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District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Act 19-655, Retail Incentive Amendment Act of 2012
- DC Council passes Act 19-657, Re-entry Facilitation Amendment Act of 2012
- Office of the Deputy Mayor for Education schedules a public hearing on the Fiscal Year 2014 budget for the District of Columbia public schools
- Office of Chief Financial Officer sets fees for covering costs associated with the collection of delinquent debt
- District Department of the Environment announces funding availability for a project to analyze fish tissue from the Anacostia and Potomac Rivers
- Public Employee Relations Board publishes opinions

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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DISTRICT OF COLUMBIA
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ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-649

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 31, 2013

Codification District of Columbi Official Code 2001 Edition

Winter 2013

To amend section 47-1806.06 of the District of Columbia Official Code to increase the Schedule H income requirement ceiling from $20,000 to $40,000 in income tax year 2014 and from $40,000 to $50,000 in income tax year 2016, to increase the maximum benefit from $750 to $1,000 by changing the existing property tax equivalent amount from 15% to 20%, to allow each tax filing unit in a household to apply instead of only one person filing per household, to add a cost of living adjustment to the Schedule H, and to simplify the property tax rate structure.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Schedule H Property Tax Relief Act of 2012".

Amend § 47-1806.06

Sec. 2. Section 47-1806.06 of the District of Columbia Official Code is amended as follows:

(a) Subsection (a) is amended as follows:

(1) Paragraph (1) is amended as follows:

(A) Strike the figure "15%" and insert the figure "20%" in its place.

(B) Strike the figure "$750" and insert the figure "$1,000" in its place.

(2) Paragraph (2) is amended as follows:

(A) Designate the existing text as subparagraph (A).

(B) New subparagraphs (B) and (C) are added to read as follows:

"(B) For taxable years beginning after December 31, 2013, the percentage required under paragraph (1) of this subsection to be determined for all claimants shall be the percentage specified in the following table:

"If adjusted gross income is:	Tax credit equals:
"$0 – 24,999	100% of property tax* exceeding 3.0% of adjusted gross income of the tax filing unit
"$25,000 - $40,000	100% of property tax* exceeding 4.0% of adjusted gross income of the tax filing unit

"*or rent paid constituting property tax (20% of rent).

"(C) For taxable years beginning after December 31, 2015, the

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percentage required under paragraph (1) of this subsection to be determined for all claimants shall be the percentage specified in the following table:

"If adjusted gross income is:	Tax credit equals:
"$0 – 24,999	100% of property tax* exceeding 3.0% of adjusted gross income of the tax filing unit
"$25,000 - $50,000	100% of property tax* exceeding 4.0% of adjusted gross income of the tax filing unit

"*or rent paid constituting property tax (20% of rent).".

(3) Paragraph (3) is repealed.

(b) Subsection (b) is amended as follows:

(1) Paragraph (4) is amended by striking the sentence "Only 1 claimant per home and per household per year shall be entitled to relief under this section." and inserting the sentence "Only one claimant per tax filing unit per year shall be entitled to relief under this section." in its place.

(2) Paragraphs (5), (6), and (7) are repealed.

(3) Paragraph (8)(B) is amended by striking the figure "15%" and inserting the figure "20%" in its place.

(c) Subsection (j)(1) is amended to read as follows:

"(1) In determining eligibility for the credit allowable under this section, and for the purpose of determining outstanding tax liability (if any) of the claimant to the District household income for which the claim is filed and the claimant's outstanding tax liability (if any) shall be determined on the basis of the adjusted gross income of the tax filing unit, which is defined as an individual or married couple that would--were their income above the filing threshold--file an individual income tax return. The tax filing unit also includes any other persons who would be claimed as dependents on that tax return.".

(d) A new subsection (r) is added to read as follows:

"(r)(1) The maximum credit amount of $1000 and the eligibility income threshold of $50,000 shall be adjusted annually for inflation based on the Consumer Price Index.

"(2) For the purpose of this subsection, the term "Consumer Price Index" means the all items index of the Consumer Price Index for All Urban Consumers for the District of Columbia, published by the Bureau of Labor Statistics of the United States Department of Labor.".

Sec. 3. Applicability.

