Fourth Street, NW, Room 280 North)

DATE	TIME	ROOM NUMBER
Wednesday, January 8, 2014	10:30 AM	Room 280 North
Wednesday, February 5, 2014	10:30 AM	Room 280 North
Wednesday, March 5, 2014	10:30 AM	Room 280 North
Thursday, April 24, 2014	10:30 AM	Room 280 North
Wednesday, May 7, 2014	10:30 AM	Room 280 North
Wednesday, June 4, 2014	10:30 AM	Room 280 North
Wednesday, July 2, 2014	10:30 AM	Room 280 North
Wednesday, August 6, 2014	10:30 AM	Room 280 North
Wednesday, September 3, 2014	10:30 AM	Room 280 North
Wednesday, October 1, 2014	10:30 AM	Room 280 North
Thursday, November 20, 2014	10:30 AM	Room 280 North
Wednesday, December 3, 2014	10:30 AM	Room 280 North

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

**Certification of Filling a Vacancy
In Advisory Neighborhood Commissions**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Joseph Maloney
Single-Member District 4C02

OFFICE OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER AFFAIRS**ADVISORY COMMITTEE****Notice of Public Meeting**

The Advisory Committee for the Mayor's Office of GLBT Affairs will hold a meeting on January 15th, 2014 at 6:30pm – 441 4th St. NW, 11th floor. The focus of the meeting will be for the committee members to engage in strategic planning for the New Year and to decide on which initiatives they would like to focus.

As per the District's Open Meetings law, this meeting is open to members of the public to attend.

If time allows, community members will be allotted 2 minutes each to speak to the Committee Members at the end of the meeting. **Registration is required in order to attend the meeting and there are a limited number of spaces available:** <https://www.eventbrite.com/e/january-advisory-committee-meeting-for-the-mayors-office-of-glbt-affairs-tickets-9930787252>

Written comments are encouraged and will be accepted until January 13th, 2014. If received, comments will be distributed to all Committee Members in advance of the meeting. Comments can be submitted via email to Amy.Loudermilk@dc.gov or can be mailed to:

Office of GLBT Affairs
ATTN: Amy Loudermilk
1350 Pennsylvania Ave NW, Suite 327
Washington, DC 20004

HOWARD UNIVERSITY PUBLIC CHARTER MIDDLE SCHOOL OF
MATHEMATICS AND SCIENCE

NOTICE OF REQUEST FOR PROPOSALS/QUOTATIONS

Curriculum Coordination/Development and Teacher Professional Development

Howard University Public Charter Middle School of Mathematics and Science is advertising the opportunity to bid on services for **Curriculum Coordination/Development and teacher professional development**, in Compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995. To obtain a copy of the Request for Proposal (RFP) interested parties may contact the following:

Mr. Yohance C. Maqubela
Howard University Public Charter Middle School of Mathematics and Science
405 Howard Place, NW
Washington, DC 20059
(202) 806-7845
ycm@ms-2.org

DEADLINE FOR SUBMISSIONS IS CLOSE OF BUSINESS FRIDAY, JANUARY 3, 2014 AT 5:00 PM.
Please forward proposals and supporting documents to Mr. Yohance C. Maqubela at the address above. **ALL BIDS NOT ADDRESSING ALL AREAS AS OUTLINED IN THE (RFP) WILL NOT BE CONSIDERED.**

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD**NOTIFICATION OF BOARD MEETING**

The District of Columbia Public Charter School Board (“PCSB”) hereby gives notice, dated Friday, December 20, 2013, of its meeting on Wednesday, January 8, 2014 at 8:30 AM in PCSB’s office, located at 3333 14th Street, NW, Suite 210. At this meeting, the Board will vote on whether to renew Arts and Technology Academy Public Charter School’s (“ATA PCS”) charter agreement for a fifteen-year period. PCSB held a public informal hearing regarding renewal of ATA PCS’ charter agreement on Wednesday, December 18, 2013. The School Reform Act requires PCSB to hold a final vote on charter renewal no later than 30 days following an informal hearing (DC ST § 38-1802.12(d)(4)(A)(ii)). For further information, please contact Ms. Sarah Medway, Charter Agreement Specialist, at 202-328-2660.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC INTEREST HEARINGFORMAL CASE NO. 1105, IN THE MATTER OF THE INVESTIGATION INTO THE BUSINESS AND SOLICITATION PRACTICES OF STARION ENERGY IN THE DISTRICT OF COLUMBIA

The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 130.11 of the Commission’s Rules of Practice and Procedure, of a public interest hearing to consider the Settlement Agreement filed by the Office of the People’s Counsel and Starion Energy PA, Inc. (“Settling Parties”).¹ The public interest hearing will convene Thursday, January 9, 2014, at 11:15 a.m. in the Commission Hearing Room, 1333 H Street, N.W., East Tower, Suite 700, Washington, DC 20005.

BACKGROUND

On May 30, 2013, the Commission issued Order No. 17148, granting in part the petition of the Office of People’s Counsel (“OPC”) to open an investigation into the business and solicitation practices of retail energy suppliers.² On July 12, 2013, the Commission held a public hearing to gather information from consumers regarding the business and sales practices of retail energy suppliers, marketers and brokers serving residential and commercial electricity and natural gas customers in the District of Columbia (“District”).³ Twenty-two District consumers testified during the hearing, 21 of whom complained about allegedly unlawful, misleading, and deceptive sales practices of Starion Energy (“Starion”).

Following the public hearing, the Commission issued Order No. 17206, opening *Formal Case No. 1105*, to investigate the business practices of Starion and directed Starion to cease and desist any practices that violate the D.C. Code and the Commission’s rules regarding consumer protection standards applicable to energy suppliers.⁴ Additionally, the Commission set an evidentiary hearing for October 3, 2013, to consider OPC’s claims regarding Starion’s sales

¹ *Formal Case No. 1105, In the Matter of the Investigation into the Business and Solicitation Practices of Starion Energy in the District of Columbia* (“*Formal Case No. 1105*”), Joint Motion of Starion Energy and the Office of People’s Counsel (“Settling Parties”) for Approval of a Full and Unanimous Settlement Agreement, filed December 9, 2013 (“*Joint Motion*”); and *Formal Case No. 1105*, Starion Energy and the Office of People’s Counsel’s Unanimous Settlement Agreement and Voluntary Compliance Plan, filed December 9, 2013.

² *General Docket No. 117, In the Matter of the Petition of the Office of the People’s Counsel for an Investigation into the Business Practices of Alternative Energy Suppliers in the District of Columbia* (“*General Docket No. 117*”), Order No. 17148, ¶ 8, rel. May 30, 2013.

³ *General Docket No. 117 and Formal Case No. 1105*, Hearing Transcript, rel. July 16, 2013.

⁴ *Formal Case No. 1105*, Order No. 17206, ¶ 7, rel. July 30, 2013.

practices, and established a procedural schedule for resolving this matter.⁵ On August 29, 2013, in response to an unopposed motion filed by Starion,⁶ the Commission issued Order No. 17232 which amended the procedural schedule for resolving this matter and set a new date for the evidentiary hearing of November 14, 2013.⁷ On November 13, 2013, at the request of Starion and OPC, the Commission suspended the procedural schedule to allow the parties' time to finalize a settlement.⁸

PROPOSED SETTLEMENT AGREEMENT

According to the Settling Parties, the Settlement Agreement:

Sets for[th] a comprehensive plan that: (1) Ensures consumers who have submitted substantiated complaints against Starion related to slamming or misrepresentation are remediated; (2) sets forth an action plan going forward whereby the Settling Parties commit to working together and meeting on a quarterly basis for one year to evaluate and edit, as appropriate, the various marketing materials and processes to be implemented by Starion; and (3) Starion agrees to make a voluntary contribution of \$100,000 to the Utility Assistance Program of the Greater Washington Urban league to provide assistance to consumers in need.⁹

PUBLIC INTEREST HEARING

The purpose of this public interest hearing is to determine if the proposed Settlement Agreement is in the public interest pursuant to Section 130.11 of the Commission's Rules of Practice and Procedure.¹⁰ During the course of the hearing, the settling parties will present witnesses to testify regarding the proposed Settlement Agreement and Pepco, as the non-signatory party, will have an opportunity to cross-examine witnesses.¹¹

The hearing will be broadcast live on the Commission's website, www.dcpssc.org, and the video archived at http://www.dcpssc.org/public_meeting/index.asp.

⁵ *Formal Case No. 1105*, Order No. 17206, ¶¶ 7, 8, rel. July 30, 2013.

⁶ *Formal Case No. 1105*, Starion Energy PA, Inc. Motion to Amend Procedural, filed August 26, 2013 ("Starion's Motion").

⁷ *Formal Case No. 1105*, Order No. 17232, ¶ 6, rel. August 29, 2013.

⁸ *Formal Case No. 1105*, Order No. 17297, ¶ 8, rel. November 13, 2013. *See also*, *Formal Case No. 1105*, Joint Motion of Starion Energy PA, Inc. and the Office of the People's Counsel to suspend the current procedural schedule established by Order No. 17232, filed November 6, 2013 ("Joint Motion").

⁹ *Formal Case No. 1105*, Joint Motion at 3.

¹⁰ 15 DCMR § 130.11 (July 10, 1992).

¹¹ 15 DCMR § 130.12 (July 10, 1992).

ADDITIONAL INFORMATION

Copies of the proposed Settlement Agreement may be obtained by contacting the Office of the Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005 or by visiting the Commission's website at www.dcpssc.org. The proposed Settlement Agreement is located on the Commission's eDocket system in *Formal Case No. 1105*, item no. 37 or can be obtained online at http://www.dcpssc.org/edocket/docketsheets_pdf_FS.asp?caseno=FC1105&docketno=37&flag=D&show_result=Y.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, January 2, 2014 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|----|--|-----------------------|
| 1. | Call to Order | Board Chairman |
| 2. | Roll Call | Board Secretary |
| 3. | Approval of /December 5, 2013 Meeting Minutes | Board Chairman |
| 4. | Committee Reports | Committee Chairperson |
| 5. | General Manager's Report | General Manager |
| 6. | Action Items
Joint-Use
Non Joint-Use | Board Chairman |
| 7. | Other Business | Board Chairman |
| 8. | Adjournment | Board Chairman |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH STREET, N.W.
SUITE 200-SOUTH
WASHINGTON, D.C. 20001**

PUBLIC NOTICE OF CLOSED MEETING

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on 12/17/13, the Board of Zoning Adjustment voted 4-0-1, to hold closed meetings telephonically on Monday, January 6, 13, and 27, 2014, beginning at 4:00 pm for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's agendas for January 7, 14 and 29, 2014; and,

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

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION ----- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18247-A of Big City Development, LLC, pursuant to 11 DCMR § 3130, for a two-year extension of BZA Order No. 18247.

The original application was pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 771.2, a variance from the rear yard requirements under § 774.1, a variance from the off-street parking requirements under § 2101.1, and a variance from the loading requirements under § 220.1, to allow the development of a new restaurant in the HS/C-2-A District at premises 1309 and 1311 H Street, N.E. (Square 1027, Lots 88 and 89).

HEARING DATE (Original Application):	September 20, 2011
DECISION DATE (Original Application):	September 20, 2011
FINAL ORDER ISSUANCE DATE (Order No. 18247):	November 29, 2011
DECISION ON 1ST EXTENSION OF ORDER DATE:	December 17, 2013

**SUMMARY ORDER ON MOTION TO EXTEND
THE VALIDITY OF BZA ORDER NO. 18247**

The Underlying BZA Order

On September 20, 2011, the Board of Zoning Adjustment (the "Board") approved the Applicant's request for an area variance from the floor area ratio requirements of § 771.2; an area variance from the rear yard requirements of § 774.1; an area variance from the off-street parking requirements of § 2101.1; and an area variance from the loading requirements of § 2201.1, to allow the development of a new restaurant in the HS/C-2-A District at premises 1309-1311 H Street, N.E. (Square 1027, Lots 88 and 89) (the "Site"). The Board issued its written order ("Order") on November 29, 2011. Pursuant to 11 DCMR §§ 3125.6 and 3125.9, the Order became final on November 29, 2011 and took effect 10 days later.

Under the Order and pursuant to § 3130.1 of the Zoning Regulations, the Order was valid for two years from the time it was issued -- until November 29, 2013. Subsection 3130.1 states:

No order authorizing the erection or alteration of a structure shall be valid for a period longer than two (2) years, or one (1) year for an Electronic Equipment Facility (EEF), unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit, except as permitted in § 3130.6.

(11 DCMR § 3130.1.)

BZA APPLICATION NO. 18247-A**PAGE NO. 2**Motion to Extend Validity of the Order Pursuant to 11 DCMR § 3130.6

On October 31, 2013, the Applicant sent a letter to the Board that requested, pursuant to 11 DCMR § 3130.6, a two-year extension of Order No. 18247, which was due to expire on November 29, 2013. The Applicant is requesting this extension due to its inability to obtain sufficient project financing, despite its good faith efforts, due to economic and market conditions beyond the Applicant's reasonable control.

Criteria for Evaluating Motion to Extend

Subsection 3130.6 of the Zoning Regulations authorizes the Board to extend the time periods for good cause provided: (i) the extension request is served on all parties to the application by the applicant, and all parties are allowed 30 days in which to respond; (ii) there is no substantial change in any of the material facts upon which the Board based its original approval; and (iii) the applicant demonstrates there is good cause for such extension. Pursuant to 11 DCMR § 3130.6(c)(1), good cause is established through the showing of 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.

The Merits of the Request to Extend the Validity of the Order Pursuant to 11 DCMR § 3130.6

The Board finds that the motion has met the criteria of § 3130.6 to extend the validity of the underlying order. To meet the burden of proof, the Applicant submitted an affidavit that described its efforts and difficulties in obtaining financing. As set forth in the affidavit, the Applicant owns and operates two existing restaurants: (1) The Carolina Kitchen, located in Largo, MD, which opened in 2005, and (2) The Carolina Kitchen Bar & Grille, located in Hyattsville, MD, which opened in 2008. The Applicant is also in the process of opening a third outpost at 2300 Washington Place, N.E. (known as Rhode Island Row). The Applicant purchased the H Street Site with the goal of developing a new restaurant concept at the Site. (Exhibit 35.)

Since the Board issued Order No. 18247 in November of 2011, the Applicant has been working diligently to secure the necessary funding to move forward with development of the Site. The Applicant has contacted several lenders with whom it has worked in the past, including Industrial Bank, which has successfully financed a number of the Applicant's prior projects. However, no lenders thus far have been willing to finance

BZA APPLICATION NO. 18247-A**PAGE NO. 3**

development of the new restaurant on any reasonable terms. For example, as set forth in a letter from Douglas Dillon, Industrial Bank's Senior Vice President and Commercial Lending Group Head, Industrial Bank is interested in committing funding for the Applicant's project at the Site in the future, but is not yet willing to do so at this point. Due to the economy's fragile condition over the past few years, it has been challenging to fund projects, particularly new restaurant concepts that require substantial construction and operational start-up costs. Based on Industrial Bank's experience working with the Applicant on other business ventures, Industrial Bank knows that the Applicant is knowledgeable about the restaurant industry, from both the financial and managerial aspects of operation. However, before Industrial Bank will commit funding for the project at the Site, it wants to see the following three things:

1. The successful completion and opening of the Applicant's newest restaurant on Rhode Island Row;
2. Negotiation and agreement upon a sufficient personal guarantee and collateral from the Applicant in order to secure investment and provide additional support; and
3. Further refinement and market analysis of how the Applicant's proposed new restaurant concept relates to its established brands and the mix of existing restaurants on the H Street corridor.

(Exhibit 35, Tab C.)

The Applicant has already invested substantially in the Site and is committed to moving forward with development and opening of a new restaurant at the Site. However, it will take additional time and resources until the Applicant can secure financing to get the project up and running.

The Board found that the Applicant has met the criteria set forth in 11 DCMR § 3130.6. The reasons given by the Applicant were beyond the Applicant's reasonable control within the meaning of § 3130.6(c)(3) and constitute "good cause" required under § 3130.6(c)(1). In addition, as required by § 3130.6(b), the Applicant demonstrated that there is no substantial change in any of the material facts upon which the Board based its original approval in Order No. 18247. There have also been no changes to the Zone District classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Board's order.

The Office of Planning ("OP"), by memorandum dated December 3, 2013, reviewed the application for the extension of the Order for "good cause" pursuant to 11 DCMR § 3130.6 and recommended approval of the requested two-year extension. The Site is within the boundaries of Advisory Neighborhood Commission ("ANC") 6A. At its regularly scheduled meeting on December 12, 2013, at which a quorum was present, ANC 6A voted 7-0 to recommend the Applicant's request for a two-year extension. However, no written report was filed by the ANC.

BZA APPLICATION NO. 18247-A**PAGE NO. 4**

The motion for the time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). No party to the application objected to an extension of the Order. The Board concludes that extension of the relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirements of 11 DCMR § 3125.3, which required that the order of the Board be accompanied by findings of fact and conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18247-A for a two-year time extension of Order No. 18247, which Order shall be valid until **November 29, 2015**, within which time the Applicant must file plans for the proposed restaurant with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; S. Kathryn Allen, not present or participating, and 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: December 18, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOADR SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal No. 18588 of Alexi Stavropoulos, pursuant to 11 DCMR §§ 3100 and 3101, from a March 5, 2013 decision by the Department of Consumer and Regulatory Affairs not to permit an addition to an accessory garage that exceeds the height limit in the WH/R-1-B District at premises 3215 45th Street, N.W. (Square 1606, Lot 819).¹

HEARING DATE: July 16, 2013

DECISION DATE: July 16, 2013

ORDER DENYING APPEAL

This appeal was submitted on April 9, 2013 by Alexi Stavropoulos on behalf of Arthur Harding, the owner of the property that is the subject of the appeal (“Appellant”). The appeal challenges a decision by the Department of Consumer and Regulatory Affairs (“DCRA”) not to issue a building permit for an addition to an accessory garage that exceeded the applicable height limit in the WH/R-1-B zone at 3215 45th Street, N.W. (Square 1606, Lot 819). Following a public hearing, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated April 25, 2013, the Office of Zoning provided notice of the appeal to the Zoning Administrator, at the DCRA, with a copy to the Appellant; the Office of Planning; the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3D, the ANC in which the subject property is located; and Single Member District/ANC 3D01. Pursuant to 11 DCMR § 3112.14, on May 9, 2013 the Office of Zoning mailed letters providing notice of the hearing to the Appellant (both the owner of the subject property and his agent); the Zoning Administrator; and ANC 3D. Notice was also published in the *D.C. Register* on May 10, 2013 (60 DCR 6641).

Party Status. Parties in this proceeding are the Appellant, DCRA, and ANC 3D. There were no requests for party status.

Appellant’s Case. The Appellant challenged a decision by DCRA not to issue a building permit to allow an addition to an accessory garage after DCRA determined that the existing garage was a nonconforming structure since its height (16.5 feet) exceeded the maximum permitted height of 15 feet. According to the Appellant, the existing garage is “in very good shape” but the owner “would like to add a 10 foot addition in order to ... gain more useable space in the garage.” The planned addition would match the height of the existing garage at 16.5 feet in order to maintain a

¹ This caption has been revised from the caption used in the public notice of this appeal, which erroneously stated that the decision challenged in the appeal was made February 5, 2013.

BZA APPEAL NO. 18588**PAGE NO. 2**

consistent look. The Appellant asserted that the garage was constructed before the 15-foot height limit was put in place, and that the owner should not be required to remove an existing structure due to the height restriction.

DCRA. The Department of Consumer and Regulatory Affairs urged denial of the appeal on the ground that the Appellant had not identified a zoning error with respect to the denial of a building permit for the planned garage addition. DCRA asserted that, under § 2001.3(b)(2), an addition to the nonconforming garage would be limited to 15 feet in height, rather than the 16.5 feet planned by the property owner. According to DCRA, the “Appellant’s desire to keep a consistent look for the garage is not a basis for the Board to find error in DCRA’s application of § 2500.4 [the zoning provision that limits the height of an accessory building to 15 feet].” DCRA also stated that the Appellant had mistakenly concluded that demolition of the existing garage was required; in fact, the “regulations prohibit the expansion of nonconformities, but they do not require nonconforming structures be demolished.” (Exhibit 19.)

ANC Report. By letter dated July 11, 2013, ANC 3D indicated that, at a properly noticed public meeting on July 10, 2013, with a quorum present, the ANC voted 9-0-0 “to support BZA Application #18588 to permit an addition (10 feet) to an accessory garage that exceeds the height limit in the WH/R-1-B District at 3215 45th Street, N.W. (Square 1606, Lot 819).” ANC 3D concluded that “the proposed addition, while exceeding the present height limits for accessory structures, would not have a negative aesthetic or other negative impact on the neighborhood.” (Exhibit 20.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 3215 45th Street, N.W. (Square 1606, Lot 819). The property is zoned WH/R-1-B, and is improved with a one-family detached dwelling and a one-story accessory private garage.
2. Pursuant to § 2500.4, an accessory building may not exceed one story or 15 feet in height. The garage at the subject property, at 16.5 feet in height, is nonconforming with respect to height.
3. The owner of the subject property planned an addition to enlarge the accessory garage. As proposed, the addition would also be 16.5 feet in height, consistent with the existing garage.
4. The owner sought a building permit for the addition, but the permit application was denied based on a determination by DCRA that the accessory garage was a nonconforming structure due to its height in excess of 15 feet. The determination, a “Plan Correction List” issued by DCRA on March 5, 2013, also indicated that the “proposed addition to the existing non-conforming structure is subject to relief and

BZA APPEAL NO. 18588**PAGE NO. 3**

approval of the Board of Zoning Adjustment (BZA) pursuant to section 2001.3(b)(2) of the Zoning Regulations.” (Exhibit 3.)

5. Pursuant to § 2001.3(b)(2), an enlargement or addition may be made to a nonconforming structure provided that the enlargement or addition will “[n]either increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.”

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.)) (*See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment “may be taken by any person aggrieved, or organization authorized to represent that person,...affected by any decision of an administrative officer...granting or withholding a certificate of occupancy...based in whole or part upon any zoning regulations or map” adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.)) (*See also* 11 DCMR § 3200.2.) In an appeal, the Board may “reverse or affirm, wholly or partly; or may modify the order, requirement, decision, determination, or refusal appealed from; or may make any order that may be necessary to carry out its decision or authorization; and to that end shall have all the powers of the officer or body from whom the appeal is taken.” (11 DCMR § 3100.4.)

In this case, the Appellant challenges a decision by DCRA not to issue a building permit to allow an addition to an accessory garage that is nonconforming with respect to height, where the planned addition would be built to the same height, in excess of the maximum permitted as a matter of right for an accessory structure. The Appellant has not identified any zoning error by DCRA in denying the Appellant’s application for a building permit for the proposed addition. As noted by DCRA in its “Plan Correction List,” the addition proposed by the Appellant would require zoning relief approved by the Board as an addition to a nonconforming structure. (*See* 11 DCMR § 2001.3, enlargement of or addition to a nonconforming structure devoted to a conforming use.) The Board finds no error in DCRA’s assertion that the “Appellant’s desire to keep a consistent look for the garage” did not negate the applicability of § 2500.4, the provision limiting to 15 feet the maximum height permitted as a matter of right for accessory structures. The Board also concurs with DCRA that the Appellant mistakenly concluded that DCRA’s decision not to issue a building permit for the planned addition required the demolition of the existing garage; DCRA’s decision did not affect the existing garage but indicated a need for zoning relief for its enlargement in the manner proposed by the Appellant.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001).) In this case, ANC 3D

BZA APPEAL NO. 18588**PAGE NO. 4**

voted “to support BZA Application #18588” and the Appellant’s proposed enlargement of the existing nonconforming garage. However, this proceeding concerns an appeal of DCRA’s decision not to issue a building permit for construction that could not be undertaken as a matter of right, and did not address the merits of the Appellant’s proposed addition. The ANC did not indicate any issues or concerns relative to the DCRA decision challenged by the Appellant, and thus there was no statement of issues or concerns to which the Board can give great weight in this proceeding.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof with respect to the claim of error in the decision by the Department of Consumer and Regulatory Affairs not to issue a building permit for an addition to an accessory garage that exceeded the applicable height limit in the WH/R-1-B zone at 3215 45th Street, N.W. (Square 1606, Lot 819). Accordingly, it is therefore **ORDERED** that the decision of the Zoning Administrator is **AFFIRMED**.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood voting to Affirm the decision of the Zoning Administrator; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 20, 2013

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 18655 of Application of Bank of America, pursuant to 11 DCMR §§ 3104.1, 1304.1 and 1325, for a special exception to exceed the 20 percent limit on the amount of the ground floor that may be devoted to banks under subsection 1302.4(a) in order to install an automatic teller machine (ATM) banking center in the HS-R/C-2-A District at premises 1102 H Street, N.E. (Square 981, Lot 806).

HEARING DATE: December 3, 2013
DECISION DATE: December 3, 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”) 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A did not participate in this application. The Office of Planning (“OP”), submitted a report dated November 26, 2013, in support of the application. (Exhibit 27.) The D.C. Department of Transportation (“DDOT”) also filed a report dated November 26, 2013 stating no objection to the application. (Exhibit 26.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under §§ 3104.1, 1304.1 and 1325. 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 DDOT reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 1304.1 and 1325, that the requested relief can be granted, 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.

BZA APPLICATION NO. 18655
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 25.

VOTE: 4 - 0 - 1 (Lloyd J. Jordan, Anthony J. Hood, S. Kathryn Allen, and Jeffrey L. Hinkle to Approve; one Board seat 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: December 16, 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,

BZA APPLICATION NO. 18655**PAGE NO. 3**

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. 18672 of Cavalier Apartments LP, pursuant to 11 DCMR § 3104.1, for a special exception for a change of nonconforming use under subsection 2003.1, and a special exception from the parking requirements under subsection 2120.6, to allow a retail variety and grocery store on the ground floor of an apartment building in the R-5-E District at premises 3500 14th Street, N.W. (Square 2688, Lot 43).

HEARING DATE: December 18, 2013
DECISION DATE: December 18, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

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”) 1A, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. ANC 1A submitted a letter in support of the application. The ANC report indicated that at a regularly scheduled, duly noticed public meeting on November 13, 2013, at which a quorum was present, the ANC voted unanimously by a vote of 11-0-0 to support the application. (Exhibit 25.) The Office of Planning (“OP”) submitted a report and testified at the hearing in support of the application. (Exhibit 27.) The Department of Transportation (“DDOT”) submitted a report of no objection to the application. (Exhibit 29.)

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 §§ 2003.1 and 2120.6. 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, 2003.1 and 2120.6, 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.

BZA APPLICATION NO. 18672
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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 be **GRANTED** with the following **CONDITION**:

1. Subject to the approval of the National Park Service and the Historic Preservation Review Board, the Applicant shall erect and maintain two inverted-U bicycle racks on the 14th Street frontage of the building in proximity to the retail variety and grocery store approved by this order.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle and S. Kathryn Allen to APPROVE; no Zoning Commission member participating; the third mayoral seat 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: December 23, 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC

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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. 18674 of William and Catherine Durbin, pursuant to 11 DCMR §§ 1202.1 and 3104.1, for a special exception under section 223, for an addition to an existing one-family row dwelling not meeting the lot occupancy (section 403), court (section 406) and nonconforming structure (subsection 2001.3) requirements in the CAP/R-4 District at premises 508 4th Street, S.E. (Square 812, Lot 822).

HEARING DATE: December 17, 2013

DECISION DATE: December 17, 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”) 6B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B 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. The Department of Transportation submitted a report not objecting to the application. The Architect of the Capitol submitted a report stating that the application is not inconsistent with the goals and mandates of the U.S. Congress. The Board received several letters from neighbors 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 30 – Plans) be **GRANTED**.

BZA APPLICATION NO. 18674

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VOTE: **3-0-2** (Lloyd J. Jordan, Michael G. Turnbull and Jeffrey L. Hinkle to APPROVE. S. Kathryn Allen not present, not voting and the third member seat 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: December 17, 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. 18680 of Michael R. Lewis, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory basement apartment within a one-family dwelling under subsection 202.10, in the R-1-B District at premises 4434 Tindall Street, N.W. (Square 1597, Lot 25).

HEARING DATE: December 17, 2013

DECISION DATE: December 17, 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”) 3E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E 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. The Department of Transportation submitted a report not objecting to 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 202.10. 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 202.10, 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 be **GRANTED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle and Michael G. Turnbull to APPROVE. S. Kathryn Allen not present not voting, and the third member seat vacant.)

BZA APPLICATION NO. 18680

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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: December 17, 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. 18681 of Shirley H. Cox, pursuant to 11 DCMR § 3104.1, for a special exception to establish a child development center (15 children and three staff) under § 205 (last approved under BZA Order No. 18079) in the R-2 District at premises 3008 K Street, S.E. (Square 5482, Lot 8).

HEARING DATE: December 17, 2013

DECISION DATE: December 17, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 22, 2009, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a special exception to allow conversion from a single family dwelling to a child development center in the R-2 residential zone district. (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”) 7B, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 7B, which is automatically a party to this application. ANC 7B did not attend the hearing, nor submit a written report. The Office of Planning (“OP”) submitted a timely report in conditioned support of the application. (Exhibit 26.) The District Department of Transportation (“DDOT”) submitted a timely report raising no objection to the approval with conditions of the requested special exception. (Exhibit 23.) The Office of the State Superintendent of Education (“OSSE”) submitted a timely report recommending approval of the application. (Exhibit 22.)

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 special exception under § 205. 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 OP report 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 properties in accordance with the Zoning Regulations and Map.

BZA APPLICATION NO. 18681

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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 FOLLOWING CONDITIONS:**

1. Approval shall be for a period of **THREE (3) YEARS**, beginning on the date upon which this order became final.
2. The hours of operation of the child development center shall not exceed 6:30 a.m. until 6:30 p.m., Monday through Friday.
3. The maximum enrollment shall not exceed 15 children, and the number of staff shall not exceed three.
4. The Applicant shall plant 14 Green Spire Euonymus along the eastern lot line to buffer the use from the adjoining residence.
5. The Applicant shall be permitted one non-illuminated flush-mounted outdoor sign, no more than 144 square inches in area.
6. The Applicant shall maintain the property in a clean and orderly condition, including the regular upkeep of all landscaping, regular removal of trash, and property storage of play equipment when the child development center is not in operation.

VOTE: 3-0-2 (Lloyd J. Jordan, Michael G. Turnbull, and Jeffrey L. Hinkle to APPROVE; S. Kathryn Allen, not present or participating, one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

FINAL DATE OF ORDER: December 19, 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE

BZA APPLICATION NO. 18681**PAGE NO. 3**

APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION ORDER NO. 05-36G
Z.C. Case No. 05-36G
K Street Developers, LLC
(Modification to Approved Planned Unit Development &
Related Zoning Map Amendment @ Square 749)
November 18, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on June 27, 2013, and September 26, 2013, to consider an application filed by K Street Developers LLC, owner of part of Record Lot 67 in Square 749 known for assessment and taxation purposes as Lots 826 and 827 ("K Street") and CASCO, Inc., owner of Lots 31, 804, 805, and 830 in Square 749 ("CASCO") (K Street and CASCO collectively referred to herein as the "Applicant"), for approval of a modification to a planned unit development ("PUD") approved pursuant to Z.C. Order No. 05-36, as amended.¹ CASCO filed a related application to rezone Lots 31, 804, 805, and 830 in Square 749 from C-2-B to C-3-C. The Commission considered the applications 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 hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Applications

1. On September 13, 2012, K Street and CASCO filed an application to modify a multi-phase PUD first approved in Z.C. Order No. 05-36. CASCO also filed an application for a related Zoning Map amendment from C-2-B to the C-3-C Zone District for Lots 31, 804, 805, and 830 in Square 749 (the "Phase III Land") (the PUD modification and Zoning Map amendment applications herein collectively, the "Applications").² The Applications were submitted in order to expand the scope of the multi-phased residential redevelopment of property in Square 749 to include virtually all the remaining land in Square 749 not previously a part of the PUD, and to incorporate an additional 41 dwelling units and third phase of construction, bringing the total to more than 770 residential units.³
2. The PUD approval which the Applicant seeks to modify was first approved by the Zoning Commission in 2006 in Z.C. Order No. 05-36 (as amended, the "Approved PUD") and was structured as a two-phased residential project to occupy the entirety of Square 749

¹ Subsequent to the filing of the Applications, in April 2013, K Street transferred ownership of Lots 826 and 827 in Square 749 to Toll DC LP. The Applicant submitted a copy of the Agreement to Cooperate entered into between K Street and Toll DC LP (Exhibit 29) whereby, among others, Toll DC LP agreed to cooperate and support the PUD modification application.

² Lot 830 was added to CASCO's rezoning request as part of the Applicant's prehearing statement filed April 8, 2013, at Exhibit 14.

³ The only remaining lot in Square 749 not impacted is Lot 829, a small lot owned by Union Place Phase I, LLC ("UPPI") that was created as part of the alley closing in the square.

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with the exception of a few small lots totaling approximately 5,300 square feet in the northeast corner of the Square. With the current modification application, the Applicant seeks to incorporate this additional land into the Approved PUD and to complete redevelopment of the entirety of Square 749 with this phase being for residential purposes and in a consistent manner with the improvements and further proposed development already approved by the Commission.⁴

Background of Approved PUD

3. By Z.C. Order No. 05-36, effective October 10, 2006, the Commission granted first-stage PUD approval and a related Zoning Map amendment from C-M-3 and C-2-B to C-3-C for virtually the entirety of Square 749, all to permit construction of a two-phase apartment development around an outdoor central plaza, with a total of approximately 712 dwelling units, including 78 units restricted for affordable housing, ground-floor retail, and daycare uses with a total gross floor area of approximately 850,000 square feet. At the same time that it granted first-stage approval for the overall project, the Commission granted consolidated approval for Phase I of the total project, to be located in the eastern portion of Square 749 with frontage along 3rd Street, N.E., and consisting of a 10-story apartment building including approximately 202 dwelling units, 3,700 square feet of ground-floor retail, and 177 parking spaces (the "Phase I Building").⁵ Construction of this Phase I Building has been completed.
4. By Z.C. Order No. 05-36A, effective November 14, 2008, the Commission granted second-stage approval of Phase II of the project, consisting of a 14-story building containing 500 dwelling units and approximately 14,000 square feet of retail uses and a child care containing approximately 3,500 square feet, to be constructed along the western portion of Square 749 with frontage along 2nd Street as well as K and L Streets, N.E. (the "Phase II Building").⁶
5. In Z.C. Order Nos. 05-36B and 05-36C, the Commission approved minor modifications to the Phase I Building, to restrict access for safety purposes to a small portion of the outdoor plaza to project residents only (05-36B), and to modify the affordable housing proffer slightly to allow prospective tenants to utilize more than 30% of household income for payment of rent in order to accommodate arts professionals (05-36C).

⁴ The only lot in Square 749 not included in the Approved PUD or the Phase III Land is Lot 829, which was created as a result of the closing of the small stub alley in the northeast corner of Square 749 and is owned by UPPI, current owner of Lot 828, which property is improved with the first phase of the Approved PUD.

⁵ The PUD Approval was later modified per authority of the Zoning Administrator pursuant to 11 DCMR § 2409.6(b) to permit development of 212 dwelling units in Phase I.

⁶ Flexibility granted in this Order allowed up to 525 units to be constructed.

Z.C. ORDER NO. 05-36G
Z.C. CASE NO. 05-36G
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6. By Z.C. Order No. 05-36D, the Commission extended the validity of the second-stage approval granted for Phase II of the Approved PUD to November 14, 2012, by which time application must be made for a building permit, with construction to commence by November 14, 2013.
7. Pursuant to Z.C. Order No. 05-36E, the Commission approved K Street's phasing plan to allow the Phase II Building to be constructed in two sub-phases (Phase II-A, to include approximately 244 dwelling units, and Phase II-B, to include approximately 256 dwelling units). The modification approved by the Commission with this Order also directed that parking shall be provided throughout the Approved PUD at a ratio of 0.71 spaces per dwelling unit. The time extension approved pursuant to Z.C. Order No. 05-36E provided that in order for the PUD to remain valid a building permit application for Phase II-A must be filed by November 14, 2012 and construction commence by November 14, 2013. In order for approval for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of a final certificate of occupancy for the residential portion of Phase II-A, with construction to commence within one year thereafter.
8. Pursuant to Z.C. Order No. 05-36F, approved on July 30, 2012, the Commission granted K Street a further time extension for Phase II of the Approved PUD such that a building permit for Phase II-A must be filed by November 14, 2014, and construction must commence by November 14, 2015, and in order for Phase II-B to remain valid, a permit application must be filed not later than two years following the date of the issuance of the final certificate of occupancy for the residential portion of Phase II-A, with construction of Phase II-B to commence within one year thereafter.
9. Most recently, by Z.C. Order No. 05-36H, dated March, 2013, the Commission granted minor modification of the Approved PUD to allow the Phase I Building and the Phase II Building to be constructed, occupied, and operated as separate buildings on a single record lot, to be accomplished through the Commission's approval of the removal of all door openings and above-grade connections between the phases.

Procedural Background

10. By report dated October 19, 2012, the District of Columbia Office of Planning ("OP") recommended that the Commission schedule a public hearing for the Applications. (Exhibit ["Ex."] 12.)
11. At its November 14, 2012 public meeting, the Commission determined to schedule the Applications for public hearing.
12. The Applicant filed its supplemental statement and request for hearing date with the Office of Zoning on April 8, 2013.

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13. On April 23, 2013, Union Place Phase I, LLC ("UPPI"), owner of that certain property in Square 749 known for assessment and taxation purposes as Lots 828 and 829, submitted through its counsel, Greenstein, Delorme & Luchs P.C., motions to either dismiss the Applications or for reconsideration by the Commission of its determination to set down the Applications for public hearing. In support of its motions, UPPI argued that it had not consented to the filing of the Applications; that the Phase III Land was never conceived of as being a future phase of the Approved PUD; and that the Applications appear to propose the use of the UPPI property for parking, recreational, and other uses without the consent of UPPI. (Ex. 15.)
14. The Applicant filed an Opposition to the UPPI motions on April 30, 2013, disputing factual allegations set forth in the UPPI motion and also arguing in support of the appropriateness of the Applications in light of the Commission precedent that an application for modification of one building within a PUD may be considered without the other owners in the PUD joining in or consenting to said modification. (Ex. 16.)
15. The Commission considered the UPPI motion and the Applicant's Opposition at the Commission's public meeting held on May 13, 2013, and directed that UPPI and the Applicant argue their respective pleadings as a preliminary matter before the public hearing on the Applications scheduled for June 27, 2013.
16. On June 7, 2013, the Applicant submitted its supplemental prehearing statement, including refined architectural drawings and additional details regarding the proposed project amenities and community benefits. (Ex. 20.)
17. On June 17, 2013, OP submitted its final hearing report to the Commission recommending approval and requested certain additional documentation from the Applicant. (Ex. 23.)
18. On June 18, 2013, the District of Columbia Department of Transportation ("DDOT") submitted a memorandum to the Commission indicating no objections to the Applications subject to certain conditions. (Ex. 24.)

Public Hearing

19. The Commission held a public hearing for the Applications on June 27, 2013. As a preliminary matter at the public hearing, the Commission heard oral argument from counsel for UPPI and the Applicant regarding UPPI's motion and the Applicant's opposition thereto. After consideration of the pleadings, oral arguments, and testimony from Ronald Cohen on behalf of K Street and CASCO, the Commission voted unanimously to deny UPPI's motions. In its deliberations, the Commission noted that it was persuaded by the facts of the application; namely, that the Cohen family had been

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involved for more than two decades in the redevelopment of Square 749, from assemblage of all the properties in the square, to selection of the project architects, to working with the impacted community; and further, that the Cohen family retained an ownership interest in Phase I of the PUD and also Phase II as of the time the Applicant made application for the present modification. The Commission noted further that it was persuaded by the past actions of the Commission to allow phases of PUDs to move forward absent consent of all owners of property with said PUD, which approach was upheld and confirmed as appropriate by the District of Columbia Court of Appeals in *1330 Connecticut Avenue, Inc. v. D.C. Zoning Commission*, 669 A.2d 708 (1998), and other examples included in the Applicant's submissions to the record. The Commission also noted that UPPI could actively participate in the public hearing as a party to the application.

20. As an additional preliminary matter, and without opposition from the Applicant, the Commission determined to accept UPPI as a party in opposition to the Applications.
21. At the hearing, the Applicant presented several witnesses in support of its applications: Eric Siegel on behalf of the Applicant; George Myers and Colline Hernandez-Ayala of GTM Architects, project architects; and Osborne George of O.R. George and Associates, transportation engineering. Based upon their professional experience and qualifications, Mr. Myers was recognized as an expert in architecture and Mr. George as an expert in transportation engineering. The Commission also accepted Mr. George's Transportation Impact Statement ("TIS") and Trash and Loading Management Plan into the record. (Ex. 14E, 30.) The Commission also accepted Mr. Curt Schreffler of CAS Engineering as an expert in civil engineering, although Mr. Schreffler did not testify.
22. The Applicant's expert witness for zoning and land use, Steven E. Sher, did not testify at the public hearing; however, the Applicant submitted Mr. Sher's written report for the record. (Ex. 31.) Counsel for UPPI objected to the inclusion of Mr. Sher's report into the record without Mr. Sher's attendance at the hearing. UPPI subsequently filed a motion to strike the written testimony. The Commission's ruling to require a further limited hearing is discussed at Finding of Fact 47.
23. UPPI, as party in opposition, at the June 27, 2013 public hearing cross-examined the Applicant's witnesses, except Mr. Sher, and OP but did not present direct testimony nor offer any witnesses to rebut the Applicant's testimony.

Office of Planning

24. Through its Setdown Report dated October 19, 2012, and its Final Report dated June 17, 2013, and through testimony presented at the public hearing, OP expressed its support for the proposed modification of the approved PUD and related Zoning Map amendment to C-3-C for the Phase III Land. (Ex. 12, 23.)

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25. In its Setdown Report, OP noted that, as part of its review and approval of the Approved PUD, the Commission suggested that the lots now under consideration as part of the Applications be incorporated into the PUD.
26. In its Setdown Report, OP further noted that the proposed PUD modification would result in a high quality development that would neither be inconsistent with the Comprehensive Plan, nor require zoning relief that is out of balance with the expected public benefits.
27. In its Setdown Report and its Final Report, OP noted that the proposed PUD modification would further several Comprehensive Plan policies:
 - (a) Housing Element: The modification would permit the addition of 41 units of housing for balanced, mixed-use growth near certain Metro stations, as encouraged by policies 1.1.3 and 1.1.4;
 - (b) Central Washington Element: The additional housing proposed by the Applications is responsive to Policy CW 1.1.4's encouragement of denser housing in the central area, particularly in NoMA; and
 - (c) Urban Design Element: Phase III's design and massing would be integrated with the Approved PUD and would serve as a transition element to the nearby rowhouses. This would be consistent with policy UD 2.2.7's encouragement of appropriately scaled infill, and policy UD 3.3.1's encouragement of quality treatment of public spaces.
28. In its Setdown Report and its Final Report, OP noted that the Generalized Policy Map includes the Property within the boundaries of the NoMA/New York Avenue Metro land use change area and that the Commission has already determined as part of the approved PUD that the C-3-C Zone District is appropriate for Phases I and II of the PUD, which comprise more than 95% of Square 749.
29. In its Setdown Report and its Final Report, OP noted that, if considered independent of the approved PUD, the Phase III building would require relief to provide no parking rather than the required 10 vehicle parking spaces given the number of units in the building, and that, while such relief would not be necessary in the context of the full PUD, a modification of PUD Condition No. 2 of Z.C. Order 05-36E is needed to permit the marginal diminution in the required parking ratio of from one space per 0.71 residential unit to what OP calculates as one space per 0.67 unit.
30. In its Setdown Report and its Final Report, OP noted that the Applications included a request for flexibility from the Commission to provide a rear yard not meeting the

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required setback dimension. OP determined that the diminution of the rear yard would have little to no impact on future building occupants or the public.

31. In its Final Report, OP recommended approval of the Applications upon provision by the Applicant of certain additional information, which the Commission notes was provided by the Applicant in its post-hearing submissions. (Ex. 28, 30, 32, 36.)
32. The Commission concurs with OP's findings in support of the Applications.

Department of Transportation

33. By memorandum dated June 18, 2013, and through testimony presented at the public hearing, DDOT indicated no objection to the Applications, with certain conditions. (Ex. 24.)
34. DDOT indicated that the Applicant coordinated with DDOT in the development of the TIS and study scope as well as the Applicant's loading management and trash removal plan, and DDOT confirmed that the Applicant's methodology for evaluating existing and future traffic conditions is generally consistent with DDOT procedures. DDOT noted that the project site is well served by mass transit facilities and located only three blocks east of the NoMa-Gallaudet Metrorail Station and is also served by several major Metrobus routes (including D3, D4, and D8). The DDOT report indicated that the residents of Phase III would be able to utilize parking elsewhere within the Approved PUD; however, DDOT acknowledged that its determination of no objections remained effective even in the event that residents of Phase III were not able to park in the other buildings of the PUD.
35. DDOT further indicated that it had worked with the Applicant to establish a transportation demand management ("TDM") program for the Project, including the following commitments: to designate a resident transportation coordinator, to provide a secure bicycle parking room with capacity for 15 bicycles, to develop a loading management plan, and to develop a program with DDOT assistance to monitor the site to analyze mode split assumptions and traffic generation. DDOT also requested the Applicant to provide each unit, upon move-in and at the discretion of each tenant, either a one-time complimentary annual membership in the Capital Bikeshare program or a one-year membership to a car-sharing program. The Applicant indicated its agreement to the TDM components, and indicated that its bicycle room provides for a total of 30 bicycle parking spaces. The Applicant requested that the car and bike sharing incentive offered to tenants be provided at initial lease-up only, to which DDOT agreed.
36. With respect to the loading management plan, the Applicant submitted a "preliminary loading & trash management plan" comprised of three elements: (1) a proposed loading and short-term parking zone located on the south side of L Street that would be subject to

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DDOT approval; (2) scheduling and coordination of move-in and move-out activity by building management and maintenance staff; and (3) providing that trash will be transported from the first-floor trash room to the L Street curb via small-wheeled receptacles. (Ex. 24, 30.) DDOT testified at the hearing that, while it largely supported the loading management plan the Applicant proposed, it was in the process of amending its curbside loading regulations, and that the proposed loading zone would be in conflict with the DDOT's new policy. DDOT stated that it preferred to decide whether it would approve the loading zone when the issue was presented to DDOT's Public Space Committee for approval, and declined to weigh in on whether it would approve the loading zone if it was requested. DDOT did, however, also state that it did not believe that a loading zone was necessary for the Project's loading operations. The Applicant subsequently stated in a letter to ANC 6C that it would not seek approval of the loading zone. (Ex. 46D.)

37. The Commission concurs with DDOT's recommendation in support of the Applications. The Commission believes the Applicant's loading management plan, without the loading zone, is adequate to mitigate any potential adverse effects of the Project related to loading.

ANC 6C

38. Advisory Neighborhood Commission ("ANC") 6C did not appear at the public hearing nor submit any report in advance of the public hearing. At the hearing, the Applicant noted that it had presented to the ANC at its June 12 public meeting and that the ANC deferred action until its July 10 public meeting. The Commission held the record open until July 15, 2013, for the ANC to submit its formal recommendation to the Office of Zoning.
39. By letter dated July 12, 2013, ANC 6C indicated its unanimous opposition to the Applications, noting that the ANC did not agree with the Applicant that the Phase III project was properly integrated with the Approved PUD, that the ANC did not believe the parking impacts were adequately mitigated, that the Applicant did not provide any loading facilities for the Phase III Building, and that the project amenities offered as part of the Applications is much less than that of the Approved PUD. (Ex. 39.)
40. The Applicant responded to the ANC's stated concerns by letter to the Commission dated July 19, 2013, wherein the Applicant addressed the ANC's criticisms regarding parking, loading, and proposed benefits and amenities for the Phase III Building. (Ex. 41.) In its letter, the Applicant detailed that the project would generate a requirement of approximately 10-14 parking spaces, that the small size and configuration of the property prevented any feasible provision of parking on the Phase III land, and that the Applicant proposed a number of innovations to minimize parking demand, including working with the District of Columbia to remove the Phase III Building from the Residential Parking

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Permit ("RPP") registry and include within every residential lease in the Phase III Building a prohibition upon registering a vehicle for RPP parking. The Applicant also addressed the ANC's stated concerns regarding loading operations through reference and submission of the Trash and Loading Management Plan prepared by its expert witness, Osborne George. In a subsequent letter to the Chair of ANC 6C dated August 21, 2013, the Applicant stated that it would not pursue the portion of the loading plan which provided for a loading zone on the street. (Ex. 46D.)

41. By letter dated September 16, 2013, ANC 6C repeated its opposition to the Applications. The letter stated that the ANC did not believe that the new project was sufficiently integrated into the PUD as a whole, citing that the loading facilities for the project were adjacent to, rather than sharing the existing loading facilities of the already constructed portions of the PUD, and that the Cohen family no longer owned a controlling ownership interest in any of the existing portions of the PUD. (Ex. 48.)
42. The Commission finds that the Applicant adequately addressed all of the ANC 6C's issues and concerns. In addition, the Commission finds that the Phase III Building is sufficiently integrated into the existing PUD, and that the Trash and Loading Management Plan (without the loading zone) addresses the ANC's concerns.

Persons in Support or Opposition to the Applications

43. The Commission received one letter in opposition to the Application, from Mozella Boyd Johnson, who generally indicated opposition to the parking and rear yard flexibility proposed by the Application as well as complained that the retail space constructed as part of Phase I of the PUD had not been occupied. (Ex. 22.)
44. No testimony was received from any person in support of the Applications.

Conclusion of June 27 Hearing, Additional Limited Hearing, ANC, and Closing of Record

45. The record was left open for the Applicant and UPPI to provide limited post-hearing submissions and responsive pleadings. The record was also left open to receive the report of ANC 6C following its July 10, 2013 public meeting and the Applicant's response thereto, as detailed above.
46. By letter dated July 12, 2013, counsel for UPPI requested the Commission reject Mr. Sher's report and moved to have it stricken from the record based upon an argument of unreliability and unfairness as Mr. Sher did not appear at the public hearing. (Ex. 38.) By letter dated July 19, 2013, the Applicant opposed UPPI's request to strike Mr. Sher's report from the record. (Ex. 40.)

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47. At its July 29, 2013 public meeting, the Commission deliberated on the UPPI Motion to Strike Mr Sher's testimony and voted unanimously to conduct a special limited public hearing to receive Mr. Sher's testimony and to allow UPPI opportunity to conduct cross-examination of Mr. Sher. The Commission also expressed concern over the July 12, 2013 letter from the ANC indicating unanimous opposition to the Application and requested that the Applicant explore further discussions with the ANC given the ANC's long record of support of the numerous earlier approvals associated with the Approved PUD. The Commission also requested that the Applicant provide more responsive information to the Commission regarding the cost analysis for its proffer of more affordable housing than required by the Inclusionary Zoning regulations and regarding efforts to comply with local contracting and employment commitments during the construction of Phase I of the Approved PUD.
48. By letter dated August 30, 2013, the Applicant provided the materials requested by the Commission regarding local contracting and employment records for Phase I of the Approved PUD as well as documentation relating to its subsequent outreach to address concerns raised by ANC 6C. (Ex. 46.)
49. ANC 6C's submission is discussed in Finding of Fact 41.
50. Pursuant to notice, a special limited public hearing was conducted on September 26, 2013, for purposes of receiving Mr. Sher's expert testimony in support of the outline submitted as Exhibit 31 and provided UPPI the ability to cross-examine the witness. As part of that limited hearing, the Commission accepted Mr. Sher's testimony outline into the record. (Ex. 31.)
51. At its September 30, 2013 public meeting, the Commission took proposed action to approve the Applications.
52. The Applicant submitted its final list of proffered public benefits and proposed conditions pursuant to § 2403.16 on October 7, 2013. (Ex. 50.) Following dialogue with the Office of the Attorney General pursuant to § 2403.19, the Applicant submitted a revised list of proffered public benefits and proposed conditions on October 21, 2013. (Ex. 51.)
53. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by action dated November 13, 2013, found that the Applications would not have any adverse impact on the federal interests.
54. The Commission took final action to approve the Applications at its public meeting on November 18, 2013.