This act shall apply as of January 1, 2014, upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

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Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the 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 act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
January 29, 3012

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-650

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To amend the Policemen and Firemen's Retirement and Disability Act to change, from age 60 to age 55, the age before when remarriage by a widow or widower will terminate an annuity; and to amend An Act For the retirement of public-school teachers in the District of Columbia to change, from age 60 to age 55, the age before when remarriage by a surviving spouse or domestic partner will terminate an annuity.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Equity in Survivor Benefits Amendment Act of 2012".

Amend § 5-716

Sec. 2. Section 12(k)(5)(A) of the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718; D.C. Official Code § 5-716(e)(1)), is amended by striking the number "60" and inserting the number "55" in its place.

Sec. 3. An Act For the retirement of public-school teachers in the District of Columbia, approved August 7, 1946 (60 Stat. 875; D.C. Official Code § 38-2021.01 *et seq.*), is amended as follows:

Amend § 38-2021.05

(a) Section 5(b)(1) (D.C. Official Code § 38-2021.05(b)(1)) is amended as follows:

(1) Strike the phrase "(B) such spouse or domestic partnership elects" and insert the phrase "(B) such spouse or domestic partner elects" in its place; and

(2) Strike the phrase "60 years" wherever it appears and insert the phrase "55 years" in its place.

Amend § 38-2021.09

(b) Section 9(b)(1) (D.C. Official Code § 38-2021.09(b)(1)) is amended by striking the phrase "before becoming 60 years of age" wherever it appears and inserting the phrase "before becoming 55 years of age" in its place.

Sec. 4. Fiscal impact statement.

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

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Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-651

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to grant the State Board of Education personnel authority and the authority to appoint up to 3 employees; to amend the State Board of Education Establishment Act of 2007 to grant the State Board of Education personnel authority, and make it responsible for administrating its budget; to amend the Ombudsman for Public Education Establishment Act of 2007 to provide that the Ombudsman for Public Education be appointed by the State Board of Education to serve a 5-year term.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "State Board of Education Personnel Authority Amendment Act of 2012".

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

Amend § 1-604.06

(a) Section 406(b) (D.C. Official Code § 1-604.06(b)) is amended as follows:

(1) Paragraph (20) is amended by striking the word "and" at the end.

(2) Paragraph (21) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(3) A new paragraph (22) is added to read as follows:

"(22) For employees of the State Board of Education, the personnel authority is the State Board of Education.".

Amend § 1-609.03

(b) Section 903(a) (D.C. Official Code § 1-609.03(a)) is amended as follows:

(1) Paragraph (9) is amended by striking the word "and" at the end.

(2) Redesignate paragraph (10) as paragraph (11).

(3) A new paragraph (10) is added to read as follows:

"(10) The State Board of Education may appoint no more than 3 full-time equivalent employees; and".

(4) The newly designated paragraph (11) is amended by striking the phrase "through (9)" and inserting the phrase "through (10)" in its place.

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Sec. 3. The Ombudsman for Public Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-351 *et seq.*), is amended as follows:

(a) Section 602 (D.C. Official Code § 38-351) is amended to read as follows: Amend § 38-351

"Sec. 2. Office of Ombudsman for Public Education; establishment; term.

"(a) There is established within the State Board of Education an Office of Ombudsman for Public Education, which shall be headed by an ombudsman appointed by the State Board of Education.

"(b)(1) The Ombudsman shall be a District resident within 180 days of appointment.

"(2) The Ombudsman shall serve for a term of 5 years, and may be reappointed.

"(3) After notice and an opportunity to be heard, the Ombudsman may be removed only for cause that relates to the Ombudsman's character or efficiency by a majority vote of the State Board of Education.

"(c) If a vacancy in the position of ombudsman occurs as a consequence of resignation, disability, death, or other reasons other than the expiration of the term, the State Board of Education shall appoint an ombudsman to fill the unexpired term within 75 days of the occurrence of the vacancy.".

(b) Section 604(a) (D.C. Official Code § 38-353(a)) is amended as follows: Amend § 38-353

(1) Paragraph (12) is amended to read as follows:

"(12) Submit to the Deputy Mayor for Public Education, the Council, the Mayor, State Board of Education, Office of the State Superintendent of Education, District of Columbia Public Schools, Public Charter School Board, and the University of the District of Columbia on December 15th and May 15th, an analysis of the preceding month within that semester, including complaint and resolution data; ".