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The Property and Surrounding Area

55. The property now included in the Approved PUD, currently known as Record Lot 67 in Square 749 (known as Lots 826, 827, and 828 for assessment and taxation purposes), contains a lot area of approximately 101,000 square feet and represents virtually the entirety of land in Square 749 (the "Approved PUD Land").
56. Square 749 is located in the emerging NoMa neighborhood in Northeast Washington and is bounded by 2nd Street to the West, K Street to the South, 3rd Street to the East and L Street to the North. The only land in Square 749 not currently included as part of the Approved PUD Land are the few small lots located in the northeast corner of the Square, at the intersection of 3rd and L Streets, N.E., constituting the Phase III Land and a small remainder from the closed alley stub, Lot 829, owned by UPPI. The combined lot area of the Phase III Land totals approximately 5,295 square feet, representing approximately five percent of the total lot area of Square 749. The Phase III Land was utilized for staging operations involving the construction of Phase I and is currently vacant and unimproved.
57. The property immediately to the east, across 3rd Street, N.E., from the Approved PUD Land and the Phase III Land, is zoned C-2-B and is improved with a recently constructed six-story student intern housing development (approximately 350 sleeping rooms) known as the Washington Center. The property to the immediate north of this development (and northeast of the Phase III Land) across L Street, N.E., in Square 773, is likewise zoned C-2-B, with construction recently completed at that site of a matter-of-right six-story, 60-unit apartment building.
58. To the immediate north of the Phase III Land, a zoning boundary line runs along L Street, N.E., between Square 749 to the south and Square 748 to the north, with the land to the immediate north zoned C-M-1 and unimproved. The Uline Arena is located in the northern portion of Square 748 and abuts the railroad tracks and the NoMa-Gallaudet New York Avenue Metrorail Station to its west.
59. As noted by DDOT, the NoMa-Gallaudet Metrorail Station (Red Line) is located approximately three blocks away. Square 749 and the immediate neighborhood also are served by a number of Metrobus routes.

Existing and Proposed Zoning

60. The Approved PUD Land is located in the C-3-C Zone District as a result of its rezoning from a mixture of C-2-B and C-M-3 as part of the PUD approval. The Phase III Land is currently zoned C-2-B.

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61. The C-2-B Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core and permit high-density residential and mixed-use development. The C-2-B Zone District is a general commercial district, permitting a broad range of retail, service and office uses, hotels, residential uses (single and multi-family), and many institutional uses. Height in the C-2-B Zone District is permitted to a maximum of 65 feet with no limit on the number of stories. A total building density of 3.5 floor area ratio ("FAR") is permitted; however not more than 1.5 FAR of that amount may be devoted to uses other than residential uses. Incorporating the Inclusionary Zoning density bonus, which applies to residential development of 10 or more dwelling units, a maximum density of 4.2 FAR would be permitted. A maximum of 80% lot occupancy is permitted.
62. CASCO requests rezoning of the Phase III Land to the C-3-C Zone District. In the C-3-C Zone Districts, medium-high density development is permitted. The maximum permitted height in the C-3-C Zone District is 90 feet. The maximum density is 6.5 FAR. A maximum of 100% lot occupancy is permitted. Pursuant to the PUD development standards, a maximum height of 130 feet is permitted in the C-3-C Zone Districts and a maximum density of 8.0 FAR.
63. As OP noted in its Setdown Report and its Final Report, the Generalized Policy Map includes the Property within the boundaries of the NoMA/New York Avenue Metro land use change area, and the Commission has already determined as part of the Approved PUD that the C-3-C Zone District is appropriate for Phases I and II of the PUD, which comprise more than 95% of Square 749. The Commission finds that rezoning of the Phase III Land to C-3-C is not inconsistent with the Comprehensive Plan and is in keeping with its earlier approvals regarding Square 749.
64. The Comprehensive Plan's Future Land Use Map designates the Phase III Land for mixed-use moderate-density commercial and moderate-density residential, the same designation given to the eastern portion of the Approved PUD, which the Commission approved for the C-3-C zoning designation in the PUD.

Nature of Project and PUD Modification

65. The Applications before the Commission are for modification to an approved PUD to allow construction of a seven-story apartment house on the Phase III Land measuring approximately 63 feet 8 inches in height (the "Phase III Building" or the "Project"). Building density on the Phase III Land would total approximately 6.48 FAR and when incorporated into the larger PUD would result in a total density for the PUD of approximately 7.80 FAR, which is within the PUD standards of 8.0 FAR for C-3-C-zoned properties. The Phase III Building would occupy approximately 97% percent of the Phase III Land, where 100% is permitted. Across the entire Square, the combined

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Phase I, II, and III improvements, once constructed, will occupy only 69% of the total site area.

66. The Phase III building has been designed to contain a total of 41 dwelling units in a mixture of studio and one-bedroom units. Consistent with the commitments offered as part of the Approved PUD, Phase III will include dedication of certain units for affordable housing; however, unlike the earlier phases which have time limits on their affordability components, dedicated units within Phase III will be subject to the controls of Chapter 26 of the Zoning Regulations, including dedication of units to affordable housing for the life of the Project. The Applicant has committed to provide a total of five units, representing approximately 10% of the total residential gross floor area and more than 10% of the unit count in the Phase III building, with said units to be distributed throughout the building except for the top two floors. The Commission notes that the Applicant has undertaken further study of its affordable housing commitment upon request of the Commission at its July 27, 2013, public meeting, and while the Applicant's overall dedication of square footage to inclusionary housing remains at approximately 10% of the overall residential square footage of the Phase III Building (consistent with the amount of affordable housing commitment in the earlier phases of the PUD), the reallocation and expansion of the affordable housing proffer to include a fifth dedicated unit within the Phase III Building represents a meaningful effort by the Applicant to enhance the affordability aspect of the project. By placing an obligation for so long as the Project exists on an additional unit, the Applicant is providing an opportunity for an additional household to qualify under the District's Inclusionary Zoning program and at the same time accepting lost revenue and the administrative/enforcement obligations relating to that additional unit. While the number of units and square footage are in the abstract not as much as other projects, the Commission notes that this is a small part of the overall development in Square 749 and represents 10% of the residential density (2,644 sq. ft.) versus the eight percent requirement (2,065 sq. ft.), and five out of 41 units, which is 12% of the units. At the Commission's request, the Applicant provided information to the record calculating that the cost to the Applicant to subject two additional dwelling units (over and above the three units required to be made subject to Inclusionary Zoning pursuant to regulation), would total approximately \$173,000, discounted to present-day value. (Ex. 46A.)
67. The Phase III building will be freestanding from Phases I and II and will abut to the north of Phase I, which drops down from 10 to six stories along this portion of its 3rd Street frontage. The Phase III building's main entrance will be located on L Street, N.E., with additional articulated frontages along 3rd Street, N.E., and along its north elevation.
68. The Applicant has engaged GTM Architects, the architect responsible for the design of both Phases I and II of the Approved PUD, to design a building which serves to complete the redevelopment of Square 749 by providing an appropriate transition in massing from

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Phase I along 3rd Street, N.E., wrapping around to L Street and the significantly higher Phase II building. Through its use of line, stepback, massing, and articulation of the base and cornice as well as use of such devices as bay windows along 3rd Street and a prominent balcony feature above the L Street entrance, and through its materials and color palette, the Commission finds that the Phase III building reads as an independent yet sympathetic insertion between Phases I and II.

69. The Commission requested the Applicant to undertake further study of the West elevation of the Phase III Building in efforts to increase the amount of fenestration provided on that façade. As part of its post-hearing submission, the Applicant provided an alternative design for the west elevation (Ex. 36A2, p. Ex. 3) and committed to pursue approval of the alternative design with DCRA and to the extent applicable to pursue a waiver request under the District of Columbia Construction Code to construct the alternative design.
70. Given the small lot size and configuration with frontage on two streets, the Phase III Building will not include any parking facilities. As part of its post-hearing submission responding to the comments from ANC 6C, the Applicant provided studies demonstrating the significant difficulty and impracticality that would confront the Applicant in order to provide parking in the Phase III Building. The Commission notes that the Applicant has undertaken several measures to mitigate its inability to provide parking on-site, including a commitment to work with the District of Columbia to keep the Phase III Building address from being included on the Residential Parking Permit ("RPP") registry and also a commitment by the Applicant to include in all its residential leases language making it a lease violation for any tenant to register his/her vehicle in the RPP program and to actively pursue and evict any tenant who violates said lease provisions. In addition, Toll DC LP, the new owner of Phase II of the Approved PUD, has confirmed that if upon construction of Phase II, Toll determines there to be excess available parking, Toll agrees to make such parking available for lease by residents of the Phase III Building. (Ex. 46D (attachment).)
71. The Commission notes that no loading facilities are required for the Phase II Building under Chapter 22 of the Zoning Regulations given its size.
72. The Property will be extensively landscaped, as identified in the landscaping plans. A green roof is proposed for the roof. (Ex. 36A.)
73. The Applicant has included a draft LEED scorecard in its updated drawings and indicated that it intends to pursue sustainability measures in the design, construction, and operation of the Phase III Building that would be equivalent to certification for the Project under the United States Green Building Council's LEED New Construction (NC) for Silver rating. (Ex. 36A.)

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Development Incentives and Flexibility Requested

74. The Applicant requests the following areas of flexibility from the C-3-C Zone District requirements and PUD standards to facilitate development of the Project:
- (a) To provide rear yard not meeting requirements of the Zoning Regulations with front of the Phase III Building being L Street, N.E.;
 - (b) To provide no on-site parking spaces pursuant to § 2101 of the Zoning Regulations;
 - (c) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings;
 - (d) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials;
 - (e) To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;
 - (f) To pursue approval by DCRA of the alternative design for the west elevation shown on Exhibit 36A2, Page Ex.3, and in the event said alternative design is not approved by DCRA, to pursue the original design for the west elevation show on Exhibit 36A1, Page A21; and
 - (g) To vary the final selection of landscaping and vegetation types as proposed, based upon availability at the time of construction and finalization of site grading and utility plans.

Public Benefits and Project Amenities

75. The Commission finds that this application to modify the PUD Approval will achieve the goals of the PUD process by providing additional high-quality residential development in coordination with a residential project that has already been reviewed and approved by the Commission, in a neighborhood where infill development, especially of a residential nature, is strongly encouraged by the District, and in close proximity to a Metrorail station and that the following superior benefits and amenities will be created as a result of the Project:

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- (a) *Urban Design and Architecture.* The Project has been designed to "complete" the coordinated design and development of Square 749, providing a finished corner piece to complement Phases I and II and to visually enclose the outdoor plaza that serves as the focal point of the PUD. This coordination extends to compatible materials, design elements and treatments, as well as public space landscaping improvements, all of which lend to a higher quality finished product than likely would be available as part of a matter-of-right development on the Phase III Land;
- (b) *Site Planning and Efficient Land Utilization.* The Project makes efficient use of its shape and topography. The proposed modification will generate a significant amount of revenue for the District in the form of vastly increased property taxes payable and income taxes payable by new residents. Furthermore, the new occupants of the 41 units will add to the market demand for existing neighboring retail uses and amenities, further invigorating the neighborhood;
- (c) *Housing and Affordable Housing.* The Project will add a total of 41 residential units to the 712 units that are included in the PUD Approval, including five affordable units (totaling approximately 10% of the residential gross floor area of the Project, or approximately 2,644 square feet) restricted for so long as the Project exists as Inclusionary Zoning units as established in Chapter 26 of the Zoning Regulations. This exceeds the requirement established in Chapter 26 of the Regulations that the Applicant provide eight percent of the total residential gross floor area, or 2,065 square feet, as Inclusionary Zoning units. As a result, an additional approximately 599 sq. ft. of residential gross floor area of space will be restricted as Inclusionary Zoning units;
- (d) *Effective and Safe Vehicular and Pedestrian Access and Transportation Management.* The Applicant has demonstrated that the Project will operate in an efficient and safe manner as a result of a number of initiatives that will be executed, including its loading and trash management plan, extensive bicycle parking within the Phase III Building and around the entirety of Square 749, and commitments from the Applicant to restrict resident access to the RPP registry. Further, the Applicant has established a transportation demand management plan in coordination with DDOT, that includes the following elements: designate a Resident Transportation Coordinator to encourage and disseminate information about non-private automobile trips and serve as the building's TDM leader; provide a secure bicycle parking room with 30 spaces; monitor and audit the site, with assistance from DDOT, to analyze the mode split assumptions; and provide each dwelling unit in the Phase III Building, upon initial move-in only, a complimentary one-year membership to Capital Bikeshare or to a car-sharing program, at the tenant's discretion;

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- (e) *Employment and Training Opportunities.* The Applicant has agreed to enter into a First Source Employment Agreement with the District's Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for a significant percentage of the jobs created by Phase III of the PUD. Applicant also has agreed to enter into a Certified Business Enterprise Agreement with District's Department of Small and Local Business Development ("DSLBD") with regard to Phase III;
 - (f) *Environmental Benefits.* The Project's environmental benefits include a commitment to incorporate into the design, construction and operation of the Phase III Building sustainability measures equivalent to LEED NC 2009 Silver rating, including installation of a green roof as part of the new construction, and extensive landscaping on the Property; and
 - (g) *Uses of Special Value to the Neighborhood or the District as a Whole.* The Commission finds that the Project provides funding or in-kind work to provide streetscape or public space improvement within NoMa Business Improvement District.
76. The Commission finds that the PUD is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, urban design and architecture, employment and training opportunities, environmental benefits, and uses of special value to the neighborhood. These proffered benefits and amenities are appropriately balanced against the requested development incentives for the Project, namely an increase of approximately 12,000 square feet of density over the matter-of-right limit.

Compliance with Comprehensive Plan

77. The Commission finds that the proposed modification is consistent with the Future Land Use Map and the Generalized Policy Map and advances the purposes of the Comprehensive Plan and furthers and complies with the major themes and policies in the Citywide and Area Elements in the Comprehensive Plan. With regard to the Future Land Use Map, the Phase III Land is identified for mixed-use moderate-density commercial and moderate-density residential, as is the eastern portion of the Approved PUD Land, which the Commission approved for C-3-C zoning designation in the PUD Approval. The entire PUD Site is included in the NoMa New York Avenue Land Use Change Area pursuant to the Generalized Policy Map.
78. The Commission further finds that the Project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the

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guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan, as follows:

- (a) *Land Use Element.* The Project is consistent with a number of policies established in the Land Use Element, including Policy LU-1.4.1: Infill Development. The proposed modification responds to the District's priority of encouraging infill development on vacant urban land, especially those which create gaps in the urban fabric and detract from the character of residential streets;
- (b) *Housing Element.*
 - (1) Policy H - 1.1.3: Balanced Growth. The proposed modification responds to the District's strong encouragement to develop new housing on vacant and underutilized land; and
 - (2) Policy H - 1.1.4: Mixed Use Development. The PUD Approval, as proposed to be modified, addresses the District's priority of promoting mixed-use development, including housing, on commercially-zoned land, particularly around appropriate Metrorail stations;
- (c) *Urban Design Element.*
 - (1) Policy UD - 2.2.7: Infill Development. The proposed modification addresses the District's direction to avoid overpowering contrasts of scale, height and density as infill development occurs. The Project provides a contextual corner piece that brings together the taller Phase II and the lower-scale Phase I, to provide a suitable bridge to the buildings either recently constructed or under construction at the intersection adjacent to the Phase III Land;
 - (2) Policy UD 3.1.1: Improved Streetscape Design. The modification addresses the District's call to improve the appearance of the District's landscaped areas through its significant beautification efforts along both the 3rd Street and L Street frontages. These public space improvements are compatible and in keeping with similar public space improvements included in the PUD Approval;
- (d) *Transportation Element.* The overall goal of the Transportation Element is to create a safe, sustainable, and efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce and visitors, supports economic prosperity, and enhances the quality of life for District residents. The Project supports this goal through its various transit-enhancement components, including the Applicant's commitment to restricting resident access to the RPP registry, extensive bicycle parking capacity within the Phase III Building and around Square 749, a loading and trash management plan,

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and transportation demand management initiatives, including promotion of non-automotive transit options;

- (e) *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality. The Project includes extensive landscaping, energy efficiency, and green engineering practices, including a commitment to providing sustainability measures and features within the Phase III Building equivalent to LEED NC Silver and is therefore consistent with the Environmental Protection Element; and
- (f) *Central Washington Area Element.* Policy CW 1.1.4: New Housing Development in Central Washington. The modification directly responds to the District's encouragement to develop new high-density housing in Central Washington, particularly in NoMa, as a strong downtown residential community can create pedestrian traffic, meet local housing needs, support local businesses in the evenings and on weekends, and increase neighborhood safety and security.

CONCLUSIONS OF LAW

1. Pursuant to §2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Subsection 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR § 2403.3.)
3. The overall PUD, including as modified by the Applications, meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
4. The development of the PUD, as modified by the Applications, carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which

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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 PUD's benefits and amenities are reasonable for the development proposed on the Property. The impact of the PUD on the surrounding area is not unacceptable. Accordingly, the Applications should be approved.
6. Evaluating the PUD modification according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the Applications qualify for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the Applications against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits herein, in conjunction with the amenities discussed above, are appropriate in this case.
7. Approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.
8. Approval of this PUD modification and change of zoning is not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code § 6-641.02, including as follows:
 - (a) The proposed rezoning is not inconsistent with the Comprehensive Plan;
 - (b) The proposed rezoning will not produce objectionable traffic conditions; and
 - (c) The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land.
9. Approval of this PUD modification will promote the general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, and civic activity.
10. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
11. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, building density, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that would otherwise require approval by the Board of Zoning Adjustment.
12. The Commission is required under Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code

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- § 1-309.10(d)) to give great weight to the affected ANC's recommendations. The Commission has carefully considered ANC 6C's recommendation in opposition to the Applications. The Commission notes in this regard that the principals of the Applicant herein have owned all the property in Square 749 and retain an ownership interest in UPPI, owner of Phase I, have submitted for the record evidence of an agreement with the new owner of Phase II to cooperate in the Applications, and own all of the Phase III Land and have spent many years working with the District, OP, and the Commission on the development of Square 749. Therefore, for this, among other reasons set forth in the record, the Commission deems the Applications an appropriate modification to the Approved PUD. The ANC's comments concerning loading were addressed in Applicant's letter to ANC Commissioner Goodman on August 21, 2013. The Commission affords the views of ANC 6C the great weight to which they are entitled.
13. The Commission concludes that it is appropriate to review the Applications absent the consent of UPPI as the Phase I Owner in light of past decisions of the Commission allowing phases of PUDs to move forward absent consent of all owners of property with said PUD, which approach was upheld and confirmed as appropriate by the District of Columbia Court of Appeals in *1330 Connecticut Avenue, Inc. v. D.C. Zoning Commission*, 669 A.2d 708 (1998), and other examples included in the Applicant's submissions to the record. In addition, the Commission notes that the Applicant is no outsider trying to tag on this PUD. Rather, as previously stated, the Cohen family had been involved for more than two decades in the redevelopment of Square 749, from assemblage of all the properties in the square, to selection of the project architects, to working with the impacted community; and further, that the Cohen family retained an ownership interest in Phase I of the PUD and also Phase II as of the time the Applicant made application for the present modification.
 14. The Applications for a PUD modification and Zoning Map amendment will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
 15. The Applications for a PUD modification and Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
 16. 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's recommendation that the Commission approve the Applications. For the reasons stated above, the Commission concurs with the OP's recommendation and approves the Applications.

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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 Applications for modification to an approved planned unit development and for a Zoning Map amendment from C-2-B to C-3-C for Lots 31, 804, 805, and 830 in Square 749. This approval is subject to the following guidelines, conditions, and standards:

A. Project Development

1. The Project shall be developed in accordance with the plans submitted to the Commission on July 12, 2013, located at Exhibit 36 of the Record, and the guidelines, conditions, and standards herein. These plans incorporate comments received from the Commission and supersede all earlier Project drawings included in the Record. The Applicant has committed to pursue approval by DCRA of the alternative design for the west elevation submitted to the Commission (Ex. 36A2, p. Ex. 3) and to the extent applicable to pursue a waiver request under the District of Columbia Construction Code to construct the alternative design.
2. The Project shall be an apartment house measuring approximately 63 feet eight inches in height from 3rd Street, N.E., with a building density of not more than 6.48 FAR.
3. The Applicant is granted flexibility with the design of the Project to provide a rear yard setback not meeting the requirements of § 774.1 of the Zoning Regulations.
4. The Applicant is granted flexibility with the design of the Project to provide no on-site parking in the Phase III Building pursuant to § 2101 of the Zoning Regulations. To that end, Condition No. 2 of Z.C. Order No. 05-36E is amended to reflect an overall diminution in the permitted parking ratio from one parking space per 0.71 residential units to one parking spaces per 0.67 residential units across the PUD.
5. The Applicant is granted flexibility with the design of the Project to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building.
6. The Applicant is granted flexibility with the design of the Project to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of materials.

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7. The Applicant is granted flexibility with the design of the Project to make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.
8. The Applicant is granted flexibility with the design of the Project to vary the final selection of landscaping and vegetation types as proposed, based upon availability at the time of construction and finalization of site grading and utility plans.

B. Public Benefits and Project Amenities

9. The Phase III Building shall be designed and constructed to receive a sufficient number of points under the United States Green Building Council's LEED New Construction (NC) 2009 standards that would have entitled the Phase III Building to the LEED NC Silver rating if the Applicant had made such an application.
10. Prior to the issuance of the certificate of occupancy for the Phase III Building, the Applicant shall demonstrate that it has entered into a First Source Employment Agreement with DOES whereby the Applicant commits to work through DOES to ensure that at least 51% of any new hires created by the project shall be District of Columbia residents.
11. Prior to the issuance of the certificate of occupancy for the Project, the Applicant shall demonstrate that it has entered into a Certified Business Enterprise Utilization Agreement with DSLBD applicable to the Phase III Building whereby the Applicant agrees to contract with Certified Business Enterprises for no less than 35% of the adjusted development budget for the Project.
12. Prior to the issuance of the certificate of occupancy for the Phase III Building, the Applicant shall demonstrate that a total of 21 bicycle racks meeting DDOT standards have been installed in public space around the perimeter of Square 749.
13. For so long as the project exists, the Phase III Building shall include a total of five dwelling units (approximately 2,644 square feet of residential GFA) within the Project devoted as Inclusionary Zoning units, as controlled by the provisions of Chapter 26 of the Zoning Regulations. The Inclusionary Zoning units shall be located generally as provided in the drawings provided as Exhibit 36 (Sheet Ex.1).
14. Prior to the issuance of the certificate of occupancy for the Project, the Applicant shall demonstrate that it has provided financial support in the amount of \$5,000 to

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the NoMA Park Fund or provide an equivalent amount in services in NoMa in the form of construction of streetscape or public space improvements, and submit a letter to DCRA demonstrating that the streetscape or public space improvements have been completed or are underway.

15. For the life of the Project, the Applicant shall abide by the transportation demand management plan set forth in the DDOT report and as agreed at the public hearing, which shall include the following: (i) designating a Resident Transportation Coordinator to encourage and disseminate information about non-private automobile trips and serve as the building's TDM leader; (ii) providing a secure bicycle parking room with 30 spaces; (iii) monitoring and auditing the site, with assistance from DDOT, to analyze the mode split assumptions; and (iv) providing each dwelling unit in the Phase III Building, upon initial move-in only, a complimentary one-year membership to Capital Bikeshare or to a car-sharing program, at the tenant's discretion.
16. For the life of the Project, the Applicant shall take such steps as are necessary to ensure that residents do not receive a residential parking permit ("RPP"), including without limitation (i) placing a clause in emphasized typeface in all leases for residential units prohibiting any resident from applying for or obtaining a RPP, with a provision for mandatory lease termination, to the full extent permitted by law; (ii) ensuring that DDOT removes the property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP; and (iii) should the Applicant sell any units at the property, adding a covenant that runs with the land to the deed for the units prohibiting residents from applying for or obtaining RPPs, to the full extent permitted by law.
17. For the life of the Project, the Applicant shall abide by the second and third elements of the preliminary loading management plan provided as Exhibit 26, namely, (i) the Applicant, thorough site management staff, shall schedule move-in and move-out activity so that access to the front entrance, side/service entrance and the elevator will be coordinated, and the Applicant will ensure that maintenance staff is on duty during all move-in and move-out activity; and (ii) trash will be transported from the first-floor trash room to the L Street curb via the service door using small-wheeled receptacles.

C. **Miscellaneous**

18. No building permit shall be issued for the Project until the Applicant has recorded a Notice of PUD Modification in the Land Records of the District of Columbia between CASCO and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer

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and Regulatory Affairs ("DCRA"). Such Notice shall bind CASCO and all successors in title to construct on and use the Property in accordance with this order or amendment thereof by the Commission.

19. The Zoning Map Amendment referenced herein shall become effective only upon the recordation of said Notice.
20. The modification approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in § 2409.1 of the Zoning Regulations. Construction of the Project shall begin within three years of the effective date of this Order.
21. 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.

On September 30, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the Applications at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On November 18, 2013, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 27, 2013.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04C
Z.C. Case No. 06-04C
Florida & Q Street, LLC
(Modification to Approved Planned Unit Development @ Square 3100)
November 18, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on October 3, 2013 to consider an application from Florida & Q Street, LLC (the "Applicant"), the owner of record of Lot 48 in Square 3100, for the approval of modifications to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 06-04, as extended pursuant to Z.C. Order Nos. 06-04A, 06-04B, and 06-04D.¹ 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 on the modification application 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. Pursuant to Z.C. Order No. 06-04, dated January 8, 2007, effective June 15, 2007, the Commission approved a consolidated PUD and related zoning map amendment for the property located at Lot 48 in Square 3100 (the "Subject Property") to enable the development of a new building on the site.
2. The Subject Property has a land area of approximately 18,984 square feet and is located in the northwest quadrant of the District at the intersection Q Street, Florida Avenue, and North Capitol Street. The Subject Property extends approximately 150 feet north along North Capitol Street and is currently unimproved.
3. The approved project prior to the modification includes approximately 85,428 square feet of gross floor area, with approximately 81,428 square feet of gross floor area devoted to residential use, providing between 65 and 85 dwelling units, and approximately 4,970 square feet of floor area was devoted to retail use in the cellar. The approved project has a maximum density of 4.5 floor area ratio ("FAR") and a maximum building height of 86 feet (not including roof structures). The approved project includes 84 parking spaces located on two levels of underground parking accessed from a curb cut on Florida Avenue.
4. Pursuant to Z.C. Order No. 06-04A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 15, 2011. Within said time an application was to be filed for a building permit, as specified in § 2409.1 of the Zoning

¹ Z.C. Order 06-04D was issued simultaneously with this Order.

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Regulations, and construction of the project was to commence no later than June 15, 2012.

5. Pursuant to Z.C. Order No. 06-04B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2014.
6. On May 31, 2013, the Applicant filed an application with the Commission for approval of modifications to the approved project. The application included plans that depicted the modifications. The Applicant also filed a request to further extend the validity of Z.C. Order 06-04 and in doing so prevented that order from expiring during the pendency of this application.
7. The Commission voted to set down the modification application at its public meeting held on July 8, 2013 and to defer consideration of the time extension requested in Z.C. Case No. 06-04D until its disposition of the modification request,
8. On June 28, 2013, the Office of Planning ("OP") recommended that the Commission schedule a public hearing on the modification application. (Exhibit ["Ex."] 12.)
9. On July 17, 2013, the Applicant submitted a Prehearing Statement. (Ex. 13.) The Prehearing Statement included information regarding the Applicant's meeting with the D.C. Department of Transportation ("DDOT") regarding the proposed modifications; information regarding the amount of affordable housing to be provided in the modified project; the anticipated timing for finalizing the updated list of amenity recipients; and the applicable information required pursuant to § 3013 of the Zoning Regulations. (Ex. 13, 14.)
10. On September 13, 2013, the Applicant submitted a Supplemental Prehearing Statement. (Ex. 18-18B.) The Supplemental Prehearing Statement included updated Architectural Plans and Elevations, and a supplemental Transportation Memorandum prepared by Symmetra Design.
11. On October 1, 2013, the Applicant submitted the resume of Jennifer A. Marca, who was proffered as an expert in residential architecture and design on behalf of the Applicant. (Ex. 21.)
12. After proper notice, the Commission held a public hearing on the modification application on October 3, 2013.

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13. The parties to the case were the Applicant and the Advisory Neighborhood Commission ("ANC") 5E, the ANC within which the Subject Property is located.
14. OP and DDOT testified in support of the project at the public hearing.
15. Two individuals also testified in general support of the application at the public hearing and submitted written testimony. (Ex. 31, 32.)
16. At the hearing, the Applicant submitted a summary of the proposed modifications (Ex. 26); a copy of its transportation expert's hearing presentation (Ex. 27); and a copy of its architect's hearing presentation (Ex. 28).
17. Three principal witnesses testified on behalf of the Applicant at the public hearing, including Bill Bonstra, FAIA, LEED AP and Jennifer Marca, on behalf Bonstra | Haresign Architects, as experts in residential architecture and design, and Nicole A. White, P.E. PTOE, on behalf of Symmetra Design, as an expert in transportation planning and analysis. Based on their professional experience, as evidenced by the resumes submitted for the record, Mr. Bonstra, Ms. Marca, and Ms. White were qualified by the Commission as experts in their respective fields.
18. On October 2, 2013, ANC 5E submitted a request that the Commission waive the requirement of § 3012.5 of the Zoning Regulations, which requires that "[i]f an Advisory Neighborhood Commission (ANC) wishes to participate in a contested case under § 3022, the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing," and accept the ANC's report. (Ex. 23, 24.) The Commission voted to at the public hearing to waive § 3012.5 and to accept the written report of ANC 5E.
19. The Commission took proposed action to approve the modification application at the conclusion of the public hearing on October 3, 2013.
20. On October 10, 2013, the Applicant submitted its final list of proffered public benefits and amenities and draft conditions, and a consolidated listing of the off-site amenity recipients. (Ex. 34, 35). The Applicant submitted its final list of public benefits and draft conditions on October 31, 2013. (Ex. 38.)
21. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") on October 9, 2013 under §492 District of Columbia Home Rule Act. NCPC, by report dated October 31, 2013 found that the proposed modifications to the project will not affect the federal interests. (Ex. 38.)

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22. The Commission took final action to approve the modification application on November 18, 2013.

Modified Project

23. The Applicant is seeking modifications to: reduce the building's maximum height from 86 feet to 72 feet, four and one-half inches (not including roof structures); provide approximately 85,428 square feet of gross floor area of which 84,306 would be devoted to residential uses; provide between 85 and 95 dwelling units and approximately 4,998 square feet of floor area devoted to retail use in the cellar, with the option to convert this space to residential use if it cannot be leased for retail uses; provide 41 parking spaces located on one level of underground parking accessed from Florida Avenue; and to make minor refinements to the exterior facades of the building. The overall density of the modified project is 4.5 FAR, which is consistent with the approved PUD.
24. In addition, given that four of the original amenity recipients identified in Z.C. Order No. 06-04 have been closed, are no longer operational, or otherwise have been completed, the Applicant is seeking approval to reallocate the funds originally designated for Shaed Elementary School, the J.F. Cook Elementary School, the North Capitol Street BID Incubation Fund, and the installation of an entrance gate at the Florida Avenue park, to new uses, while maintaining the aggregate amount of the contributions at \$109,600.
25. The Applicant requested that the Commission provide flexibility for the Applicant to convert to residential use the proposed 4,998 square feet of floor area devoted to retail use in the cellar if this space cannot be leased for retail uses. However, based upon comments from the Commission at the public hearing and ANC 5E's recommendation that the Applicant retain the retail space and not be permitted to convert such space into living space, the Applicant withdrew this request for flexibility at the public hearing. The Commission determined that although the Applicant cannot convert the proposed retail space to residential space without coming back to the Commission, the Commission would be inclined to treat such request as a minor modification in the future if the request is supported by documentation demonstrating the Applicant's efforts to market the space to retail tenants, and the Applicant's inability to secure tenants interested in or capable of leasing the space. However, the Commission recognizes that such a future request could not be treated as a minor modification if a single Commissioner objects at the time pursuant to 11 DCMR § 3030.12.

Zoning Flexibility

26. Pursuant to Z.C. Order No. 06-04, the Commission approved relief from the court width, residential recreation space, and loading requirements for the approved development. Similar to the approved PUD, the revised design requires relief from the court width and

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loading requirements, and relief from the roof structure requirements. Relief is no longer necessary from the residential recreation space requirements since those requirements have been repealed.

27. *Flexibility From Court Width Requirement (§ 776).* Although the Zoning Regulations do not require that buildings include a court, § 776.3 of the Zoning Regulations requires that if a court is provided, it must have a minimum court width of four inches per foot of height, but not less than 15 feet (§ 776.3), and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (§ 776.4). The modified PUD includes a closed court with a width of 15 feet, two inches and an area of 773 square feet located along the northern property line. The court is in the same locations and has the same width as that shown on the approved PUD plans. The height of the court is 77 feet, six inches and therefore the required width is 25 feet, 10 inches and the required area is 250 feet, thus triggering the need for relief. The Commission approved the same court relief as part of the approved PUD. (See Z.C. Order No. 06-04, Finding of Fact No. 25(a).) Similar to the approved PUD, the Applicant is attempting to provide more open space at the rear of the property to allow for additional buffer to the nearby residences, and therefore would like to provide this court space. However, the Applicant cannot increase the width of the court to meet the requirement since that would impact the ability to offer full sized units along the west side of the North Capitol Street wing. The reduced court area will not be visible from the street.
28. *Flexibility From The Off-Street Loading Requirements (§ 2201).* The Applicant requests flexibility from the off-street loading requirements. Section 2201.1 of the Zoning Regulations provides that an apartment house or multiple dwelling with 50 or more dwelling units is required to provide one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep. (11 DCMR § 2201.) However, due to the anticipated needs of the residential use, the Applicant is instead proposing to provide one loading berth at 30 feet deep, one loading platform at 525 square feet, and one service/delivery loading space at 20 feet deep. The Zoning Commission approved the same loading relief as part of the approved PUD and the loading facilities are in the same location as initially approved by the Commission. (See Z.C. Order No. 06-04, Finding of Fact No. 25(c).) Given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks. In addition, the loading areas are likely to be used by the residents primarily when they move in or out of the building, and any subsequent use by residents is generally infrequent and can be restricted to times which pose the least potential conflicts and thus will not result in any adverse impacts.
29. *Flexibility From Roof Structure Requirement (§§ 411 and 770).* The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because, as

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shown on the roof plan sheets included in the Modified Plans: (1) there will be multiple roof structures (§§ 411.3 and 770.6(a)); (2) each stair tower cannot be set back from all exterior walls a distance equal its height above the roof (§§ 411.2 and 770.6(b)); and (3) the enclosing walls of a roof structure are not of an equal height (§ 411.4). Specifically, the project includes: (a) a roof structure located along the east-west portion of the roof that encloses stair tower and elevator, with enclosing walls of 10 feet. This structure meets the set back requirements; (b) a roof structure located behind the tower element of the roof that encloses an elevator, with enclosing walls of 10 feet and 13 feet, 6 inches. This structure does not meet the set back requirement from the courtyard wall; and (c) a roof structure located along the north-south portion of the roof that encloses a stair tower with enclosing walls of 10 feet. This structure meets the set back requirements. Each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevator. The Applicant designed the roof structures to have walls of unequal height in order to help reduce the visibility of the structures. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the internal configuration of the proposed building. The requested roof structure design will not adversely impact the light and air of adjacent buildings since each element has been located to minimize its visibility. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected.

Development Flexibility

30. The Applicant has made every effort to provide a level of detail that conveys the significance and appropriateness of the project's design for this location. Nonetheless, some flexibility is necessary that cannot be anticipated at this time. Thus, the Applicant also requests flexibility in the following areas:
 - a. To be able to provide a range of 85 to 95 residential units;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the number required by the Zoning Regulations; and

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- d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit;

Compliance with PUD Evaluation Standards

31. The Commission found in Z.C. Case No. 06-04 that a number of public benefits and amenities will be created as a result of the approved project (See Z.C. Order No. 06-04, Finding of Fact No. 26); that the approved project is consistent with many of the Comprehensive Plan's major themes (See Z.C. Order No. 06-04, Finding of Fact No. 28); that the approved project will further the specific objectives and policies of many of the Comprehensive Plan's major elements (See Z.C. Order No. 06-04, Finding of Fact No. 29); and that the approved project fulfills and furthers specific objectives for Ward 5 (See Z.C. Order No. 06-04, Finding of Fact No. 31).
32. The OP report filed in this application indicates that the project, as modified, will continue to provide a number of public benefits and amenities, particularly since the project gains no additional density through this PUD modification over what was previously approved. OP also indicated that the project, as modified, is consistent with the 2006 Comprehensive Plan, including the Land Use, Housing, Urban Design, and Mid-City Area elements and their related policies.
33. Accordingly, the Commission finds that the project, as modified, continues to meet the applicable PUD evaluation standards of § 2405 of the Zoning Regulations.

Updates to Approved Public Benefits and Amenities

34. In working with DDOT and ANC 5E, the Applicant has agreed to implement the following Transportation Demand Management ("TDM") measures during the life of the modified project:
 - a. Loading Facilities - The project shall include one 30-foot-deep loading berth and one 20-foot-deep loading berth, as shown on Sheet A-3.2 of the Plans;
 - b. Delivery Day/Hours - The Applicant shall require residents of the building to schedule use of the loading berth on Monday through Friday from 10:00 a.m. to 2:00 p.m. and after 7:00 p.m., and on Saturdays and Sundays from 7:00 a.m. to 7:00 p.m.;

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- c. Truck Size - The Applicant shall prohibit trucks larger than 30 feet from utilizing the loading berth;
- d. Loading Management Coordinator - The Applicant shall assign a loading management coordinator to prevent truck queuing and to help guide trucks' back-in movements;
- e. Residential Parking Permit Prohibition - The Applicant shall include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit ("RPP") Program. In addition, the Applicant will request that DDOT remove the Subject Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP. For so long as the Applicant owns the Subject Property, and once DDOT has removed the Subject Property from the list of properties eligible for RPPs or has classified the Subject Property as ineligible for RPP, the Applicant shall not reapply to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP. The Applicant shall also include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from reapplying to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP;
- f. Unbundling of Parking - The Applicant shall unbundle all parking cost from the cost of lease or purchase;
- g. Posting of Transportation Demand Management Commitments and Promotion of Public Transportation Options - The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised. The Applicant shall also provide each initial tenant a welcome package that promotes website links such as CommuterConnections.org, goDCgo.com, Capital Bikeshare, carsharing, WMATA, and DC bicycle maps;
- h. Site Access - The Applicant shall restrict the Florida Avenue curb cut to right-in/right-out movements. The Applicant shall post signage prohibiting left turns in or out of the Florida Avenue curb cut;
- i. Bikeshare or Carshare Membership - The Applicant shall offer each initial tenant/owner of the building the one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership;

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- j. Transportation Screen - The Applicant shall provide a transportation information screen in the residential lobby that will show real time arrival/availability for nearby buses, trains, carshare, and bikeshare;
- k. Bike Parking Spaces - The building shall include a minimum of 60 bike parking spaces in the building; and
- l. Affordable Housing Condition No. 6. of Z.C. Order No. 06-04 provided that "[a]ffordable housing shall be provided as specified in the Affordable Housing Commitment standards identified as Exhibit No. 42 of the record." The original application was set down on April 20, 2006. The Inclusionary Zoning ("IZ") Regulations would not have been applicable to any building permit to construct the original PUD as a result of 11 DCMR § 2608.2, which provides:

2608.2 The provisions of this Chapter shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.

Since the Applicant proposed to modify the building that was the subject of the original setdown, the Inclusionary Zoning Regulations would appear to apply. Therefore, pursuant to §§ 2603.2 and 2603.4 the modified Project must devote a minimum of eight percent of total residential gross floor area square feet of gross floor area) to moderate-income households for so long as the Project exists. The Applicant has acknowledged the need to comply with the set aside requirement and will devote the minimum amount of gross floor area required.

Subsection 2403.6(f) of the PUD evaluation standards provides that "compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning." According to OP's final report, the amount of the IZ set aside that will be provided by the Project represents an "18% increase in the residential gross floor area devoted to IZ over matter-of-right under C-2-A zoning." Therefore, the Commission will treat the Applicant's compliance with IZ as a public benefit.

- 35. The approved off-site amenities package, which totals \$109,600, included the Applicant making the following contributions: \$1,000 to Shaed Elementary School (Finding of Fact No. 26.g.i.); \$6,600 to J.F. Cook Elementary School for the purchase of student school supplies (Finding of Fact No. 26.g.ii); \$1,000 to a contractor selected by the ANC for the installation of an entrance gate at the Florida Avenue park (Finding of Fact No. 26.g.vii); and \$35,000 for the North Capitol Street BID Incubation Fund for the creation of a business improvement district along the North Capitol Street corridor (Finding of Fact

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No. 26.g.ix). These four contributions collectively total \$43,600. However, subsequent to the PUD's initial approval in 2006, Shaed Elementary School, the J.F. Cook Elementary School, and the North Capitol Street BID Incubation Fund have been closed and are no longer operational, and the renovation of the Florida Avenue park has been completed.

36. Accordingly, the Applicant worked with ANC 5E and the Ward 5 Councilmember to reallocate the funds originally designated for the closed schools, the entrance gate, and the BID incubation fund. The Applicant agreed to reallocate those funds as follows: \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance; and \$6,600 to the NOMA Bid or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association. The reprogrammed amounts collectively total \$43,600, while maintaining the aggregate amount of the contributions at \$109,600.00. A consolidated list of the revised off-site amenities follows²:
- a. \$6,600 to Dunbar Senior High School for the purchase of band and cheerleader uniforms and band instruments;
 - b. \$6,600 to McKinley Technology High School for the purchase of books, classroom materials, and computer equipment for the school's Biotechnology, Broadcast Technology, and Information Technology instructional programs;
 - c. \$6,600 to William E. Doar, Jr. Public Charter School for the Performing Arts for the purchase of musical instruments;
 - d. \$6,600 to D.C. Preparatory Academy PCS for the purchase of supplies and materials to support the school's academic tutoring, sports, and arts enrichment programs;
 - e. \$6,600 to the North Capitol Main Street, Inc. for community improvement projects, such as the purchase of materials for the planting of trees;
 - f. \$6,600 to the Bloomingdale Civic Association for the purchase of equipment and uniforms for youth sports activities and a contribution to the association's student scholarship fund;
 - g. \$6,600 to the Eckington Civic Association for the purchase of equipment and materials necessary to develop a neighborhood website and community

² The first 10 items are unchanged from the original PUD Order, Z.C. Order No. 06-04.

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newsletter, as well as for the creation of a fund to assist seniors with quality-of-life issues;

- h. \$6,600 to the Stronghold Civic Association for the purchase of equipment and materials for youth sports activities and a contribution to the association's student scholarship fund;
- i. \$6,600 to the Bates Street Civic Association for the installation of gates for a pocket park and wrought iron borders for tree boxes and for other community beautification projects;
- j. \$6,600 to the 5th District Citizens Advisory Committee for the sponsorship of and purchase of materials for local youth-related events and programs;
- k. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant provided \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance; and
- l. Prior to the issuance of a certificate of occupancy for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs ("DCRA") evidence that the Applicant provided \$6,600 to the NOMA BID or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association.

Office of Planning Reports

- 37. By report dated June 28, 2013, OP recommended that the modification application be set down for public hearing, and indicated that the project, as modified, is substantially consistent with the conditions identified in Z.C. Order No. 06-04. (Ex. 12.)
- 38. By report dated September 23, 2013, OP recommended final approval of the modification application. (Ex. 20.) OP indicated that the modified project remains consistent with the permitted height and FAR under the approved map amendment. OP also noted that the modified project gains no additional density through this PUD modification over what was previously approved, and that the modification requests minimal additional flexibility. OP also opined that the modified project is consistent with the 2006 Comprehensive Plan, including the including the Land Use, Housing, Urban Design and Mid-City Area elements and their related policies. OP concluded that it supports the modified project and recommended approval of the modification application. The Commission concurs with the findings and recommendations of OP.

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DDOT Report

39. By report dated September 23, 2013, DDOT indicated that it has no objections to the modifications, provided that the following conditions be incorporated into the project: (a) the Applicant should assign a loading management coordinator to prevent truck queuing and to help guide trucks back-in movements to eliminate conflicts with pedestrians and bicyclists; (b) in addition to the TDM elements proposed by the Applicant, the Applicant should offer a Capital Bikeshare membership or carshare membership to all new tenants in perpetuity; and (c) the Applicant should provide a transportation information screen in the lobby that would show real time arrival/availability for nearby buses, trains, carshare, and bikeshare. (Ex. 19.)
40. With respect to the Applicant's request to reduce the amount of parking, DDOT noted that the Subject Property is well served by transportation alternatives including multiple high-frequency bus routes, Metro, bikeshare, bicycle lanes, and sidewalks, and that the proposed on-site parking meets zoning requirements and is consistent with trends in parking provision across the District. Moreover, DDOT indicated that because of the project's location, the reduction in the size of the units from the previously-approved PUD, the availability of transportation alternatives, and the requested TDM strategies, demand for parking among potential residents is expected to be low. Further, the proposed parking provision is consistent with other recent projects in similar contexts across the District. Accordingly, DDOT concluded that the proposed parking provision should be sufficient to accommodate parking demand generated by the proposed project.
41. The Applicant agreed to implement DDOT's recommendations to assign a loading management coordinator and to provide a transportation information screen in the building's lobby. The Applicant also agreed to offer each initial tenant/owner of a unit in the building a one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership.
42. The Commission finds that the Applicant's proposal to provide a one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership, instead of offering these benefits in perpetuity, is appropriate given that the original approved PUD was not required to provide a Capital Bikeshare membership or carshare membership; the modified project meets the off-street parking requirements; and the Applicant has agreed to implement a number of TDM measures for the modified project.

ANC Report

43. ANC 5E, by resolution dated October 2, 2013, indicated that on September 17, 2013, ANC 5E held a regularly scheduled public meeting, at which notice was properly given and a quorum was present, and voted as follows: (1) that the Commission approve the

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requested modifications to the approved building, contingent upon the Applicant retaining the second level of parking included in the approved plans, and that the second level of parking preferably be made available as public parking and that the developer retain the retail space and not be permitted to convert such space into living space; (2) in the event that the Commission approves the Applicant's request to only provide one level of parking, then the Commission should require the Applicant to request that DDOT remove the PUD site from the list of properties eligible for Residential Permit Parking ("RPP"), or if presently not on the list, classifying it as ineligible for RPP; and (3) that the Commission approve the Applicant's proposal to reallocate the approved amenity amounts of \$1,000 for Shaed Elementary School; \$35,000 for the North Capitol Street BID Incubation Fund; and \$1,000 for the installation of an entrance gate at the Florida Avenue Park (which collectively total \$37,000) to North Capitol Main Street, Inc. for storefront improvements and technical assistance since the initial recipients are closed or are no longer operational, provided that the Applicant should meet with the Hanover Area Civic Association to explore the feasibility of reprogramming the \$6,600 initially slated for the J.F. Cook Elementary School to uses within the boundaries of the Hanover Area Civic Association. (Ex. 25.)

44. ANC 5E also indicated that it supports the Applicant's agreement to reallocate the \$6,600 initially slated to the J.F. Cook Elementary School (which is closed) to the NOMA Bid or a similar, established organization for neighborhood cleaning/beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association.
45. As described in this Order, the Commission agrees with ANC 5E's recommendation that the Applicant be required to retain the proposed retail space, and thus the Applicant withdrew this request for flexibility. With respect to the amount of proposed parking, the Applicant exceeds its required parking minimum with a single level of underground parking. The Commission adopts the findings and analysis of DDOT, as well as the report, presentation, and testimony of the Applicant's transportation expert, all of which support the finding that the amount of parking proposed for the project is sufficient to meet the demand for the project, and is consistent with other recent projects in similar contexts across the District. The Commission therefore finds that the ANC's advice that the Applicant should be compelled to retain the two levels of underground parking is unpersuasive. As part of approving the modification application, the Commission has adopted ANC 5E's alternative recommendation requiring the Applicant to include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the RPP Program, and also requiring the Applicant to request that DDOT remove the PUD site from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP.

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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 or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR §2400.2.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a modification to a previously approved consolidated PUD. Any modifications proposed to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for and be processed as a second-stage application, except for minor modifications and technical corrections as provided for in § 3030. (11 DCMR §2409.9.) The Commission treated this modification request as a second-stage PUD application.
3. The Commission may 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 and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
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 that 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 meets 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. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. 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

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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 as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. Great weight requires the acknowledgement of the ANC as the source of the recommendations and explicit reference to each of the ANC's concerns. The written rationale for the decision must articulate with precision why the ANC does or does not offer persuasive evidence under the circumstances. In doing so, the Commission must articulate specific findings and conclusions with respect to each issue and concern raised by the ANC. D.C. Official Code § 1-309.10(d)(3)(A) and (B).
9. The Commission gave great weight to the issues and concerns of ANC 5E through its discussion of the ANC's report, which is set forth in findings of fact 43 through 45. In doing so, the Commission has given ANC 5E's written report the great weight to which it is entitled by law.
10. 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.

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 of the PUD approved at Lot 48 in Square 3100 originally approved in Z.C. Order No. 06-04, and orders the following modifications to the conditions of approval stated in Z.C. Order No. 06-04:

Conditions 1 through 5 are modified to read as follows:

1. The PUD shall be developed in accordance with the plans prepared by Bonstra Haresign Associates, dated September 13, 2013 and marked as Exhibit No. 18A1 -18A6 of the record (the "Plans"), as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a mixed-use building having a combined gross floor area of approximately 85,428 square feet and one level of underground parking. Approximately 84,306 square feet will be devoted to residential use, providing between 85 and 95

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dwelling units, and approximately 4,998 square feet of floor area will be provided for retail use in the cellar. The Project will have a maximum density of 4.5 FAR.