(2) Paragraph (15) is amended as follows:

(A) Strike the number "90" and insert the number "45" in its place.

(B) Strike the phrase "Deputy Mayor for Education a report" and insert the phrase "Deputy Mayor for Education, the Council, the State Board of Education a report, which shall be posted on their websites," in its place.

(c) Section 605(D.C. Official Code § 38-354) is amended by adding a new paragraph (5A) to read as follows: Amend § 38-354

"(5A) Bring persons together to resolve conflicts that are not in formal legal or administrative proceedings.".

(d) Section 606(a) (D.C. Official Code § 38-355(a)) is amended as follows: Amend § 38-355

(1) Paragraph (4) is amended by striking the word "or".

(2) A new paragraph (4A) is added to read as follows:

"(4A) Examine or investigate any matter that would be under the jurisdiction of the Office of the Inspector General or the Office of District of Columbia Auditor.".

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Amend § 38-2652

Sec. 4. Section 403(d) of the State Board of Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-2652(d)), is amended to read as follows:

"(d)(1) The Board shall, by order, specify its organizational structure, staff, operations, reimbursement of expenses policy, and other matters affecting the Board's functions.

"(2) The Board shall appoint staff members, who shall serve at the pleasure of the Board, to perform administrative functions and any other functions necessary to execute the mission of the Board.

"(3) Beginning in fiscal year 2013, the Board shall prepare and submit to the Mayor, for inclusion in the annual budget prepared and submitted to the Council pursuant to Part D of Title IV of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.41 *et seq.*) ("Home Rule Act"), annual estimates of the expenditures and appropriations necessary for the operation of the Board for the year. All the estimates shall be forwarded by the Mayor to the Council for, in addition to the Mayor's recommendations, action by the Council pursuant to sections 446 and 603(c) of the Home Rule Act.

"(4) The Board shall be reflected in the budget and financial system as an agency-level entity.

"(5) All assets, staff, and unexpended appropriations of the Office of the State Superintendent of Education or of any other agency that are associated with the Board shall be transferred to the Board by April 1, 2013.".

Sec. 5. Applicability.

Section 3 shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional

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review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-652

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Winter 2013

To amend Chapter 46 of Title 47 of the District of Columbia Official Code to provide a real property tax exemption to the Israel Senior Residences project, and to provide an exemption from permit fees to the Israel Senior Residences project.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Israel Senior Residences Tax Exemption Act of 2012".

Sec. 2. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation 47-4659 to read as follows:

"47-4659. The Israel Senior Residences, Lot 60, Square 3848.".

(b) A new section 47-4659 is added to read as follows:

New § 47-4659

"§ 47-4659. The Israel Senior Residences, Lot 60, Square 3848.

"(a) Beginning on the 1st day of the half tax year immediately following the date on which site preparation begins, as evidenced by the issuance of a grading permit or excavation permit, whichever is issued first, the Housing Element shall be exempt from real property taxes actually assessed and imposed under Chapter 8 of this title; provided, that:

"(1) The first level of concrete shall be laid for the Israel Senior Residences by December 31, 2013;

"(2) A certificate of occupancy for the Housing Element shall have been issued within 24 months after the first level of concrete has been laid; and

"(3) The affordable units shall be registered on-line within 60 days of issuance of the certificate of occupancy for the Housing Element and shall have been issued on the housing locator at www.dchousingsearch.org, where the affordable units shall be registered and monitored for compliance.

"(b) For each deadline set forth in subsection (a) of this section, one 6-month extension may be granted at the discretion of the Mayor.

"(c) If the deadlines set forth in subsection (a) of this section, as they may be extended by the Mayor pursuant to subsection (b) of this section, are not met, the Israel Senior Residences, LLC, shall pay to the District a sum equal to the amount of real property

tax that would have been imposed on the Israel Senior Residences project in the absence of the exemption provided in subsection (a) of this section.

"(d)(1) The exemption from real property taxation provided in subsection (a) of this section shall expire on the date that is the last day of the half tax year immediately following the earlier of the passage of 30 years or the date on which the Housing Element no longer has at least 50% of the total units of the Israel Senior Residences project designated as affordable units.