3. The project shall have a maximum building height of 72 feet, four and one-half inches. The building may include a roof structure in excess of that height, with a height not to exceed 18.5 feet above the roof upon which it is located, as shown on the Plans.
4. The project shall provide a minimum of 41 parking spaces. Access to the parking garage and the loading dock area will be from Florida Avenue.
5. During the life of the project, the Applicant shall implement the following Transportation Demand Management ("TDM") measures:
 - a. Loading Facilities - The Project shall include one 30-foot-deep loading berth and one 20-foot-deep loading berth, as shown on Sheet A-3.2 of the Plans;
 - b. Delivery Day/Hours - The Applicant shall require residents of the building to schedule use of the loading berth on Monday through Friday from 10:00 a.m. to 2:00 p.m. and after 7:00 p.m., and on Saturdays and Sundays from 7:00 a.m. to 7:00 p.m.;
 - c. Truck Size - The Applicant shall prohibit trucks larger than 30 feet from utilizing the loading berth;
 - d. Loading Management Coordinator - The Applicant shall assign a loading management coordinator to prevent truck queuing and to help guide trucks' back-in movements;
 - e. Residential Parking Permit Prohibition - The Applicant shall include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from applying for an off-site permit under the Residential Parking Permit ("RPP") Program. In addition, the Applicant will request that DDOT remove the Subject Property from the list of properties eligible for RPPs, or if presently not on the list, classifying it as ineligible for RPP. For so long as the Applicant owns the Subject Property, and once DDOT has removed the Subject Property from the list of properties eligible for RPPs or has classified the Subject Property as ineligible for RPP, the Applicant shall not reapply to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP. The Applicant shall also include in each residential lease/purchase agreement a provision prohibiting the tenant/owner from reapplying to have the Subject Property added back to the list of properties eligible for RPPs or reclassified as eligible for RPP;

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- f. Unbundling of Parking - The Applicant shall unbundle all parking cost from the cost of lease or purchase;
- g. Posting of Transportation Demand Management Commitments and Promotion of Public Transportation Options - The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised. The Applicant will also provide each initial tenant a welcome package that promotes website links such as CommuterConnections.org, goDCgo.com, Capital Bikeshare, carsharing, WMATA, and DC bicycle maps;
- h. Site Access - The Applicant shall restrict the Florida Avenue curb cut to right-in/right-out movements. The Applicant shall post signage prohibiting left turns in or out of the Florida Avenue curb cut;
- i. Bikeshare or Carshare Membership - The Applicant shall offer each initial tenant/owner of the building the one-time option of either a one-year Capital Bikeshare membership or a one-year carshare membership;
- j. Transportation Screen - The Applicant shall provide a transportation information screen in the residential lobby that will show real time arrival /availability for nearby buses, trains, carshare, and bikeshare; and
- k. Bike Parking Spaces - The building shall include a minimum of 60 bike parking spaces in the building.

Condition 6 is deleted in its entirety.³

Conditions 7 through 9 are amended to read as follows:

- 7. The Applicant shall include landscaping, streetscape, and open space treatment for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping, streetscape, and open space treatments in good growing condition.
- 8. Landscaping in the public space on the surrounding public streets shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its

³ Condition No. 6 contained the Applicant's original affordable housing proffer. As noted, the Project is now subject to the Inclusionary Zoning Regulations of Chapter 26 and the Applicant will be providing the minimum set aside required by law. Although the Commission has found this to be a public benefit, there is no reason to include a condition that the Applicant must do what it is already required to do by law.

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successors shall maintain all such landscaping in the public space in good growing condition.

9. The Applicant shall have flexibility with the design of the PUD in the following areas:
- a. To be able to provide a range of 85 to 95 residential units;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the number required by the Zoning Regulations; and
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Condition 12 is amended to read as follows:

12. a. No Certificate of Occupancy shall be issued for this PUD until the Applicant has submitted to DCRA evidence demonstrating that the Applicant has provided the funding for the following items:
- i. \$6,600 to Dunbar Senior High School for the purchase of band and cheerleader uniforms and band instruments;
 - ii. \$6,600 to McKinley Technology High School for the purchase of books, classroom materials, and computer equipment for the school's Biotechnology, Broadcast Technology, and Information Technology instructional programs;
 - iii. \$6,600 to William E. Doar, Jr. Public Charter School for the Performing Arts for the purchase of musical instruments;

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- iv. \$6,600 to D.C. Preparatory Academy PCS for the purchase of supplies and materials to support the school's academic tutoring, sports, and arts enrichment programs;
 - v. \$6,600 to the North Capitol Main Street, Inc. for community improvement projects, such as the purchase of materials for the planting of trees;
 - vi. \$6,600 to the Bloomingdale Civic Association for the purchase of equipment and uniforms for youth sports activities and a contribution to the association's student scholarship fund; and
 - vii. \$6,600 to the Eckington Civic Association for the purchase of equipment and materials necessary to develop a neighborhood website and community newsletter, as well as for the creation of a fund to assist seniors with quality-of-life issues;
- b. Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA evidence that the Applicant provided \$37,000 to North Capitol Main Street, Inc. for storefront improvements and technical assistance;
 - c. Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA evidence that the Applicant provided 6,600 to the NOMA Bid or a similar, established organization for neighborhood cleaning and/or beautification projects determined by, and within the boundaries of, the Hanover Area Civic Association; and
 - d. Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall submit to DCRA a letter from each organization identified in 12(a) - 12(c) verifying that the services funded have been or are being provided.

The remaining conditions set forth in Z.C. Order 06-40 remain in effect. Those conditions are:

- 10. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

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11. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
13. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
14. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. 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 that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On October 3, 2013, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the application at the close of its public hearing by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to approve; Peter G. May, not present, not voting).

On November 18, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Michael G. Turnbull to adopt; Peter G. May, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the *D.C. Register*; that is on December 27, 2013.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-04D**

Z.C. Case No. 06-04D

Florida & Q Street, LLC

(Two-Year PUD Time Extension @ Square 3100, Lot 48)

November 18, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 18, 2013. At the meeting, the Commission approved a request from Florida & Q Street, LLC (the "Applicant") for a time extension for an approved planned unit development ("PUD") for property consisting of Lot 48 in Square 3100 ("the Subject Property") pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations ("DCMR"). At the same time, the Commission also approved a modification to that approved PUD in Z.C. Case No. 06-04C. Z.C. Order No. 06-04C approving that modification is being issued simultaneously with this Order consistent with the Commission's intent that the PUD as modified shall be extended for the time periods set forth below.

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 06-04, the Commission approved a PUD for the Subject Property and an application to amend the Zoning Map from the C-2-A to the C-2-B Zone District for the Subject Property. The Subject Property consists of approximately 18,984 square feet of land area.
2. The approved PUD, prior to the modification granted in Z.C. Order 06-04C¹, included construction of a mixed-use development having a combined gross floor area of approximately 85,428 square feet, and two levels of underground parking. Approximately 81,428 square feet will be residential providing between 65-85 dwelling units and a total of 4,970 square feet of floor area will be provided for retail use in the cellar. The project was previously approved to have an approximate density of 4.5 floor area ratio ("FAR") and a maximum building height of approximately 86 feet at the corner of North Capitol Street and Florida Avenue, with substantial setbacks at the 65-foot level on all street fronts. Access to the parking garage and the loading dock area will be from Florida Avenue.
3. Pursuant to Z.C. Order No. 06-04A, the Commission granted a two-year extension of time for the PUD, extending the approval until June 15, 2011. Within said time an application was to be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations and construction of the project was to commence no later than June 15, 2012.

¹ Among other things, the approved modification reduced the building's maximum height from 86 feet to 72 feet, four and one-half inches (not including roof structures and increased the amount of residential gross floor area to 84,306 square feet, but did not increase the overall floor area ratio. The range of apartment units was increased to between 85 and 95 dwelling units and approximately 4,998 square feet of floor area will be devoted to retail use in the cellar.

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4. Pursuant to Z.C. Order No. 06-04B, the Commission extended the validity of the PUD for an additional two years such that an application for a building permit would need to be filed no later than June 15, 2013, and construction of the project is to commence no later than June 15, 2015.
5. On May 31, 2013, the Applicant filed a request for a two-year extension of Z.C. Order No. 06-04, as extended by Z.C. Order Nos. 06-04A and 06-04B, such that an application must be filed for a building permit for the approved PUD no later than June 15, 2015, and construction to start no later than June 15, 2016.
6. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. Since the PUD was initially approved, the unanticipated change in the sales and rental environment for the construction of residential projects has suffered significant downturns that have impeded the Applicant's ability to secure financing for this project. Indeed, the Commission has found in a number of cases that the changes in the economy and residential housing market conditions, combined with uncertainty in the markets, has resulted in a general lack of willingness on the part of lenders to finance projects. As indicated in the materials submitted by the Applicant, including materials prepared by the Applicant's real estate broker, the Applicant has worked diligently to secure financing for the project, and has met with numerous potential lenders and other financing sources, but has been unable to due to the volatility in the industry to secure project financing or attract a joint venture partner.
7. The Applicant has worked with Cassidy Turley, a leading commercial real estate services provider. Cassidy Turley has actively marketed the development site. They have developed a flyer and a Confidential Offering Memorandum providing details about the site and the development opportunities planned, as well as the surrounding neighborhood to potential investors. Cassidy Turley has reached out to 3,220 groups that include local developers, institutional investors, and major REITS, but none have been willing to provide financing for the approved PUD. The Applicant continues to work with many of the groups mentioned above, along with many others, on an ongoing basis to monitor the financial markets closely in order to secure the necessary financing for the project. Moreover, to date, the Applicant has been faced with the following impediments in attempting to obtain financing for the project:
 - Construction costs for the project have increased significantly since the PUD was approved;
 - The Applicant has meet with a number of lenders, yet these efforts have not yielded financing for the project because market conditions and construction costs have continued to increase at an unpredictable rate; and

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- A number of the banks that the Applicant initially contacted for financing the project have either frozen lending for residential projects or have ceased lending operations due to the uncertainty in market conditions and the softening of the housing market.
8. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions, investors, and joint venture partners it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, and the Commission finds that this extension request satisfies the criterion for good cause shown as set forth in § 2408.11 of the Zoning Regulations.
 9. The only other party to this application was Advisory Neighborhood Commission ("ANC") 5E. ANC 5E did not submit any comments on this application.
 10. Because the Applicant demonstrated good cause with substantial evidence pursuant to Section 2408.11(a) and (b) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Subsection 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

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2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendations. ANC 5E did not submit any comments on this application.
5. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. OP did not submit any comments on this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a) and (b). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control. In addition, the Applicant was unable to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control.
7. Subsection 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

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DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the validity of Z.C. Order No. 06-04 as modified by Z.C. Order No, 06-04C, such that an application must be filed for a building permit for the modified PUD no later than June 15, 2015, and construction must start no later than June 15, 2016.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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 identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic information, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On November 18, 2013, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony G. Hood Marcie I. Cohen. Robert E. Miller, and Michael G. Turnbull to adopt; Peter G. May, not having participated, 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 December 27, 2013.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING**

Z.C. Case No. 13-17

**(Brownstein Commons LP – Consolidated PUD and Related Map Amendment @
Square 5933, Lots 46, 47, 48, and 49 and Square 5934, Lots 17, 18, and 806
December 18, 2013**

THIS CASE IS OF INTEREST TO ANC 8C and 8E

On December 13, 2013, the Office of Zoning received an application from Brownstein Commons LP (the “Applicant”) for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 46, 47, 48, and 49 in Square 5933 and Lots 17, 18, and 806 in Square 5934 in Southeast Washington, D.C. (Ward 8), which is located on a site approximately bounded by Mississippi Avenue, S.E. on the south, Trenton Place, S.E., 11th Place, S.E., and the Eagle Academy Charter School to the north; 13th Street, S.E. to the east; and 10th Place, S.E. and the M.C. Terrell/McGogney Elementary School to the west. The property is currently zoned R-5-A. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, to R-5-B.

The Applicant proposes to develop a residential community that will include 71 for-sale townhouses and approximately 190 rental apartments in two multi-family buildings. The proposed multi-family buildings will be approximately 55 feet in height and will include approximately 230,000 square feet of gross floor area. Each component of the project will meet or exceed Inclusionary Zoning requirements.

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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:)	
))	
American Federation of Government)	PERB Case No. 13-U-26
Employees, Local 383,)	
))	
Complainant,)	Opinion No. 1442
))	
v.)	
))	
District of Columbia Office of the Chief)	Decision and Order
Financial Officer,)	
))	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, Local 383 ("AFGE" or "Union" or "Complainant"), filed an Unfair Labor Practice Complaint ("Complaint") against District of Columbia Office of the Chief Financial Officer ("OCFO" or "Agency" or "Respondent"), alleging OCFO violated D.C. Code §§ 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Personnel Act ("CMPA") by: 1) failing and refusing to recognize AFGE as the exclusive representative of all employees in the bargaining unit and by coding some employees in the bargaining unit as holding "non-union" positions; 2) circumventing AFGE and applying the bargaining agreement of another union when it disciplined an employee; and 3) failing and refusing to respond to AFGE's request for bargaining information. (Complaint, at 4).

In its Agency Response to ULP Complaint ("Answer"), OCFO denies it violated the CMPA; contends it is "not a party to and has never been a signatory to the Union's working conditions agreement"; and asserts that it is "not subject to the [CMPA]." (Answer, at 5-6).

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II. Background

A. Alleged failure and refusal to recognize AFGE as the exclusive representative of all employees in the bargaining unit and alleged coding of some employees in the bargaining unit as holding "non-union" positions

In the Complaint, AFGE asserts it is the certified bargaining representative of the bargaining unit described in *American Federation of Government Employees, Local 383, AFL-CIO and District of Columbia Department of Human Services, Office of the Controller, Certification of Representative*, PERB Case No. 80-R-06 (August 19, 1981) as:

All unrepresented employees of the Office of the Controller, Department of Human Services in the following Divisions: Grants Management, Fiscal Accounting and Financial Management, excluding officials, confidential employees, supervisors, employees engaged in personnel work other than a purely Title XVII: Labor Management Relations of the District of Columbia Comprehensive Merit Personnel Act of 1978.

(Complaint, at 1). AFGE contends OCFO "is the successor employer to the Office of the Controller" and that "the Union and the District of Columbia are parties to a master working conditions agreement [{"Agreement"}] covering the bargaining units for which the Union is the exclusive representative." *Id.*, at 2. AFGE notes that although the CBA states it expired in 1995, "it has rolled over for each successive year and remains in full force and effect pending the negotiation of a new agreement." *Id.*, Exhibit A.

In its Answer, OCFO admits it is the successor employer to the Office of the Controller, but states it "has no knowledge" of AFGE's assertion that AFGE is the certified bargaining representative of the unit described in PERB Case No. 80-R-06, *supra*. (Answer, at 1-2). Furthermore, OCFO "does not dispute" that the CBA has rolled over each year since it expired, but contends it has not violated D.C. Code §§ 1-617.04(a)(1) and (5) because it "is not a party to a master working conditions agreement with the Union" and because "OCFO is not subject to the [CMPA]." *Id.*, at 2, 5.

AFGE alleges there are some OCFO employees who are coded as belonging to the Union and who pay Union dues, and that there are others in positions within the bargaining unit who are coded as being "non-union." (Complaint, at 2). AFGE alleges it has "submitted dues authorization cards signed by employees holding positions within the OCFO" but that "OCFO has failed and refused to recognize the Union as the exclusive representative of those employees and has refused to code those employees as being members of the Union." *Id.* OCFO admits that some of its employees belong to the Union, but "[b]y information and belief," denies AFGE's allegations that some employees are coded as "non-union" and/or that AFGE submitted dues authorization cards. (Answer, at 2-3).

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B. Alleged circumvention of AFGE by applying the bargaining agreement of another union in the discipline of an employee

On November 15, 2012, OCFO proposed to suspend bargaining unit member, Sheila Jackson ("Ms. Jackson") for 30 days. (Complaint, at 2). Ms. Jackson is a member of the bargaining unit and is coded as such by OCFO. *Id.* On January 18, 2013, OCFO issued a final notice of proposed suspension and suspended Ms. Jackson for 30 days. *Id.*, at 3. In both the proposal and the final notice letters, OCFO stated the discipline was in accordance with "Article 7, Section 5 of the Master Agreement between [American Federation of State, County and Municipal Employees ("AFSCME")], District Council 20 and OCFO...." *Id.*, at 2-3. AFGE alleges OCFO did not notify AFGE of either the proposed decision or the final decision, "but instead notified Robert Hollingsworth, President of AFSCME, Local 2776" despite the fact that Ms. Jackson "is not a member of AFSCME or its bargaining unit at the OCFO." *Id.*, at 3.

In its Answer, OCFO admitted it "unintentionally" cited the AFSCME contract in its discipline letters to Ms. Jackson, and that it notified AFSCME of its proposed and final decisions instead of AFGE. (Answer, at 3-4). Notwithstanding, OCFO denies it violated D.C. Code §§ 1-617.04(a)(1), (3), and (5) in so doing because "OCFO is not a party to and has never been a signatory to the Union's working conditions agreement" and because "OCFO is not subject to the [CMPA]." *Id.*, at 5.

C. Alleged failure and refusal to respond to AFGE's request for bargaining information

On April 20, 2013, AFGE sent a request for "bargaining information relevant to Ms. Jackson's termination" to LaSharn Moreland, OCFO's Human Resources Director. (Complaint, at 3-4). Specifically, the request sought:

1. Copies of all correspondence within the Agency concerning its investigation of Ms. Jackson;
2. Copies of any and all investigative reports by the Agency, including any and all related witness statements or other supporting evidence, regarding any investigation of Ms. Jackson'[s] alleged conduct on November 7, 2012;
3. Copies of all email correspondence between or among any supervisors within the Agency regarding Ms. Jackson'[s] alleged misconduct from November 7, 2012, to the present;
4. Copies of any hearing officer reports, correspondence, notes, memoranda, phone messages, etc. pertaining to Ms. Jackson'[s] alleged misconduct on November 7, 2012;

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5. The name(s) of any and all Agency-sponsored trainings about employee misconduct and abuse in the workplace and any agendas, handouts, or PowerPoint presentations from those trainings. Please include the dates of the trainings and indicate those attended by Ms. Jackson;
6. Copies of all discipline(s) issued to Ms. Jackson within the last 3 years;
7. A full and correct copy of Ms. Jackson'[s] official personnel file, including complete job description; and
8. Copies of all of Ms. Jackson'[s] performance improvement plans, if any.

Id. AFGE requested that OCFO respond to the request “by no later than 5:00 p.m. on Friday, April 26, 2013. AFGE alleges that as of May 7, 2013, the date it filed its Complaint, OCFO had not responded to its request. *Id.*, at 4.

In its Answer, OCFO admits it received the request and that, as of May 7, 2013, it had not responded to it. (Answer, at 4-5). Notwithstanding, OCFO denies it violated D.C. Code §§ 1-617.04(a)(1) and (5) in so doing because “OCFO is not a party to and has never been a signatory to the Union’s working conditions agreement” and because “OCFO is not subject to the [CMPA].” *Id.*, at 6.

PERB has no record of any other pleadings having been filed in this matter. AFGE’s Complaint is therefore now before PERB for disposition.

III. Discussion

The CMPA is the statutory authority for PERB. *District of Columbia Office of the Chief Financial Officer v. American Federation of State, County, and Municipal Employees, District Council 20, Local 2776 (On Behalf of Robert Gonzalez)*, 60 D.C. Reg. 7218, Slip Op. No. 1386 at 3, PERB Case No. 12-A-06 (2013). As a result, PERB is only empowered to hear and decide legal matters that are covered by the CMPA. *Id.* The Courts defer to PERB’s interpretation of the CMPA, unless the interpretation is “unreasonable in light of the prevailing law or inconsistent with the statute” or is “plainly erroneous.” *Id.* (citing *Doctors Council of the District of Columbia General Hospital v. District of Columbia Public Employee Relations Board*, 914 A.2d 682, 695 (D.C. 2007)). Unless “rationally indefensible,” PERB’s decisions must stand. *Id.* (citing *Drivers, Chauffeurs, & Helpers, Local 639 v. District of Columbia*, 631 A.2d 1205, 1216 (D.C. 1993)).

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In *OCFO v. AFSCME, Dist. Council 20, Local 2776, supra*, Slip Op. No. 1386, PERB Case No. 12-A-06, OCFO argued that PERB did not have jurisdiction over OCFO in an arbitration review request because “OCFO is expressly exempt from the [CMPA].” *Id.*, at 3. To support its argument, OCFO relied on D.C. Code § 1-204.25(a), which states:

In general. -- Notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia, including personnel described in subsection (b) of this section, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by Chapter 6 of this title, *except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.*

Id., at 4 (emphasis added). PERB found that the plain language of the statute created “an exception that permits the Chief Financial Officer to enter into a collective bargaining agreement.” *Id.* PERB further found that OCFO’s assertion was “without merit” because it was “undisputed” that OCFO and AFSCME had entered into a collective bargaining agreement, the arbitration award at issue arose from the grievance procedure outlined in that agreement, and the D.C. Superior Court had already held that PERB had jurisdiction over the arbitration award in question because the exemption in D.C. code § 1.204.25(a) permitted “OCFO to subject itself to the CMPA under the aegis of a collective bargaining agreement.” *Id.*, at 4-5 (citing *District of Columbia v. American Federation of State, County, And Municipal Employees, District Council 20, Local 2776*, Case No. 2012 CA 004715 B. (D.C. Super. Ct. October 15, 2012)). PERB therefore held that it had subject-matter jurisdiction to review the arbitration review request in accordance with the CMPA. *Id.*, at 5. OCFO did not appeal PERB’s Decision and Order.

In the instant unfair labor practice case, PERB will find that OCFO is subject to D.C. Code §§ 1-617.04 *et seq.* of the CMPA (governing unfair labor practices) if it can be established that, in accordance with the exception articulated in D.C. Code § 1-204.25(a), OCFO has entered into a collective bargaining agreement with AFGE and thus subjected itself to the CMPA under the aegis of that agreement. *D.C. v. AFSCME, supra* (D.C. Super. Ct.).

OCFO claims it “is not party to and has never been a signatory to the Union’s working condition agreement.” (Answer, at 5-6). Furthermore, while OCFO admits it is the successor employer to the Office of the Controller, it claims it has “no knowledge” of Complainant’s assertion that AFGE is the certified bargaining representative of the bargaining unit described in PERB Case No. 80-R-06, *supra*. (Answer, at 1-2).

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OCFO raised a similar argument in *American Federation of State, County and Municipal Employees, District Council 20, Locals 1200, 2776, 2401 and 2087 v. District of Columbia, et al.*, 46 D.C. Reg. 6513, Slip Op. No. 590, PERB Case No. 97-U-15A (1999). In that case, OCFO argued it had no obligations under the CMPA to the complainant AFSCME locals because it was not bound by the collective bargaining agreements that were negotiated between those locals and the District agencies that were later placed under OCFO's authority. *AFSCME v. D.C., et al.*, *supra*, Slip Op. No. 590 at p. 5-9, PERB Case No. 97-U-15A. OCFO argued it was a "successor employer" as defined by *National Labor Relations Board v. Burns Security Services*, 406 U.S. 272 (1972) (in which the Supreme Court held that under certain circumstances "successor employers" are obligated to bargain with the incumbent unions of acquired bargaining units, but are not always bound to the substantive terms of the collective bargaining agreements negotiated between the unions of those bargaining units and the previous employers). *Id.*, at 7-8.

PERB rejected OCFO's argument based in part on: 1) PERB's holding in *American Federation of State, County and Municipal Employees, District Council 20, Local 1200 v. District of Columbia Office of the Controller, Division of Financial Management*, 46 D.C. Reg. 461, Slip Op. No. 503, PERB Case No. 96-UC-01 (1998) that AFSCME's employees placed under the control of OCFO were not removed from the labor-management subchapter of the CMPA; and 2) guidance from other jurisdictions that when "the functional role and employees of a public employer/agency are transferred to a new entity established to perform in the same capacity, ... the new agency is not a new employer for the purposes of collective bargaining" and "the entity [is thus] subject to the existing terms and conditions of employment contained in the collective bargaining agreement covering the employees placed under its authority." *AFSCME v. D.C., et al.*, *supra*, Slip Op. No. 590 at p. 8, PERB Case No. 97-U-15A (internal citations omitted). PERB noted its analysis was informed by factors considered in similar cases before the National Labor Relations Board ("N.L.R.B.") such as whether the "new employer uses the same facilities and work force to produce the same basic products or service for essentially the same customers in the same geographical area." *Id.* (citing *Valley Nitrogen Producers and International Union of Petroleum and Industrial Workers, Seafarers International Union of North America, AFL-CIO*, 207 N.L.R.B. 208 (1973)). In consideration of these factors, PERB reasoned that because it had already found in Slip Op. No. 503, *supra*, that the OCFO "has no separate existence outside the context of the District of Columbia Government", OCFO was not a new employer and was therefore bound by the collective bargaining agreements previously negotiated for the employees placed under its authority. *Id.*, at 8-9.

In the instant case, OCFO fails to state any authority to support its contentions that it is not a party to the Agreement AFGE provided with its Complaint and that it is not subject to the CMPA. (Answer, at 5-6). Notwithstanding, the pleadings do not provide sufficient information to definitively find at this time that OCFO's contentions are incorrect.

For instance, while in *OCFO v. AFSCME, Dist. Council 20, Local 2776, supra*, Slip Op. No. 1386, PERB Case No. 12-A-06 it was "undisputed" that OCFO and AFSCME had entered into a collective bargaining agreement, in this matter OCFO disputes that it is a party and a signatory to an Agreement with AFGE. *Id.*

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Additionally, the over 18-year-old Agreement AFGE relies on fails to provide any clarity. (Complaint, Exhibit A). The title of the Agreement is "Master Agreement Between the American Federation of Government Employees Locals 383, 2737, 2741, 3406, 3444 and 3871 and the Government of the District of Columbia." *Id.* Article 1 and the signature pages indicate that the specific District agencies the Agreement was intended to bind were the Office of Labor Relations and Collective Bargaining; the Department of Human Resources, the Department of Recreations and Parks, the Department of Administrative Services, the Metropolitan Police Department, and the Office of Planning and Energy. *Id.* Neither the Office of the Controller nor OCFO are mentioned. *Id.*

Furthermore, PERB's records show that this is the first case in which AFGE has claimed the Agreement establishes a collective bargaining relationship between it and OCFO. While OCFO admits it is a party to a master compensation agreement applicable to all employees in Compensation Units 1 and 2, it asserts it is only a party to that agreement by virtue of a 2003 settlement agreement with AFSCME, not AFGE. (Answer, at 2).

Finally, PERB is unable to determine based on the pleadings currently in the record whether OCFO is bound by the Agreement's substantive terms and conditions of employment because neither party has provided any evidence to demonstrate whether the employees in the bargaining unit described in PERB Case No. 80-R-06, *supra*, perform in the same capacity as they did under the Office of the Controller and/or whether OCFO uses the same facilities and work force to produce the same basic products or services for essentially the same customers in the same geographical area as did the Office of the Controller. *AFSCME v. D.C., et al., supra*, Slip Op. No. 590 at p. 8, PERB Case No. 97-U-15A (internal citations omitted).

PERB Rule 520.8 states: "[t]he Board or its designated representative shall investigate each complaint." Rule 520.10 states that "[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument." However, Rule 520.9 states that in the event "the investigation reveals that the pleadings present an issue of fact warranting a hearing, the Board shall issue a Notice of Hearing and serve it upon the parties." (Emphasis added).

Based on the foregoing, PERB finds that the parties' pleadings present an issue of fact that cannot be resolved on the pleadings alone. Therefore, in accordance with PERB Rule 520.9, PERB refers this matter to an unfair labor practice hearing to develop a factual record to: 1) determine whether AFGE is the exclusive representative of the bargaining unit described in PERB Case No. 80-R-06, *supra*; 2) determine whether OCFO has entered into a collective bargaining agreement with AFGE and the employees in that bargaining unit; 3) determine whether OCFO is bound by the substantive terms and conditions of employment of the Agreement AFGE cites in its Complaint; 4) determine whether OCFO violated D.C. Code §§ 1-617.04(a)(1), (3), and (5) in the manners alleged in the Complaint; and 5) make appropriate recommendations.¹ See *Fraternal Order of Police/Metropolitan Police Department Labor*

¹ The Board considered and approved this Decision and Order during its monthly Board Meeting on October 31, 2013. On November 1, 2013, OCFO filed a Motion for Leave to File an Amended Response to the Complaint,

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Committee v. District of Columbia Metropolitan Police Department, 59 D.C. Reg. 5957, Slip Op. No. 999 at p. 9-10, PERB Case 09-U-52 (2009).

ORDER

IT IS HEREBY ORDERED THAT:

1. PERB shall refer the Unfair Labor Practice Complaint to a Hearing Examiner to develop a factual record and make appropriate recommendations in accordance with said record.
2. The Notice of Hearing shall be issued seven (7) days prior to the date of the hearing.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

November 14, 2013

seeking to “clarify [its] initial responses and include affirmative defenses.” (Motion to Amend Response, at 1). The Board finds that because this matter was referred to a Hearing Examiner to develop a factual record and make appropriate recommendations prior to the filing of OCFO’s Motion, the Motion should be referred to the Hearing Examiner to consider and rule upon. *See* PERB Rule 550.13(c).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-26, Slip Op. No. 1442, was transmitted via File & ServeXpress™ and e-mail to the following parties on this the 15th day of November, 2013.

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/s/ Colby Harmon
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II. Discussion

To the extent the motion for expedited decision sought a decision by November 11, 2013, merely one week after the opposition to the motion was due, a period in which the Board was not scheduled to meet, the motion is denied. To the extent the motion requested a decision by December 18, 2013, the motion is granted.

There are three categories of collective bargaining subjects: (1) mandatory subjects over which parties must bargain; (2) permissive subjects over which the parties may bargain; and (3) illegal subjects over which the parties may not legally bargain. *D.C. Nurses Ass'n v. D.C. Dep't of Pub. Health*, 59 D.C. Reg. 10,776, Slip Op. No. 1285 at p. 4, PERB Case No. 12-N-01 (2012) (citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1975)). Management rights are permissive subjects of bargaining. See *NAGE Local R3-06 and D.C. Sewer & Water Auth.*, 60 D.C. Reg. 9194, Slip Op. No. 1389 at p. 4, 13-N-03 (2013); *D.C. Fire & Emergency Med. Servs. Dep't and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874 at p. 9, PERB Case No. 06-N-01 (2007).

The Union indicates that the Agency has chosen to bargain over management rights. The Union asserts that many of its proposals retain existing contract language and appear in the Agency's proposal in this round of bargaining. (Appeal at 2-3; Br. for Pet'r at 3, 9-11). The Agency responded that "the parties' bargaining history on a subject is irrelevant to a negotiability determination." (Br. for Resp't at 15).

Past proposals that become part of an existing contract do not waive a management right not to bargain on a subject, but current proposals do. The Board has summarized the state of the law regarding waivers of permissive subjects of bargaining as follows:

- (1) if management has waived a management right in the past (by bargaining over that right) this does not mean that it has waived that right (or any other management right) in any subsequent negotiations;
- (2) management may not repudiate any previous agreement concerning management rights during the term of the agreement;
- (3) nothing in the statute prevents management from bargaining over management rights listed in the statute if it so chooses; and
- (4) if management waives a management right currently by bargaining over it, this does not mean that it has waived that right (or any other management right) in future negotiations.

AFGE, Local 631 and D.C. Pub. Works, 59 D.C. Reg. 4968, Slip Op. No. 965 at p. 2, PERB Case No. 08-N-02 (2009). As the fourth principle in that list implies, management may waive a management right in a round of bargaining by choosing to bargain in that round over an issue

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where it has no duty to do so. *D.C. Fire & Emergency Servs. Dep't and AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728 at p 2 n.6, PERB Case No. 02-A-08 (2003).

We turn now to the proposals in dispute and separately address each in light of these principles, relevant cases, and statutory dictates.

A. Polygraph Examinations

Proposal 1: The Union proposes the following as Article 8, Section C(5) of the agreement.

Polygraph Examinations:

(a) Polygraph tests shall be administered only with the consent of the employee, except where in the context of an investigation, the Department reasonably believes the test is necessary to discover or alleviate an immediate threat to the integrity of government operations or an immediate hazard to the Agency, to other District employees or to the employee himself or herself or to public health, safety or welfare. The Department shall promptly notify the Union whenever a polygraph test is administered without employee consent.

(b) Except in those limited exigent circumstances identified in Section (a) where a polygraph examination may be necessary, any person who refuses to submit to a polygraph test shall not be subject to discipline or other adverse action as a result of that refusal.

(Appeal Ex. 3 at 2).

Respondent: In opposing the negotiability of this proposal, the Respondent relies upon D.C. Code § 32-902 and management rights. With regard to the former, the Respondent argues:

D.C. Code § 32-902(b) sets a mandatory legal standard under which the Department may use lie detector tests. The Union's proposal alters that standard by requiring the Department to obtain employee consent before its use of lie detector tests. Moreover, the Union's proposal alters the statutorily prescribed circumstances under which the Department may use lie detector tests; specifically, the proposal excludes pre-employment and disciplinary investigations as permissible circumstances. Accordingly, the Union's proposal directly contravenes D.C. Code § 32-902(b) and § 32-903(b), which outlaws contracts in

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contravention of D.C. Code § 32-902(b). Therefore, the Union's proposal is nonnegotiable.

(Br. for Resp't at 6). The Agency argued that *Teamsters Local Union No. 639 and D.C. Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case Nos. 90-N-02 and 90-N-04 (1990), is analogous as that case held a proposal to be nonnegotiable because it contravened a "statutory standard":

In the foregoing case, the PERB analyzed the Union's proposal that provided that "[e]mployees shall not be charged for loss or damage unless clear proof of gross negligence is shown. This Article is not to be construed as permitting charges for loss or damage to equipment under any circumstances." *Id.* at 6 (Emphasis added). However, the PERB was confronted with then D.C. Code § 1-1216, which provided that "[n]othing in Sections 1-1211 to 1-1216 shall be construed so as to relieve any District employee from liability to the District for negligent damage to or loss of District property." *Id.* at 7 (Emphasis added). . . . The PERB concluded that "the proposal directly en[c]roaches upon the employee liability standard set forth in D.C. Code Section 1-1216." *Id.* Reaching this conclusion, the PERB reasoned that "Section 1-1216's express statutory standard, i.e., 'negligence,' is directly undermined by the proposal's second sentence which provides a 'gross negligence' standard." *Id.* The PERB added that "[t]his would alter the statutorily established circumstances, i.e., 'negligent damage to or loss of District property,' under which the District may charge employees by placing a heavier burden on it, vis à vis, the 'gross negligence' standard." *Id.* For these reasons, the PERB held that "the proposal directly contravenes D.C. Code Section 1-1216 and is therefore, nonnegotiable."

(Br. for Resp't at 5-6).

Another alleged conflict between the Union's proposal and the law is that the "proposal prohibits the use of polygraph results for pre-employment and disciplinary purposes" whereas the "statute specifically allows the Department to use polygraphs in an 'internal disciplinary investigation, or pre-employment investigation.'" (Br. for Resp't at 6) (quoting D.C. Code § 32-902(b)). Contracts in violation of section 32-902 are prohibited by section 32-903(b).

In addition, the Agency contends that the proposal is nonnegotiable because it requires employee consent to the exercise of the management right to hire and discipline. The Agency argues that it does this by requiring employee consent to the use of polygraph examinations. (Br. for Resp't at 4).

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Union: The Union contends that the Agency's position that D.C. § 32-902 "provides a *carte blanche* for the Department to determine when, and under what conditions, it will test employees . . . rests on a gross overreading of the law." (Br. for Pet'r at 4). The Union explains that subsection (a) of the statute prohibits employers from using lie detector tests in connection with the employment of any employee under any circumstances. Subsection (b) excludes from this prohibition criminal or internal investigations by the Metropolitan Police, the Fire Department, and the Department of Corrections. The Union avers that "[t]he Department's theory would transform the law's *exception* into a *right*." (*Id.*) The Union concludes:

The law's purpose and effect is to create a statutory "floor" of privacy rights for employees. Although § 32-902(b) sets that floor lower for DCFEMS employees than for others, nothing in that law prohibits the collective bargaining representative for those employees from attempting to negotiate greater rights on their behalf.

(*Id.* at 5).

The Union does not deny that the proposal involves a management right but notes that the same language as the proposal "was included in the Department's own proposal at impasse." (*Id.* at 3).

Board: The Agency's argument, in effect, is that D.C. Code § 32-902 makes the proposal an illegal subject of bargaining. *See Teamsters Local Union No. 639 and D.C. Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263 at pp. 27, 28, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990) (Member Kohn, dissenting). Section 32-902 provides:

(a) No employer or prospective employer shall administer, accept or use the results of any lie detector test in connection with the employment, application or consideration of an individual, or have administered, inside the District of Columbia, any lie detector test to any employee, or, in or during any hiring procedure, to any person whose employment, as contemplated at the time of administration of the test, would take place in whole or in part in the District of Columbia.

(b) The provisions of this section shall not apply to any criminal or internal disciplinary investigation, or pre-employment investigation conducted by the Metropolitan Police, the Fire Department, and the Department of Corrections; provided that any information received from a lie detector test which renders an applicant ineligible for employment shall be verified through other information and no person may be denied employment based solely on the results of a pre-employment lie detector test.

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As the Union explained, subsection (b) allows the Agency to use lie detector tests under certain conditions notwithstanding *subsection (a)*. The Agency incorrectly reads subsection (b) as empowering the Agency to use lie detector tests notwithstanding any other law. Subsection (b) exempts the Agency from “[t]he provisions of this section,” nothing else. It does not exempt the Agency from D.C. Code § 1-617.08(b) (matters subject to collective bargaining) or D.C. Code § 1-617.04(a) (5) (duty to bargain in good faith).

Similarly, in the case cited by the Agency, *Teamsters Local Union No. 639 and D.C. Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990), a statute limited the reach of its provisions. That statute, the D.C. Employee Non-Liability Act, which was codified at the time as D.C. Code §§ 1-1211-1216, created a scheme whereby plaintiffs could sue the District for injuries instead of suing District employees, who would be immunized from such suits.¹ The limitation was contained in section 1-1216, which provided, “Nothing in Sections 1-1211 and 1-1216 shall be construed so as to relieve any District employee from liability to the District for negligent damage to or loss of District property.” *Teamsters*, Slip Op. No. 263 at p. 7 n.2. The Board held that the “express statutory standard” of negligence rendered nonnegotiable the Teamsters’ proposal that “[e]mployees shall not be charged for loss or damage unless clear proof of gross negligence is shown.” *Id.* at pp. 6-7.

Candidly, the better analysis is found in the dissenting opinion of Member Kohn (joined by Member Danowitz):

Section 1216 emphasizes just what a reading of [the] prior sections tells us: none of them address a D.C. Government employees’ liability to their employer for their negligent harm to its property. None of them relieves an employee from such liability, nor does any of them require such liability. These statutory provisions, of themselves, simply do not address the subject matter of the Teamsters proposal.

The majority’s opinion with respect to D.C. Code Section 1-1216 misunderstands that section. . . . Section 1216 does not establish a standard for employee liability. If there is in the District a statutory standard for employee liability that would govern the situations addressed in this proposal, it must be found elsewhere. . . . Section 1-1216 simply teaches that liability if found in fact (under common law, perhaps), is not to be negated by anything in 1-1211 to 1-1216; that is, none of them provides a defense. Since there is, therefore, nothing in the cited sections that precludes bargaining, we would find the proposal to be a mandatory subject of bargaining.

¹ *Davis v. Harrod*, 407 F.2d 1280, 1282 (D.C. 1969).

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Id. at pp. 28-29.

The Respondent makes the same error that Member Kohn identified. That is, the Respondent disregards (and does not even quote) the text of the statute and abstracts from it a “statutory standard.” Then the Respondent uses that “statutory standard” to create a bar to negotiation that is nowhere to be found in the statute.

Even a statute that removes matters from the collective bargaining process should not be over-generalized. In *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, 38 D.C. Reg. 847, Slip Op. No. 261 at p. 2, PERB Case No. 90-N-05 (1990), the respondent contended that section 47-3601(d) of the D.C. Code removed the union’s deferred compensation proposal from the scope of collective bargaining. The Board held that section 47-3601(d) removed from the collective bargaining process only the provisions of sections 47-3601(a)-(c), which established the nature and purpose of the deferred compensation program and eligibility to participate in it. The union’s proposal dealt with other aspects of deferred compensation. As in the present case, we rejected the respondent’s “overly broad interpretation of this provision as contrary to the plain meaning of the statutory provision.” *Id.* at p. 7.

The Respondent also asserts that “D.C. Official Code § 32-903(b) expressly forbids the formation of any contract that disallows the Department’s use of polygraphs for discipline and pre-employment purposes.” (Br. for Resp’t at 6). Section 32-903(b) bars contracts from containing “any provision in violation of § 32-902.” As explained above, Proposal 1 is not in violation of section 32-902. As a result, it is not forbidden by section 32-903(b).

While a collective bargaining proposal is unlikely to conflict with a statute’s exception to the statute’s own provisions, a proposal certainly can conflict with a statute and be preempted by it. For example, a statute provided that holiday pay is determined by the mayor. The Board held that a proposal to give holiday pay to employees from whom the mayor withheld holiday pay was nonnegotiable. *Comm. of Interns & Residents and D.C. Gen. Hosp. Comm’n*, 41 D.C. Reg. 1602, Slip Op. No. 301 at pp. 7-8, PERB Case No. 92-N-01 (1992). In another negotiability case, a statute limited the District’s contribution to employee health benefit premiums to 75 percent of the subscription charge. The Board held a proposal that the School Board pay 80 percent of premiums to be nonnegotiable. *Teamsters Local Unions No. 639 & 730 v. D.C. Pub. Schs.*, 43 D.C. Reg. 7014, Slip Op. No. 403 at p. 4, PERB Case No. 94-N-06 (1994). In contrast, nothing in D.C. Official Code section 32-902 conflicts with Proposal 1. Therefore, the proposal is not an illegal subject of bargaining.

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The proposal would be a permissive subject of bargaining over which management could refuse to bargain if it infringed a management right. The Agency contends that the proposal's consent requirement infringes management's sole right to hire and discipline under D.C. Code § 1-617.08(a)(1). The Agency observes that the Board held in *Teamsters Local Union No. 639 and D.C. Public Schools*, 38 D.C. Reg. 6693, Slip Op. 263 at p. 12, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990), that requiring an employee to consent to the extension of his or her detail infringes management's right to assign employees. (Br. for Resp't at 4).

Proposal No. 1's alleged infringement of the right to hire and discipline is less direct because consent to be disciplined or denied employment as a result of a polygraph test is not required. However, the proposal directly infringes management's sole right to determine "[t]he agency's internal security practices." D.C. Code § 1-617.08(a)(5)(D). Construing 5 U.S.C. § 7106(a)(1), an identical provision in the Federal Service Labor-Management Relations Act, the Federal Labor Relations Authority has held that a prohibition of the use of polygraphs directly interferes with the management right to determine internal security practices, *AFGE and Department of the Army Sierra Army Depot*, 30 F.L.R.A. 1236, 1240 (1988), and that requiring employee consent to the use of a polygraph is the same as a prohibition. *Nat'l Fed'n of Fed. Employees, Local 1300 and Gen. Servs. Admin.*, 18 F.L.R.A. 789, 797 (1985).

Notwithstanding, the Agency waived this management right by bargaining over it in the current round of bargaining. The Agency's proposal contains a provision on polygraph examinations that is the same, word for word, as the Union's proposal. (App. Ex. 4 at 2). Therefore, Proposal 1 is negotiable.

B. Promotions

Proposal 2: The Union proposes the following as Article 20, Section A(1) of the agreement.

Section A - Promotional Process:

The Promotional Process shall be as follows:

(1) To be eligible for promotion to the positions of EMS Battalion Supervisor, Sergeant, Lieutenant and Captain, employees shall complete the following:

- (a) Application as specified in the examination announcement;
- (b) Qualifying job related examination;
- (c) Evaluation by an assessment center panel;
- (d) Physical examination.

(Appeal Ex. 3 at 5).²

² The Union did not number the pages of Exhibit 3 or Exhibit 4 consecutively. This reference is to the fifth page of Exhibit 3. Subsequent references will also be to a page of Exhibit 3 or Exhibit 4 as though the exhibit were consecutively numbered. The underscoring and strikethrough formatting in quotations from Exhibit 3 were in the original.

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Proposal 3: The Union proposes the following as Article 20, Section A(7) of the agreement.

- (7) After the scores from a promotional qualifying examination and assessment center evaluation are determined by the Department, the Department shall add points to each candidate's scores as follows:
- (a) Points for Service: 1/4224 point, but never more than five (5) points in all, for each completed month ending on the qualifying date of service eligibility over the applicable length of service prerequisite, computed on the basis of the individual's record.
 - (a)[sic] Points for Education: 1/30 point, but never more than four (4) points in all, for each semester hour of a relevant course ~~relevant to Fire Science and Fire Administration~~ which has been successfully completed at a recognized institution of higher learning on or before June 15 of the examination year. Points for credit earned on a quarterly basis shall be computed at 2/3 of value of courses completed on a semester basis. A joint Labor-Management Board shall be established by the Fire Chief to determine course relevancy and whether the credits were earned at a recognized institution of higher learning.
 - (b) Application procedures for points for education shall be issued by the department and must be strictly adhered to.

(Appeal Ex. 3 at 6).

Proposal 4: The Union proposes the following as Article 20, Section A(9) of the agreement.

- (9) The period of eligibility on the relative standing promotion list shall be for two (2) years commencing October 16 of the examination year and the expiration date of eligibility shall be on the October 15th two (2) years subsequent to such qualifying examination. It is understood that should a vacancy occur on or before the expiration date of eligibility, members shall be promoted from the existing list.

(Appeal Ex. 3 at 6).

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Respondent: The Respondent contends that Proposals 2 through 4 “alter the statutory promotion scheme set forth in D.C Code § 5-402³ and all federal statutes incorporated by reference.” (Br. for Resp’t at 9). “Furthermore,” the Respondent states, “D.C. Code § 1-617.08(a)(2) grants the Department the ‘sole right, in accordance with applicable laws and rules and regulations . . . [t]o . . . promote.’ Taken together, D.C. Code confers upon the Department the non-bargainable, management right to promote in accordance with the foregoing District and federal statutes.” (*Id.* at 8).

In addition, the Respondent raises objections to the individual proposals. The Respondent alleges that Proposal 2 infringes management’s sole right to promote by depriving the Respondent of “the management right to identify the instruments by which a person is eligible for an officer position.” (Answer at 4). The Respondent alleges that Proposal 3 is nonnegotiable because it sets forth qualifications for certain positions. (Answer at 3) (citing *NAGE, Local R3-06 v. D.C. Water & Sewer Auth.*, 47 D.C. Reg. 7551, Slip Op No. 635 at p. 7, PERB Case No. 99-U-04 (2000)).

Finally, the Agency contends that Proposal 4 requires the Agency to fill vacancies by promotion when it may not desire to promote or may prefer to detail employees to vacant positions. (Br. for Resp’t at 9-10). The Board has held that a proposal that “requires the Agency to fill a position by promotion rather than by detailing someone to the position” is nonnegotiable. *D.C. Fire & Emergency Med. Servs. Dep’t and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874 at 25, PERB Case No. 06-N-01 (2007) (citing D.C. Code § 1-617.08(a)(2)).

Union: Citing a different portion of the same case relied upon by the Agency, the Union notes that the Board held in *D.C. Fire and Emergency Medical Services Department*, Slip Op. No. 874 at p. 20, that promotional procedures are negotiable. As such, the Union argues that Proposals 2 and 3 are procedural and thus negotiable. The Union argues that the particular language held to be procedural in *D.C. Fire and Emergency Medical Services Department* was virtually identical to Proposal 2 and was “indeed, modeled on Article 20(A)(1) of the Local CBA.” (Br. for Pet’r at 6). Regarding Proposal 3, the Union points out that “[m]anagement’s proposal at impasse contained similar language.” (*Id.*)

The Union contends that the Agency misreads Proposal 4. The Union’s only proposed change to the section is the addition of the last sentence, which reads, “It is understood that

³Section 5-402(a) of the D.C. Code provides: “The Mayor of the District of Columbia shall appoint, assign to such duty or duties as he may prescribe, promote, reduce, fine, suspend, with or without pay, and remove all officers and members of the Fire Department of the District of Columbia, according to such rules and regulations as the Council of the District of Columbia, in its exclusive jurisdiction and judgment (except as herein otherwise provided), may from time to time make, alter, or amend; provided, that the rules and regulations of the Fire Department heretofore promulgated are hereby ratified (except as herein otherwise provided) and shall remain in force until changed by said Council; provided further, that all officers, members, and civilian employees of such Department, except the Fire Chief and Deputy Fire Chiefs, shall be appointed and promoted in accordance with the provisions of §§ 1101 to 1103, 1105, 1301 to 1303, 1307, 1308, 2102, 2951, 3302 to 3306, 3318, 3319, 3321, 3361, 7202, 7321, 7322, and 7352 of Title 5, United States Code, and the rules and regulations made in pursuance thereof, in the same manner as members of the classified civil service of the United States, except as herein otherwise provided. . . .”

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should a vacancy occur on or before the expiration date of eligibility, members shall be promoted from the existing list." The Union explains that this sentence

simply clarifies *which promotional register management should use* when – *and if* – it decides to fill a vacancy, and makes that decision after the register expires. In such a situation, the Union's proposal then prescribes that management look to the register that was in effect at the time the vacancy was created, and not to any new register that may have been created after expiration of the prior register. . . . The modest amendment to Section A(9) aims solely at creating a uniform, clear procedure to apply in those situations in which a vacancy *that management chooses to fill* has existed for some time, bridging two promotional registers.

(Br. for Pet'r at 8).

Board: Section 5-402 of the D.C. Code provides that promotions of members and officers of the Agency are to be made in accordance with rules and regulations of the City Council and with nineteen sections of title 5 of the United States Code in the same manner as members of the U.S. classified civil service are promoted. In contending that Proposals 2 through 4 are nonnegotiable, the Agency argues that the "D.C. Code confers upon the District the non-bargainable, management right to promote in accordance with the foregoing District and federal statutes." (Br. for Resp't at 8). How do the Union's proposals prevent the Agency from promoting in accordance with any of those statutes? The Agency does not say. The Agency asserts only that the proposals alter a statutory scheme (*id.* at 9) but does not say how they alter the statutory scheme. The Agency notes that the Board "has held that when one aspect of a subject matter, otherwise generally negotiable in other respects, is fixed by law, e.g., the CMPA, that aspect is nonnegotiable." (Br. for Resp't at 9) (quoting *AFGE, Local 631 v. D.C. Dep't of Pub. Works*, 59 D.C. Reg. 4968, Slip Op. No. 965 at p. 10, PERB Case No. 08-N-02 (2009)). But the Agency has failed to identify any aspect of the proposals that are fixed by any of the cited laws and failed to establish that any of those laws render the proposals illegal.

The Agency also contends that the laws establish a management right to promote. There are, however, limits to the management right to promote. A proposal that is procedural in nature and neither requires nor prevents the promotion of an employee does not violate section 1-617.08(a)(2), which reserves to management the right to promote. *D.C. Fire & Emergency Med. Servs. Dep't and AFGE, Local 3721*, 54 D.C. Reg. 3167, Slip Op. No. 874 at 20, PERB Case No. 06-N-01 (2007). Section 5-402 of the D.C. Code does not give the Agency a greater management right to promote than other departments of the District. The proposal that *D.C. Fire and Emergency Medical Services* held to be negotiable under the above standard is almost the same as Proposal 2. Accordingly, that case is controlling, and we find that Proposal 2 is negotiable.

Unlike Proposal 2, Proposal 3 is not almost the same as the proposal at issue in *D.C. Fire and Emergency Medical Services*. On the other hand, Proposal 3 does not have the "absolute

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language” held to be nonnegotiable in *D.C. Public Schools v. Teamsters Local Unions No. 639 and 730*, 38 D.C. Reg. 2483, Slip Op. No. 273, PERB Case No. 91-N-01 (1991), in which the union proposed that certain promotions “shall be on the basis of strict seniority.” *Id.* at p. 5. However, even if Proposal 3 did infringe on the management right to promote, the Agency waived that management right by making a proposal that differed only in a few details from the Union’s proposal. (Appeal Ex. 4 at 5). The differences between the Union’s and the Agency’s proposals do not make either proposal more or less procedural than the other. Therefore, Proposal 3 is negotiable.