"(2) The owner shall inform the Office of Tax and Revenue when the Housing Element is no longer entitled to the exemption granted by subsection (a) of this section.

"(e) Notwithstanding any other provision of law, no fees shall be charged to the developer of the Israel Senior Residences project for any permits related to the construction of the Israel Senior Residences, including private space or building permit fees or public space permit fees. The exemption provided by this subsection shall not include inspection fees for such permits.

"(f) For the purposes of this section, the term:

"(1) "Affordable units" means residential units affordable to households with incomes between 50% and 80% of the area median income of the Washington, D.C. metropolitan statistical area, as determined annually by the United States Department of Housing and Urban Development, or its successor agency, which units shall comprise no less than 100% of the total number of units in the Israel Senior Residences project.

"(2) "Housing Element" means Lot 60, Square 3848, on which the residential units and accessory parking of the Israel Senior Residences project shall be constructed.

"(3) "The Israel Senior Residences LLC" means the entity that will construct the Israel Senior Residences on Lot 60, Square 3848, or such other taxation lots that may be created from the current Lot 60.".

Sec. 3. Applicability.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the 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 act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional

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review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat, 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-653

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To establish requirements for appointment and service on the Washington Metropolitan Area Transit Authority Board of Directors.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Washington Metropolitan Area Transit Authority Board of Directors Act of 2012".

New § 9-1108.11

Sec. 2. Requirements for appointment and service on the Board of Directors of the Washington Metropolitan Area Transit Authority.

(a) A person who is appointed to serve on the Board of Directors of the Washington Metropolitan Area Transit Authority ("Board") shall comply with the following requirements:

(1) The person shall not have been an employee of the Washington Metropolitan Area Transit Authority ("WMATA") within one year of appointment to the Board.

(2) The person shall have experience in at least one of the following areas:

(A) Transit planning;

(B) Transportation planning;

(C) Land use planning;

(D) Transit or transportation management or other public-sector management;

(E) Engineering;

(F) Finance;

(G) Public Safety;

(H) Homeland security;

(I) Human resources;

(J) Law; or

(K) Knowledge of the WMATA region's transportation issues.

(3) The person shall be a patron of services provided by the WMATA.

(4) The person shall serve a 4-year term with a maximum of 2 consecutive terms.

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(5) Persons appointed to the Board shall file an annual report with the Council on or before April 30 of each calendar year. The report shall include:

(A) The dates of attendance at WMATA Board meetings;

(B) The reason for not attending a meeting;

(C) Dates and attendance at other WMATA- related public events; and

(D) An affirmation of the member's use of the bus, rail, or paratransit services of the WMATA since submission of the previous report.

(b)(1) For the purpose of transitioning to a composition of staggered terms, initial appointments to the Board shall be made on July 1, 2013, as follows:

(A) A principal member shall be appointed for a term of 4 years;

(B) An alternate member shall be appointed for a term of 3 years;

(C) A principal member shall be appointed for a term of 2 years; and

(D) An alternate member shall be appointed for a term of one year.

(2) Thereafter, members shall be appointed for 4-year terms.

(3) Appointments, including appointments for the completion of an unexpired term, for fewer than 3 years shall not count for the purposes of term limits.

(c) To prevent extended vacancies on the Board, each person appointed may continue to serve until replaced or reappointed, for a period not to exceed 12 months.

(d) Each person appointed to the Board shall serve at the pleasure of the Council and may be removed for any reason, including failure to adhere to the requirements of this act.

Sec. 3. The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), is amended as follows:

Amend § 1-1161.01

(a) Section 101(47)(D.C. Official Code § 1-1161.01(47)) is amended by adding a new subparagraph (G-1) to read as follows:

"(G-1) Members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01);".

Amend § 1-1162.24

(b) Section 224(a)(1) (D.C. Official Code § 1-1162.24(a)(1)) is amended by striking the phrase "except Advisory Neighborhood Commissioners" and inserting the phrase "except Advisory Neighborhood Commissioners and members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01)" in its place.