Proposal 4 is ambiguous. It uses mandatory language in providing that under a certain circumstance “members shall be promoted from the existing list.” In the Respondent’s view, this mandatory language forecloses the options of leaving the post vacant or detailing someone to fill the vacancy temporarily. As interpreted by the Respondent, Proposal 4 would infringe management’s right to promote. The Union explains that the proposal was intended to specify which list is to be consulted when a vacancy is to be filled by promotion and not to mandate promotions. In other words, what the Union meant to say is: It is understood that should a vacancy occur on or before the expiration date of eligibility and the Department chooses to fill that vacancy by promotion, the promotional register to be used in making that promotion shall be the promotional register existing at the time the vacancy was created.

Where a union’s interpretation of an ambiguous proposal renders the proposal negotiable and the proposal is susceptible of that interpretation, the Federal Labor Relations Authority has adopted the union’s interpretation and held the proposal negotiable as interpreted. *See Nat’l Fed’n of Fed. Employees Local 2015 and U.S. Dep’t of Interior Nat’l Park Serv.*, 41 F.L.R.A. 1158, 1191 (1991); *Nat’l Treasury Employees Union and Internal Revenue Serv.*, 7 F.L.R.A. 275, 281 (1981). The Board will follow that approach here, adopt the Union’s interpretation, and find that Proposal 4 does not infringe a management right and thus is negotiable. Notwithstanding, the cautionary words of a member of the Federal Labor Relations Authority bear repeating:

I question why, if clarification/interpretation of an ambiguous or contradictory proposal can be readily presented to the Authority, the language of the proposal was not appropriately revised and presented to management for negotiation at the bargaining table. If the parties would say what they mean to each other in negotiations, rather than to the Authority in litigation, many negotiability cases would never arise. . . .

AFGE, Council of Soc. Sec. Dist. Office Locals and Dep’t of Health & Human Servs., Soc. Sec. Admin., 11 F.L.R.A. 608, 614 (1983) (Member Frazier, concurring).

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C. Selection of Technicians

The proposals at issue with regard to selection of technicians, Article 21 of the agreement, are set out specifically in the Respondent's letter asserting nonnegotiability (Appeal Ex. 1) and discussed collectively in the parties' pleadings and briefs.

Proposal 5: The Union proposes the following as Article 21, Section A(8)(b)(i) and (ii) of the agreement.

(b) (i) Except as provided in (ii) below, the selection of technicians, temporary technicians and temporary additional technicians shall be completed not later than ninety (90)~~sixty (60)~~ days after the position becomes vacant.

(ii) For positions in the Hazardous Materials Unit, Air Units and Foam Unit the requirement in (i) above shall not apply. However, the time limits set forth in Sections C(1) and C(2) for providing notification to members of actual or anticipated vacancies in these units, and for receiving applications, shall apply; and the position shall be filled immediately upon completion of the selection process described in Section G, Hazardous Materials Unit.

(Appeal Ex. 3 at 9).

Proposal 6: The Union proposes the following as Article 21, Section B(3)(a) of the agreement.

General: To be eligible for consideration for any technician, temporary technician or temporary additional technician position, except as provided for in this Agreement(3)(b), below, a member must have at least three (3) years service from the date of the vacancy (continuous or cumulative) in the Operations Fire-Fighting Division.

(Appeal Ex. 3 at 10).

Proposal 7: The Union proposes the following as Article 21, Section B(3)(b), (c), and (d) of the agreement.

(b) Fire Prevention Division:

i) For positions in the Fire Prevention Division, a member must have at least five (5) years service (continuous or cumulative) in the Department on the date of the announcement of the vacancy, and have been assigned to the Fire Prevention Division for at least one (1) year (continuously or cumulatively). Furthermore, the

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member must be assigned to the Fire Prevention Division at the time the vacancy occurs; provided, however, that the member need not be so assigned at the time the vacancy occurs if he/ she was so assigned within two (2) years immediately preceding the vacancy and was involuntarily transferred from the Division.

ii) To be eligible for consideration as a Fire/Arson Investigator a member must have at least five (5) years service (continuous or cumulative) in the Fire Fighting Division on the date of the announcement of the vacancy. The requirements for technician positions in the Fire Investigation Unit, which require police powers, shall be outlined by Fire Department Memorandum.

(c) Fireboat Operator: For the Fireboat Operator position, a member must, in addition to the provisions of 3(a), above, satisfy the following prerequisites:

i) Have been assigned to the fireboat for at least one (1) year (continuously or cumulatively);

ii) Be assigned to the fireboat at the time the vacancy occurs; provided, however, that the member need not be so assigned at the time the vacancy occurs if he/she was so assigned within two (2) years immediately preceding the vacancy and was involuntarily transferred from the fireboat.;

iii) Possess a United States Coast Guard license as "Operator, Uninspected Passenger Vessel";

iv) Meet all other requirements for assignment at the Fireboat;

v) Have performed successfully as a fill-in operator.

(d) Positions in an Engine Company or Truck Company, Drivers in Hazardous Materials Unit or Rescue Squad:

For positions in an engine company, or truck company, and for driver positions in a hazardous materials unit or rescue squad, a member must, in addition to the provisions of 3(a) above, be assigned to the unit in which the vacancy occurs at the time the vacancy occurs; provided, however, that the member need not be so assigned at the time the vacancy occurs if he/she was so assigned within two (2) years immediately preceding the vacancy and was involuntarily transferred from the unit.

(Appeal Ex. 3 at 10-11).

Proposal 8: The Union proposes the following as Article 21, Section B(4)(a)(v) of the agreement.

Whenever the procedures set forth in this paragraph 4 involve the administration of any written and/or practical examination, a candidate must receive a grade of at least seventy percent (70%) on each such examination in order to remain eligible for the position.

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After such examinations have been graded, candidates shall be entitled to review their examination pages and grading sheets.

(Appeal Ex. 3 at 12).

Proposal 9: The Union proposes the following as Article 21, Section C(1) of the agreement.

(1) Examinations:

(a) Candidates shall be examined on their knowledge of ~~their~~the box alarm district, ~~and~~their knowledge of hydraulics, ~~and~~ operation and maintenance of apparatus and equipment, as provided herein, utilizing the requirements and guidelines set forth in Fire Department Bulletin 32 and 56.

(b) Knowledge of Box Alarm District:

i) This examination shall be prepared and administered by the Captain and the Lieutenants of the unit concerned, or those acting in their stead, acting jointly, using guidelines established by the Training Academy. The examination shall utilize materials that are make use of material in the unit's quarters that is available to all applicants. Any on-duty members and/or administering officers shall be excused from duty to participate in the examination. Two officers shall be present to administer the examination.

ii) ~~In engine companies, the responsible officer shall administer a single joint examination for Wagon Driver and in~~ In truck companies the responsible officers shall administer a single joint examination for Truck Driver, Tillerman and Platform Operator positions.

(Appeal Ex. 3 at 13-14).

Proposal 10: The Union proposes the following as Article 21, Section C(2) of the agreement.

(2) Ratings:

All eligible candidates will be rated on a one hundred point (100) scale, with the points to be determined as follows:

(a) Knowledge of Box Alarm District, as determined by the examination administered pursuant to part (1)(b) of this Section: 0-40 points.

(b) Knowledge of Hydraulics and Operation and Maintenance of Apparatus and Equipment, as determined by the examination administered pursuant to part 1(c) of this Section: 0-35 points.

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(c) Seniority in the Department: 1/12 point for each month of service (continuous or cumulative) in the Department, up to a maximum of 15 points.

(d) Seniority in the Unit: 1/12 point for each month of service (continuous or cumulative) in the Department, up to a maximum of 10 points. In applying this provision:

i) An applicant shall only be allowed credit for service in a unit if he/she is currently assigned to that unit, except that any member who has been involuntarily transferred from one unit to another shall be entitled, at his/her option, for a period of two (2) years after the transfer, to receive credit for service in either the unit to which he/she is currently assigned or the unit from which he/she was involuntarily transferred, but not both. The Captains of companies, or those acting in their stead, shall be responsible for keeping an ongoing list of members who have been involuntarily transferred from the unit within the past two (2) years;

and

ii) The period of time served by members of the Fire Fighting Division in an assignment as a technician in the Emergency Medical Service shall be credited to seniority in the unit, either at the unit from which the member entered his/her assignment as a technician or at the unit to which the member is assigned immediately upon leaving the Emergency Medical Service, at the option of the member concerned. Once an election is made and the time is credited, it cannot be shifted toward credit in another unit.

iii) The period of time served by members, whose positions have been eliminated as a result of action undertaken by the District of Columbia Fire and Emergency Medical Services Department, shall be credited to seniority in the unit, either at the unit to which the member is re-assigned or at the former unit, should it be reestablished, at the option of the member concerned. Once an election is made and the time is credited, it cannot be shifted toward credit in another unit.

(e) Prior Satisfactory Service as a Technician, Temporary Technician and/or Temporary Additional Technician in any Unit: 5/12 point per month (continuous or cumulative), up to a maximum of 5 points.

(Appeal Ex. 3 at 14-15).

Proposal 11 is the Union's proposal for Sections D, E, and F of Article 21 of the agreement. (Appeal Ex. 3 at 15-18). It is reproduced in the appendix of this opinion.

Proposal 12 is the Union's proposal for a new article of the agreement, Article XX. (Appeal Ex. 3 at 26-27). It is reproduced in the appendix of this opinion.

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Respondent: In its brief, Respondent observes that the Board affirmed a hearing examiner's determination that if "the qualifications for the new positions [are] an integral or 'substantive' part of [management's] decision as to how it will utilize its employees to perform [management's] work . . . [, then management] need not bargain over those qualifications." (Br. for Resp't at 10) (quoting *NAGE, Local R3-06 v. D.C. Water & Sewer Auth.*, 47 D.C. Reg. 7551, Slip Op. No. 635 at p. 7, PERB Case No. 99-U-04 (2000)). The Respondent contends that the Petitioner's proposals with regard to selection of technicians set position qualifications for certain personnel that are a substantive and integral part of the Department's decision as to how it will utilize said personnel. As a result, the Respondent concludes, the proposals are nonnegotiable. (Br. for Resp't at 10-11; Answer at 3).

The Respondent's letter asserting nonnegotiability indicates more specifically how some of the proposals set qualifications. Proposal 6 mandates three years of service. Proposal 7 sets a standard for eligibility. Proposal 8 sets the pass threshold for examinations. Proposal 9 sets qualifications for drivers. Proposal 10 assigns points to various examination areas. Proposal 11 contains sections entitled "Selection Criteria" and is therefore nonnegotiable. Proposal 12 assigns examination points and establishes the passing score. The letter also inquires whether the Union has withdrawn Proposal 12. (Appeal Ex. 1).

The letter's objection to Proposal 5 does not involve setting qualifications. The letter asserts that Proposal 5 takes away management's discretion not to promote. The Agency does not raise this objection in its answer or in its brief.

Union: All of the Union's proposals appear in the Agency's proposals except Proposal 5, and the Agency has abandoned its objection to Proposal 5. Section J(2) of the Union's proposal addresses the Agency's objections regarding the setting of qualifications "and fully preserves its right to set substantive criteria for these positions." (Br. for Pet'r at 10).

Board: PERB Rule 532.3 provides: "An answer to a negotiability appeal shall state in short and plain terms the party's position on each negotiability issue raised in the appeal." The Appeal raises the issue of the negotiability of Proposal 5, which is the Union's proposed Article 21, Section A(8)(b)(i) and (ii). (Appeal ¶ 5). The Agency does not allege in the answer (or its brief) that Proposal 5 takes away management's discretion not to promote. As a result, the Agency has abandoned that claim. The only position that the Agency takes in its answer and brief that is applicable to Proposal 5 is that it, like the other proposals for Article 21, sets qualifications. The Agency's answer states that articles including "Article 21(A)(b)(i) and (iii) [*sic*] . . . are nonnegotiable because they set forth the qualifications for certain positions." (Answer at 3). Proposal 5 does not set any qualifications. Therefore, Proposal 5 is negotiable.

Proposals 6 through 11 do establish qualifications for positions, but each of Proposals 6 through 11 is the same as, or not significantly different from, the Agency's proposals for Article 21 in this round of bargaining. (Appeal Ex. 4 at 9-16). The Agency waived the management right it claims by bargaining over it in the current bargaining round. Therefore, Proposals 6 through 11 are negotiable.

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Proposal 12, in contrast, is a new article with no counterpart in the Agency's proposals. The Agency's letter asserting nonnegotiability questioned whether the proposal had been withdrawn. The Appeal includes the negotiability of Proposal 12 among the issues it presents (Appeal ¶ 6), but the Petitioner's brief does not refer to the proposal. Proposal 12 establishes numerous substantive qualifications for special operations companies. The Petitioner does not deny that it does so but relies upon Article 21, Section J(2) for the negotiability of its Article 21 proposals. Section J(2) provides:

If at any time the Department determines that the criteria for selection or removal of a Technician~~technicians~~, or of any category or categories of Technician~~technicians~~, set forth in this Article should be changed, the Department shall have the right, subject to the procedures of Article 6 of this Agreement (Existing Rights and Benefits), to institute such a change; provided, however, that nothing in this section shall authorize the Department to institute changes in any provisions of this Article other than those establishing substantive criteria for selection or removal of Technicians, unless the Union so agrees.

(Appeal Ex. 3 at 23). This provision is too qualified to ameliorate Proposal 12's infringement on the management right "[t]o hire, promote, transfer, assign, and retain employees in positions within the agency. . . ." D.C. Code § 1-617.08(a). Therefore, the Board finds that Proposal 12 is nonnegotiable.

D. Hours of Work, Schedule, and Leave

Proposal 13: The Union proposes the following as Article 45, Section B of the agreement.

- (1) The basic workweek for members working in the Fire Fighting Division shall be 42 hours averaged over a 4-week period.
- (2) The work schedule for members working in the Fire Fighting Division shall be 24 hours on duty and 72 hours off duty.

(Appeal Ex. 3 at 24).

Respondent: The Respondent contends that Proposal 13 is nonnegotiable on two grounds. First, the D.C. Code defines "basic workweek" as "an average workweek of 48 hours in the case of officers and members of the Firefighting Division of the District of Columbia Fire Department." D.C. Code § 5-1304(a)(3). "[T]he Union's proposal replaces the codified standard of 'an average workweek of 48 hours' to '42 hours averaged over a 4-week period.' . . . Accordingly, the Union's proposal regarding the basic workweek is *per se* nonnegotiable." (Br. for Resp't at 12).

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Second, management has the sole right “to establish the tour of duty.” D.C. Code § 1-617.08(a)(5)(A). Tour of duty refers to the hours an employee works. (Br. for Resp’t at 13) (citing D.C. Code §§ 1-611.03, 1-612.01, 5-501.02). Accordingly, “the Board has held and the D.C. Court of Appeals has affirmed that management has the right under the CMPA to determine an employee’s Hours of Work, and that proposals by a union which seek to abrogate that right are non-negotiable.” *D.C. Fire & Emergency Servs. Dep’t and AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728 at p. 4 n.11, PERB Case No. 02-A-08 (2003). The Respondent also claims that the D.C. Court of Appeals held that the basic work week is not negotiable in *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1216 (1993). “As the Department has not waived its exclusive rights to not bargain over this issue, the Union’s proposal is nonnegotiable under PERB case law.” (Br. for Resp’t at 14).

Union: Regarding the Agency’s first argument, the Union asserts that the adoption of the CMPA in 1979 expressly overrode section 5-1304, passed by Congress in 1950. D.C. Code § 1-632.03(a)(1)(X) (codifying CMPA, D.C. Law 2-139, § 3203, 25 D.C. Reg. 5740 (Mar. 3, 1979)).

The Union responds to the Agency’s second argument by disputing the meaning of “tour of duty” and arguing that the meaning of the term does not include matters in Proposal 13, i.e., work schedule or the length and frequency of shifts. Section 1-617.08(a)(5)(A) and (B)’s reference to “tour of duty” in the singular along with “[t]he mission of the agency, its budget, its organization” suggest to the Union that the Council contemplated a single tour of duty for each agency. The Union argues that because the CMPA also uses the terms hours, hours of work, and basic workweek, those terms cannot be synonymous with tour of duty. The Union asserts that tour of duty denotes something distinctly different from basic workweek and hours of work. (Br. for Pet’r at 19). It states that “[c]onstrued within this framework, the ‘tour of duty’ most sensibly designates the agency’s overall calendar of operation—the general periods during which it will need employees to work. . . .” (*Id.*). Proposal 13, the Union maintains, does not affect the Agency’s calendar of operation and is therefore negotiable.

Board: The Petitioner is correct that the Agency’s claim based upon D.C. Code § 5-1304(a)(3) “is quickly dispatched.” (Br. for Pet’r at 12). Section 1-632.03(a)(1)(X), adopted in 1979, provides prospectively that section 5-1304 shall not apply to police or firefighters. “[I]t is axiomatic that a specific statute enacted later in time is given effect over an earlier law generally covering the same subject matter.” *Speyer v. Barry*, 588 A.2d 1147, 1163 (D.C. 1991).

The Agency’s claim based upon D.C. Code § 1-617.08(a)(5)(A) is more substantial. The Union’s efforts to propose a meaning of tour of duty that does not encompass Proposal 13 has two problems. First, the term is used by D.C. statutes and PERB cases in the senses the Union denies. Tour of duty is used to refer to the tour of duty of an individual employee. *See* D.C. Code § 1-612.01(b) (“tours of duty shall be established to provide, with respect to each employee . . .”); D.C. Code § 5-501.02(D) & (F) (“[A] biweekly rate shall be divided by the number of hours constituting the biweekly tour of duty in order to derive an hourly rate.”); *FOP/Metro. Police Dep’t Labor Comm. v. Metro. Police Dep’t*, 60 D.C. Reg. 9186, Slip Op. No. 1388 at p. 2, PERB Case No. 11-U-01 (2013) (“Sgt. Horace Douglas . . . was advised that his scheduled tour of duty . . . would be changed from 7:30 a.m. through 4:00 p.m. to 2:30 p.m. through 11:00

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p.m.”) *AFGE, Local 3721 (on behalf of Chasin) v. D.C. Fire & Emergency Med. Servs. Dep’t*, 59 D.C. Reg. 7288, Slip Op. No. 1251 at p. 4, 10-A-13 (2012) (“Capt. Hernandez reminded Grievant that the July 25 Letter of Direction specified his tour of duty as 8:15 a.m. to 4:45 p.m.”). And, most importantly for this case, the term includes hours of work, work schedules, and shifts. *D.C. Fire & Emergency Servs. Dep’t and AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728 at pp. 2-3, 4 n.11, PERB Case No. 02-A-08 (2003). *See also Metro. Police Dep’t and FOP, Metro. Police Dep’t Labor Comm. (on behalf of Dolan)*, 45 D.C. Reg. 1468, Slip Op. No. 394 at p. 2, PERB Case No. 94-A-04 (1994) (“The Arbitrator decided a grievance that challenged MPD’s decision to temporarily alter the tour of duty of . . . staff members . . . by changing their hours of work on Fridays.”).

Second, the meaning the Union proposes as a substitute for the way the term is actually used is implausible. It is difficult to see when one would speak of an “agency’s overall calendar of operation” or why the Council would need to address that subject in several statutes. In view of the above, the Board finds that Proposal 13 infringes on a management right and is nonnegotiable.

ORDER

IT IS HEREBY ORDERED THAT:

1. To the extent the motion for expedited decision sought a decision by November 11, 2013, the motion is denied. To the extent the motion requested a decision by December 18, 2013, the motion is granted.

2. The following Union Proposals are *negotiable*.

Article 8, Section C(5) – Polygraph Examinations

Article 20, Section A(1) – Promotional Process

Article 20, Section A(7) – Promotional Process

Article 20, Section A(9) – Promotional Process

Article 21, Sections A(8)(b)(i) and (ii) – Timely Filling of Vacancies

Article 21, Section B(3)(a) – Eligibility

Article 21, Sections B(3)(b), (c), and (d) – Eligibility

Article 21, Section B(4)(a)(v) – Competitive Ratings

Article 21, Section C(1) – Examinations

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Article 21, Section C(2) – Ratings

**Article 21, Sections D, E, and F – Technicians in Fire Prevention Division,
Fireboat Operator, and Air Unit Driver and Foam Unit Driver**

3. The following Union Proposals are *nonnegotiable*.

Article XX – Selection Criteria for Special Operations Companies

Article 45, Section B –Hours of Work/Schedule/Leave

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 26, 2013

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CERTIFICATE OF SERVICE


This is to certify that the attached Decision and Order in PERB Case No. 13-N -04 was transmitted via File & ServeXpress to the following parties on this the 3d day of December, 2013.

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David McFadden
Attorney-Advisor

Union Proposal (2/3/12)

in their stead, shall be responsible for keeping an ongoing list of members who have been involuntarily transferred from the unit within the past two (2) years; and

- ii) The period of time served by members of the Fire Fighting Division in an assignment as a technician in the Emergency Medical Service shall be credited to seniority in the unit, either at the unit from which the member entered his/her assignment as a technician or at the unit to which the member is assigned immediately upon leaving the Emergency Medical Service, at the option of the member concerned. Once an election is made and the time is credited, it cannot be shifted toward credit in another unit.
- iii) The period of time served by members, whose positions have been eliminated as a result of action undertaken by the District of Columbia Fire and Emergency Medical Services Department, shall be credited to seniority in the unit, either at the unit to which the member is re-assigned or at the former unit, should it be re-established, at the option of the member concerned. Once an election is made and the time is credited, it cannot be shifted toward credit in another unit.

- (e) Prior Satisfactory Service as a Technician, Temporary Technician and/or Temporary Additional Technician in any Unit: 5/12 point per month (continuous or cumulative), up to a maximum of 5 points.

Section E-D - Selection Criteria: Technicians in Fire Prevention Division:

All eligible candidates for technician positions in the Fire Prevention Division will be rated on a one-hundred (100)-point scale, with the points to be determined as follows:

- (1) Seniority in the Department: 1/12 point for each month of service (continuous or cumulative) in the Department up to a maximum of 15 points
- (2) Seniority in the Division: 1/6 point for each month of service (continuous or cumulative) in the Division up to a maximum of 15 points.
- (3) Prior Satisfactory Service as a Technician, Temporary Technician and/or Temporary Additional Technician in any Unit: 1/12 point per month (continuous or cumulative) up to a maximum of 5 points.
- (4) Completed courses in an Accredited Institution of Higher Learning Which are Job-Related or Necessary for a Job-Related Degree: 1/12 point per semester hour, up to a maximum of 15 points.
- (5) Division Examination: A written examination comprised of matter relevant to the position where the vacancy exists shall be prepared jointly by the Division head and the BFC/FPD, or those Supervisors/Officers above the rank of Sergeant as delegated by the Division Head. Grades on the examination shall count for 0-50 points on the overall rating scale.

Union Proposal (2/3/12)

Section F - Selection Criteria: Fireboat Operator:

All eligible candidates for the Fireboat Operator position will be rated on a one-hundred (100)-point scale, with the points to be determined as follows:

- (a) Seniority in the Department: 1/12 point for each month of service (continuous or cumulative) in the Department, up to a maximum of 5 points.
- (b) Seniority in the Unit: 1/12 point for each month of service (continuous or cumulative) in the Fireboat unit, up to a maximum of 10 points.
- (c) Prior Satisfactory Service as a Technician, Temporary Technician and/or Temporary Additional Technician in a unit: 5/12 point per month (continuous or cumulative) in the Department, up to a maximum of 5 points.
- (d) Written Practical Examinations: Written and practical examinations comprised of matter relevant to the position shall be prepared by the Captain and Lieutenants of the unit, or those acting in their stead. Grades on each of the two examinations shall count for 0-40 points on the overall rating scale.

Section G - Selection Criteria: ~~Hazardous Materials Unit, Air Unit~~ Driver and, Foam Unit Driver:

Timely Filing of Vacancies: For Air Unit Driver and Foam Unit Driver vacancies, the Captain of the station to which the unit is assigned shall, as soon as the definite need there for is determined, but not later than ten (10) days after the position became vacant, notify the Assistant Fire Chief of Operations of the vacancy. Within ten (10) days after the Assistant Fire Chief is notified, but not later than twenty (20) days after the position became vacant, the Assistant Fire Chief shall by Department memorandum notify all members of the Department of the vacancy.

- (1) **Rating Panels:** The rating and ranking of applicants for technician positions in the ~~Hazardous Materials Unit, Air Units and Foam Unit~~ shall be by rating panels consisting of:
 - (a) the Captain(s) and the three lieutenants of the station to which the unit is assigned;
 - (b) a representative of the Training Division
 - (c) a representative designated by the Fire Chief;
 - (d) an observer designated by Local 36; and
 - (e) (for the Air Units only) a representative of the Apparatus Division
- (2) **Selection of Candidates:**
 - (a) Each eligible applicant shall be required to submit a written statement listing his/her qualifications relevant to the position, including length of service in the Department and in the relevant unit, job-related education, specific relevant experience, and any additional information which would lead to the selection of the best qualified person for the assignment.

Union Proposal (2/3/12)

- (b) No later than fourteen (14) days after the deadline for filing applications the panel shall review the applications and shall select candidates whom they deem most qualified from among the eligible applicants.
- (c) The panel shall select at least as many candidates as there are anticipated vacancies; and in the case of the Foam Unit or Air Units, the panel shall, whenever possible, select at least two (2) more candidates than the number of anticipated vacancies.
- (d) The selection shall be based upon the statement submitted by the applicant, previous experience in the Department, previous job-related education, and any other job-related criteria that the panel deems appropriate.
- (e) If the panel deems it necessary, the panel may interview eligibles to assist the panel in making its selections.

(3) Training and Final Selection:**(a) Hazardous Materials Unit:**

~~(i) Not later than fourteen (14) days after the candidates have~~ **After candidates have been chosen by the selection panel, they shall be** detailed to the Hazardous Materials Unit for a period of ninety (90) days for training, during which time ~~he/she~~ they will be required to become proficient in the use of tools, appliances, equipment and other pertinent materials of the unit, detailed to the Training Academy for a prescribed course of instruction.

~~(b) Once the training course has commenced, if, for any reason, a candidate is unable to complete the course, the process shall continue with the remaining candidates.~~

~~(c) Candidates shall be notified in advance of appropriate study material to assist them in preparing for the course.~~

~~(d) Upon the completion of the prescribed course 90-day training period, the candidates shall be rated on a one-hundred (100)-point scale, with the points to be determined as follows:~~

~~(i) Seniority in the Department: 1/12 point for each month of service (continuous or cumulative), in the Department up to a maximum of 13 points.~~

~~(ii)(a) Prior Satisfactory Service as a Technician, Temporary Technician and/or Temporary Additional Technician in any Any Unit: 5/12 point per month (continuous or cumulative), up to a maximum of 5 points;~~

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~~(iii) b.)~~ **Written and Practical Examinations:** ~~Written~~ written and practical examinations comprised of matter relevant to the position shall be prepared by the Training Academy, Captain and Lieutenants of the unit, or those acting in their stead.

~~(a.)~~ Grades on the written examination shall count for ~~0-45~~40 points on the overall rating scale, and

~~(b.)~~ ~~Grades~~ Grades on the practical examination shall count for ~~0-50~~40 points on the overall rating scale.

~~(The candidate(s) so assigned shall then be required to complete successfully a minimum eighty (80) hour Hazardous Materials resident program at the National Fire Academy or other nationally recognized Hazardous Materials Training Facility. If a candidate successfully completes the prescribed Hazardous Materials training course, he/she shall be designated as Technician Hazardous Materials Unit.~~

~~(b) Air Units and Foam Unit:~~

~~i) After candidates have been chosen by the selection panel, they shall be detailed to the Training Academy for a prescribed course of instruction.~~

~~ii) Once the training course has commenced, if, for any reason, a candidate is unable to complete the course, the process shall continue with the remaining candidates.~~

~~iii) Candidates shall be notified in advance of appropriate study material to assist preparation for the course.~~

~~iv) Upon the completion of the prescribed course, the candidates shall be rated on a one hundred (100) point scale, with the points to be determined as follows:~~

~~(a.) Seniority in the Department: 1/12 point for each month of service (continuous or cumulative), in the Department up to a maximum of 20 points in the case of the Air Units and 10 points in the case of the Foam Unit;~~

~~(b.) Satisfactory Service as Technician, Temporary Technician and/or Temporary Additional Technician in any Unit: 5/12 point per month (continuous or cumulative), up to a maximum of 5 points;~~

~~(c.) Written and Practical Examinations: Written and practical examinations comprised of matter relevant to the position shall be prepared by the Training Academy. Grades on the written examination shall count for 0-35 points on the overall rating scale in the case of the Air Units, and 0-10 points in the case of the Foam Unit. Grades on the practical examination shall count for 0-40 points in the case of the Air Units and 0-15 points in the case of the Foam Unit.~~

Section H-G - Temporary Technician, Temporary Additional Technician:

(1) Definitions:

(a) Temporary Technician: An individual who fills the position of an incumbent Technician when the incumbent is transferred, reassigned or detailed to another salary

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[NEW ARTICLE]

ARTICLE XX

**SELECTION CRITERIA FOR SPECIAL OPERATIONS COMPANIES
(RESCUE SQUADS, HAZARDOUS MATERIALS UNIT, FIREBOAT)**

Section A - Examination:

- (1) A written examination shall be administered on September 15 of each calendar year.
- (2) Notification for the examination shall be issued at least ninety (90) calendar days prior to the date of the examination. The notices of examination shall include a listing of any text and reference materials that may be used for study purposes. The notice shall also set the closing date for receipt of applications. Applications received after such date will not be considered.

Section B - Eligibility:

To be eligible for the testing process, a member must have a minimum of five (5) years of service in the Department on the date the notice of examination is issued.

Section C - Ratings and Points:

Candidates shall be rated on a 100-point scale as follows:

- (1) A candidate's grade on the written examination shall count for 0-80 points on the overall rating scale.
- (2) Points for service, computed on the basis of the individual's record, shall be added to each candidate's grade on the written examination as follows:
 - (i) Service in the Department: 1/12 point, but never more than fifteen (15) points in all, for each completed month, ending on the date the notice of examination was issued;
 - (ii) Prior satisfactory service as a Technician, Temporary/Technician, and/or Temporary/Additional Technician: 1/12 of a point, but never more than five (5) points in all, for each completed month, ending on the date the notice of examination was issued.
- (3) When the final relative standing lists are completed, each candidate will be notified in writing of his/her final score and his/her relative standing. Reasonable efforts will be made to promptly notify the candidates. Members shall be placed in vacancies in the Special Operations Companies in their rank order on the list.
- (4) The period of eligibility on the relative standing list shall be for one (1) year, commencing on October 16 of the examination year, and the expiration date of eligibility shall be on the October 15th one (1) year subsequent to the examination.

Union Proposal (2/3/12)**Section D – Evaluation Period and Practical Examination:**

- (1) A member placed in a position from the list will be required to complete a ninety (90) day evaluation period and to pass a practical examination to remain in the position. The member must receive a score of at least 70% to pass the practical examination.
- (2) If a member does not complete the evaluation period or does not pass the practical examination, the next member on the list shall be placed in the position, and shall be required to complete the evaluation period and to pass the practical examination to remain in the unit, as described in (5) above.

Section E - Final Selection:

A member who successfully completes the ninety (90) day evaluation period and passes the practical examination shall be permanently assigned to the Special Operations Company, effective on the last day of his or her evaluation period or on the date that he/she passes the examination, whichever is later.

Section H – Specialist Classification and Pay:

A member shall be classified as a Specialist and entitled to receive Specialist Pay in accordance with this Agreement on the effective date of his/her assignment to the Company, as described in Section E, above.

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:)	
)	
Sinobia Brinkley)	
)	PERB Case Nos. 10-U-12
Complainant,)	10-S-02
)	
v.)	
)	Opinion No. 1446
Fraternal Order of Police/Metropolitan)	
Police Department Labor Committee,)	
District 20, Local 2087,)	Decision and Order
)	
)	
Respondents.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

Complainant Sinobia Brinkley (“Complainant” or “Ms. Brinkley”) filed an Unfair Labor Practice Complaint (“ULP”) and a Standard of Conduct Complaint (“SOC”) (collectively, “Complaint”) against Fraternal Order of Police/Metropolitan Police Labor Committee, District 20, Local 2087 (“Respondent” or “FOP” or “Union”), alleging that FOP 1) failed to honor her request to have another union representative assigned to handle a grievance to which she was a party; 2) failed to provide her with information pertaining to her case; 3) failed to take her concerns “seriously by granting relief of professional representation and resolution”; and 4) was “biased and neglectful” in its handling of her “grievance/complaint”. (Report, at 4-5, 11) (quoting Complaint, at 1).

The cases were consolidated and referred to a Hearing Examiner. A Hearing was held on November 3, 2010, December 6, 2010, February 15, 2011, and March 2, 2011, before Hearing Examiner Lois Hochhauser (“Hearing Examiner”). The Hearing Examiner, in her Report and Recommendation (“Report”), recommended that the Complaint be dismissed. *Id.*, at 14. FOP filed Exceptions to the Report, but Ms. Brinkley did not. (FOP Exceptions).

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II. Background

In 2009, Ms. Brinkley was assigned to the negotiations unit within the Metropolitan Police Department's ("MPD") Special Operations Division ("SOD"). (Report, at 3). On or about May 10, 2009, MPD's Chief of Police disbanded the negotiations unit and Ms. Brinkley was transferred to the District Patrol Service Division ("DPSD"). *Id.* Ms. Brinkley filed an individual grievance challenging the change and transfer and, on the same day, FOP filed a group grievance on behalf of Ms. Brinkley and the other employees affected by the change. *Id.*, at 3-4.

On July 10, 2009, Ms. Brinkley filled out a form asking FOP to represent her, on which form she initialed a provision stating that FOP maintained the sole authority to determine whether the grievance would continue to arbitration, and further to determine whether to withdraw or settle the matter if it did proceed to arbitration. *Id.*, at 4. The form also contained a provision waiving any claims that Ms. Brinkley may have "against FOP as a result of its representation and handling of your case." *Id.*

Ms. Brinkley alleged that FOP later ignored her request to replace FOP representative, Wendell Cunningham, with another representative because "she felt he 'did not properly investigate or represent [her] properly.'" *Id.*, at 5.

At the Hearing, Ms. Brinkley testified that she and Kia Jones ("Ms. Jones"), another bargaining unit member who had been affected by the change within the SOD, contacted FOP and spoke with Monica Waleed ("Ms. Waleed") on numerous occasions and that while she and Ms. Jones were given information about the group grievance, FOP refused to give Ms. Brinkley any information about her individual grievance. *Id.*, at 5. Ms. Brinkley and Ms. Jones both testified that Ms. Waleed told them that FOP Chairman, Kristopher Baumann ("Mr. Baumann") and Mr. Cunningham had instructed her not to give them any information about the cases. *Id.*, at 5, 7. Ms. Brinkley and Ms. Jones testified further that in September 2009, FOP informed them that they should not call there anymore for updates because the matter was going to arbitration and an attorney would be hired to litigate the case. *Id.* Ms. Brinkley and Ms. Jones claimed that when they asked for the attorney's contact information, FOP refused to give it to them. *Id.* Notwithstanding, Ms. Waleed testified that she never told Ms. Brinkley and Ms. Jones that she could not give them any information and further denied that she ever told them that any high ranking union officials instructed her to not give them information. *Id.*, at 7-8.

Ms. Brinkley alleged that she continued calling FOP and that, during one of the calls, Mr. Baumann hung up on her. *Id.*, at 5. At another time, she alleged that FOP official, Delroy Burton ("Mr. Burton"), told her FOP was dealing with bigger issues than "[her] little case". *Id.*, at 5-6. During another conversation, she alleged Mr. Baumann screamed at her that he did not have to talk to her. *Id.*

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Ms. Brinkley claimed that after one of these calls with Mr. Baumann, she decided to resign from FOP. *Id.*, at 6. She completed the paperwork on October 6, 2009, and left the original form with FOP Payroll Coordinator Keeley Williams ("Ms. Williams") at FOP's offices to be processed. *Id.* Later that day, however, she started having second thoughts after discussing the decision with FOP representative Michael Millet ("Mr. Millet"), and stated that she asked Ms. Williams to hold the paperwork and not process it, which Ms. Brinkley said Ms. Williams agreed to do. *Id.* On October 7, 2009, Ms. Brinkley said she contacted Ms. Williams again and told her she had decided not to resign from FOP and asked her to shred the paperwork. *Id.* Despite this alleged communication, FOP approved Ms. Brinkley's resignation on October 6, 2009, and the paperwork terminating her membership with FOP was processed in February 2010. *Id.*, at 4, 6-9. Mr. Millet testified that he talked to Ms. Brinkley shortly after hearing that she intended to leave the Union in an effort to convince her not to resign. *Id.*, at 8. Ms. Williams testified that she remembered that Ms. Brinkley initially asked her not to process the paperwork "until after the Union election", and that she actually forgot about the paperwork for some time. *Id.*, at 8-9. Ms. Williams testified that a few months later, however, she found the completed and approved paperwork and submitted it to the D.C. Office of Pay and Retirement Services ("OPRS") to be finalized. *Id.* Mr. Baumann testified that it was his understanding that the paperwork was submitted shortly after he approved it on October 6, 2009. *Id.*, at 9. Despite the delay between October 6, 2009, the day he approved Ms. Brinkley's request, and February 2010, when Ms. Brinkley's resignation was processed and finalized by OPRS, Mr. Baumann testified that Ms. Brinkley was not considered a member of the Union as of October 6, 2009, regardless of the fact that her union dues were still being taken out of her paycheck until February 2010 because "the dues [were] being taken out erroneously." *Id.*

Ms. Brinkley testified that as a result of FOP's calculation that her membership with the union was terminated on October 6, 2009, FOP's national president refused to investigate or reply to her complaints about the Local lodge's actions, and the Local would no longer answer any questions about her grievances between October and December 2009. *Id.*, at 6.

Ms. Brinkley asserted that when she tried to rejoin the union, she was told she would only be readmitted if she "apologized to Mr. Baumann because she had violated a union bylaw by filing a PERB complaint." *Id.*, at 7.

On January 12, 2010, Ms. Brinkley filed her Complaint with PERB. *Id.*, at 4-5.

At the hearing, FOP filed motions to dismiss the Complaint for lack of timeliness, lack of jurisdiction, and lack of standing. *Id.*, at 9. After considering the parties' written and oral arguments, the Hearing Examiner denied each motion, reasoning: 1) the Complaint was not untimely because many of the allegations "took place and/or continued" less than 120 days before the Complaint was filed¹; 2) PERB has jurisdiction over this matter because Ms.

¹ Citing PERB Rules 520.4 and 544.4, and *District of Columbia Department of Finance and Revenue v. American Federation of State, County and Municipal Employees, District Council 20, Local 2776*, 36 D.C. Reg. 3334, Slip Op. No. 217, PERB Case No. 88-A-01 (1989).

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Brinkley's allegations, if proven, could constitute violations of D.C. Code §§ 1-617.03(a)(1)² and/or 1-617.04 (governing ULP's)³; and 3) Ms. Brinkley has standing to bring her Complaint because she was a member of the union when the violations took place and furthermore, there is "no requirement or PERB Rule that Complainant must be a member of a Union at the time she files a Complaint with PERB." *Id.*, at 10-11.⁴

In her report, the Hearing Examiner stated that while she found Ms. Brinkley's testimony to be "confusing and even contradictory at times", that did not impact her credibility because the events she testified about "happened several years ago" and it was therefore reasonable that her "recollections [had] become hazy." *Id.*, at 12. Nevertheless, the Hearing Examiner noted that Ms. Waleed's, Mr. Millet's, and Ms. Williams' testimony all contradicted Ms. Brinkley's recollections on several material facts. *Id.* In her reconciliation of these credibility issues:

[T]he Hearing Examiner considered the demeanor of the witness, the character of the witness, the inherent improbability of the witness's version, inconsistent statements of the witness and the witness's opportunity and capacity to observe the event or act at issue. *Hillen v. Department of the Army*, 35 M.S.P.R. 453 (1987). Because of the many contradictions, the Hearing Examiner adhered to these considerations carefully, particularly reflecting on the demeanor of the witness during the testimony since the substance of the testimony could be reviewed when the transcript was reviewed but the demeanor could not be captured in a transcript. *See, e.g., Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 496 (1951). The District of Columbia Court of Appeals emphasized the importance of credibility evaluations by the individual who sees the witness 'first hand'. *Stevens Chevrolet Inc. v. Commission on Human Rights*, 498 A.2d at 440-450 (D.C. 1985). These 'first-hand' observations are critical in cases, such as this, where serious accusations have been made, where much testimony is conflicting. This Administrative Judge has many years of experience observing and

² D.C. Code § 1-617.03(a)(1): "(a) ... A labor organization must certify to the Board that its operations mandate the following: (1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings".

³ *Citing Georgia Mae Green v. District of Columbia Department of Corrections*, 37 D.C. Reg. 8086, Slip Op. No. 257, PERB Case No. 89-U-10 (1990); and *American Federation of Government Employees, Local Union No 3721 v. District of Columbia Fire Department*, 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991).

⁴ The Hearing Examiner's finding implies that had Ms. Brinkley not been a member of the Union when the violations took place, FOP's standing argument might have been valid. The Board notes, notwithstanding, that Ms. Brinkley's union membership and resignation should not have made any difference in the way FOP treated her or handled her Grievances. Indeed, Ms. Brinkley was entitled to representation regardless of whether or not she resigned from the Union. *See* D.C. Code § 1-617.11(a).

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assessing witnesses, and that experience and expertise were called upon and utilized in this case. The Hearing Examiner is also mindful that even if parts of the witness's testimony are discredited, other parts can be accepted as true. *DeSarno, et al., v. Department of Commerce*, 761 F.2d 657, 661 (Fed. Cir. 1985). The Hearing Examiner found all of the witnesses credible.

Id. Taking these factors into consideration, the Hearing Examiner noted that Ms. Waleed testified she gave documents to Ms. Brinkley; Mr. Millet did not substantiate Ms. Brinkley's assertion that she would be required to apologize to Mr. Baumann in order to rejoin the union; and neither Ms. Waleed's nor Mr. Millet's testimony demonstrated any evidence of animus. *Id.*, at 12-13. Furthermore, the Hearing Examiner found there "was no evidence that Complainant ever attempted to rejoin the union", so it is impossible to know "if Mr. Baumann or any other Union official would have blocked her efforts." *Id.*, at 13.

Regarding Ms. Brinkley's remaining allegations, the Hearing Examiner noted:

Courts have looked at three criteria in determining [if] a union has met its duty to fairly represent a member: the union must treat its members without hostility or discrimination, it must exercise its discretion to assert the rights of individual members in good faith and honesty, and it must avoid arbitrary conduct. *Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW*, 469 F.2d 181 (1972). In the instant case, the evidence presented established that all three criteria were met: there was no evidence of hostility or discrimination, it exercised its discretion in reaching its decision, and its actions were not arbitrary. PERB has long utilized these criteria in reaching decisions in standards of conduct complaints. For example, in *[Carl] Freson v. Fraternal Order of Police/Metropolitan Police Department Labor Committee*, 31 D.C. Reg. [2290], Slip Op. No. 74, PERB Case No. 83-U-09 (1984), the Board held that a union's refusal to proceed to arbitration on a grievance did not constitute a breach of its duty of fair representation. The Board stated that "[r]egardless of the effectiveness of a Union's representation in the handling or processing of a bargaining unit employee's grievance, such matters are within the discretion of the union [as] the bargaining unit's exclusive bargaining representative". *Enoch [J.] Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290*, 43 D.C. Reg. 5598, Slip Op. No. [454 at p. 2], PERB Case No. [95-U-28] (1995). Similarly, in *Brenda Beeton v. District of Columbia Department of Corrections and Fraternal Order of Police/Department of Corrections Labor*

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Committee, 45 D.C. Reg. 2078, Slip Op. No. 538 [at p. 3], PERB Case No. [97-U-26] (1998), the Board concluded that ‘judgmental acts of discretion in the handling of a grievance, [including the decision to arbitrate,] do not constitute the requisite arbitrary, discriminatory or bad faith [conduct element]’ that is needed in order to find a violation of the standards of conduct.

Id.

In addition to finding that FOP met its duty based on the foregoing authority, the Hearing Examiner found it was clear from the witnesses’ testimony that “Complainant did not have a clear or realistic understanding of several important matters, including, but not limited to the process for resigning from the Union, and the length of time for the arbitration process to be completed.” *Id.* The Hearing Examiner further found that when Ms. Brinkley asked FOP for updates, “she did not distinguish between her individual grievance or the group grievance.” *Id.* The Hearing Examiner found the “evidence established that the group grievance, of which Complainant is a member, was approved by the Union to proceed to arbitration, and there was no evidence presented that Respondent was responsible for any of the delay.” *Id.*

While the Hearing Examiner stated “the evidence suggests that several Union officials may not have spoken to Complainant in a professional and appropriate manner and that the processes for the handling of grievances, particularly those that go to arbitration, could have been explained more fully to Complainant”, those failures did not constitute a standards of conduct violation or an unfair labor practice. *Id.*, at 13-14.

The Hearing Examiner reasoned that in order to “breach a duty of fair representation or commit an unfair labor practice, a Union’s conduct must be ‘arbitrary, discriminatory or in bad faith, or be based on considerations that are irrelevant, invidious or unfair’”. *Id.*, at 14 (quoting *Stanley O. Roberts v. American Federation of State, County and Municipal Employees, Local 2725*, 36 D.C. Reg. 3631, Slip Op. No. 203, PERB Case No. 88-S-01 (1989)). The Hearing Examiner noted that even though the pleadings submitted by Ms. Brinkley, as a *pro se* litigant, must be construed “liberally” in accordance with *Osekre v. American Federation of State, County and Municipal Employees, District Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (2000), that did not excuse Ms. Brinkley from her burden under PERB Rule 520.11 to prove her allegations by a preponderance of the evidence at the Hearing. *Id.* Considering these and the other “applicable laws and precedents” cited in the Hearing Examiner’s Report, and “based on a careful review of the documentary and testimonial evidence presented, as well as the arguments advanced by the parties,” the Hearing Examiner found that “Complainant did not meet her burden of proof ... that Respondent’s actions constituted standards of conduct violations or unfair labor practices”, and as a result, recommended that Ms. Brinkley’s Complaint be dismissed. *Id.*

Because the Board is remanding certain parts of the Report to the Hearing Examiner, the Board reserves its discussion of FOP’s Exceptions until after the Hearing Examiner’s supplemental report has been issued.

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III. Discussion

The Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent. See *American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at 3, PERB Case No. 95-U-20 (1996). Issues concerning the probative value of evidence are reserved to the Hearing Examiner. *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998). Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions. *Hoggard v. DCPS, supra*, Slip Op. No. 496 at 3, PERB Case No. 95-U-20. Finally, PERB Rule 550.13(c) empowers Hearing Examiners to "[r]ule on motions."

Considering the record and the Hearing Examiner's Report, the Board finds that the Hearing Examiner failed to address several key issues in the case, and that additional analysis and clarification on the questions of standing and timeliness are required.

In regard to the question of standing, the Hearing Examiner found that Ms. Brinkley had standing because she was a member of the union when at least some of the violations took place and because PERB's Rules do not require a complainant to be a member of a union at the time a Complaint is filed. *Id.*, at 10-11. Despite the Hearing Examiner's implication that Ms. Brinkley might not have had standing if she had not been a member of the Union when the violations took place, the Board has already noted herein that Ms. Brinkley's union membership and resignation should not have made any difference in the way FOP treated her or handled her Grievances and that she was entitled to representation regardless of whether she resigned from the Union. See D.C. Code § 1-617.11(a); and Footnote 4 above. The Hearing Examiner's Report is therefore rejected to the extent it implies otherwise.

In regard to whether the provision Ms. Brinkley agreed to when she signed the Union's representation agreement constituted a waiver of her standing to challenge FOP's handling of her cases, the Hearing Examiner stated she "did not consider its applicability in reaching her conclusions since the matter was not raised by Complainant." (Report, at 14). Even if this issue was not raised by Complainant, it was raised by Respondent, and therefore must be addressed and given due consideration and analysis.

In regard to the question of whether the Complainant's allegations were timely in accordance with PERB Rules 520.4 and 544.4, the Hearing Examiner noted that the Complaint was filed on January 12, 2010, and therefore reasoned that "violations occurring on or after September 14, 2009 would be timely." *Id.* The Hearing Examiner found that "[i]n her Complaint, Ms. Brinkley has alleged standards of conduct violations and unfair labor practices

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that occurred after that date.” *Id.* The Hearing Examiner further acknowledged that “some” of Complainant’s allegations predate September 14, 2009, but implied they were still timely because “Complainant also alleges violations that took place and/or continued within the covered time period.” (Report, at 10) (citing *DFR v. AFCSME*, *supra*, Slip Op. No. 217, PERB Case No. 88-A-01). The Board notes that the case the Hearing Examiner relied on deals with the legality of an arbitration award and does not support the Hearing Examiner’s statement.⁵ PERB does not have jurisdiction to consider complaints filed outside of the 120-day window prescribed by PERB Rules. *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”). That 120-day period begins when the complainant first knew or should have known about the acts giving rise to the alleged violation. *Charles E. Pitt v. District of Columbia Department of Corrections*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009). Because time limits are mandatory and jurisdictional, the Hearing Examiner must determine which of Complainant’s specific allegations were filed within the 120-day window and which ones were not. *Hoggard v. PERB*, *supra*.

Last, the Board notes that the Hearing Examiner’s Report did not address Ms. Brinkley’s allegation that the Union failed to honor her request to assign another representative to her grievance, but finds that the absence of ruling is not fatal because, even if the allegation is true, that action would not constitute a violation of the standards of conduct or an unfair labor practice. See *Enoch Williams v. American Federation of State, County and Municipal Employees, District Council 20, Local 2290*, 43 D.C. Reg. 5598, Slip Op. No. 454 at p. 2, PERB Case No. 95-U-28 (1995) (holding that “[r]egardless of the effectiveness of a union’s representation in the handling or processing of a bargaining unit employee’s grievance, such matters are within the discretion of the union or the bargaining unit’s exclusive bargaining representative”).

Based on the foregoing, the Board remands this matter to the Hearing Examiner to address these issues in a supplemental report, and to make appropriate recommendations. The Board reserves making findings on all of the other issues related to this matter, including FOP’s Exceptions, until after the Hearing Examiner’s supplemental report has been issued.

⁵ If the Hearing Examiner’s intention was to invoke a “continuing violation theory” to justify her finding that all the allegations “took place and/or continued within the covered time period”, that theory must be applied within the parameters of PERB precedent. See, e.g. *American Federation of Government Employees, Local 3721 v. District of Columbia Fire Department*, 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991); and *Fraternal Order of Police/Department of Human Services Labor Committee v. District of Columbia Department of Human Services*, 59 D.C. Reg. 3296, Slip Op. No. 812, PERB Case No. 02-U-24 (2009). The Board notes, however, that the ruling would still be constrained by PERB’s requirement that the 120-day period begins when the complainant first knew or should have known about the acts giving rise to the alleged violation(s). *Pitt v. DOC*, *supra*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06. If it was not the Hearing Examiner’s intention to invoke a “continuing violation theory”, she must still clarify her position because the case she cited in the Report (Slip Op. 217) is not applicable to questions of timeliness.

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ORDER

IT IS HEREBY ORDERED THAT:

1. The case is remanded to the Hearing Examiner to address the following issues:
 - A. Whether the provision in the Union's representation agreement constituted a waiver of Complainant's standing to challenge FOP's handling of her case; and
 - B. Which of Complainant's allegations were timely.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

November 26, 2013

CERTIFICATE OF SERVICE


This is to certify that the attached Decision and Order in PERB Case Nos. 10-U-12 / 10-S-02, Slip Op. No. 1446, was transmitted via File & ServeXpress™ and U.S. Mail to the following parties on this the 17th day of December, 2013.

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