Amend § 1-1162.25

(c) Section 225(a) (D.C. Official Code § 1-1162.25(a)) is amended by striking the phrase "Advisory Neighborhood Commissioners" and inserting the phrase "Advisory Neighborhood Commissioners and members of the Washington Metropolitan Area Transit

ENROLLED ORIGINAL

Authority Board of Directors appointed pursuant to section 1 of the Washington Metropolitan Area Transit Regulation Compact, approved November 6, 1966 (80 Stat. 1324; D.C. Official Code § 9-1107.01)"in its place.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the 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 act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-654

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 1, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To amend the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to require the Attorney General to report to the Council any action, suit, or proceeding in which any District law is challenged as unconstitutional or in violation of the District of Columbia Home Rule Act, and to require the Attorney General to report to the Council the establishment or implementation of a formal or informal policy to refrain from implementing, enacting, or defending a District law.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Council Notification on Enforcement of Laws Amendment Act of 2012".

Sec. 2. The Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 27, 2009 (D.C. Law 18-160; D.C. Official Code § 1-301.81 *et seq.*), is amended by adding a new section 111 to read as follows:

New § 1-301.89b

"Sec. 111. Report on constitutional challenge or District of Columbia Home Rule Act validity challenge.

"(a) The Attorney General shall submit a report to the Council of the District of Columbia of any action, suit, or proceeding brought in a court of law in which the Council of the District of Columbia is not a party, and the constitutionality or the validity under the District of Columbia Home Rule Act , approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*), of any District statute, rule, regulation, program, policy, or enactment of any type is questioned, and the Attorney General has been notified pursuant to:

"(1) Rule 24(c) of the Superior Court of the District of Columbia Rules of Civil Procedure; or

"(2) Rule 5.1(a) of the Federal Rules of Civil Procedure.

"(b) The Attorney General shall submit a report to the Council of the District of Columbia of the establishment or implementation of any formal or informal policy by the Attorney General, or any officer of the Office of the Attorney General, to refrain from:

"(1) Enforcing, applying, or administering any provision of any

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District statute, rule, regulation, program, policy, or enactment of any type affecting the public interest of the District of Columbia; or

"(2) Defending, either by affirmatively contesting or through refraining from defending, any District statute, rule, regulation, program, policy, or enactment of any type affecting the public interest of the District of Columbia.

"(c)(1) A report required under subsection (a) of this section shall be submitted to the Council within 30 calendar days from the date the Attorney General receives notice as provided in subsection (a)(1) or (a)(2) of this section, and shall contain sufficient information to identify the action, suit, or proceeding underlying the challenge.

"(2) A report required under subsection (b) of this section shall be submitted to the Council within 30 calendar days from the date the Attorney General establishes or implements a formal or informal policy, or is made aware of the establishment or implementation of a formal or informal policy, as described in subsection (b) of this section, and shall contain:

"(A) The date the formal or informal policy, as described in subsection (b) of this section, was established or implemented; and

"(B) A complete and detailed statement describing the policy and identifying the statute, rule, regulation, program, policy, or enactment that is the subject of the policy.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

UNSIGNED
Mayor
District of Columbia
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-655

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 29, 2013

Codification District of Columbi Official Code 2001 Edition

Summer 2013

To amend the Retail Incentive Act of 2004 to designate as Retail Priority Areas portions of North Capitol Street and Rhode Island Avenue, N.E.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Retail Incentive Amendment Act of 2012".

Amend § 2-1217.73

Sec. 2. Section 4 of the Retail Incentive Act of 2004, effective September 8, 2004 (D.C. Law 15-185; D.C. Official Code § 2-1217.73), is amended to add a new subsection (f) to read as follows:

"(f) The following corridors are designated as Retail Priority Areas:

"(1) North Capitol Street Retail Priority Area shall consist of the parcels, squares, and lots within the following area: Beginning at the intersection of New York Avenue, N.W. and First Street, N.W.; thence north along said First Street, N.W. to Florida Avenue, N.W.; thence northwest along said Florida Avenue, N.W. to Second Street, N.W.; thence north along said Second Street, N.W. to Rhode Island Avenue, N.W.; thence northeast along said Rhode Island Avenue, N.W. to First Street, N.W.; thence north along said First Street, N.W. to Michigan Avenue, N.W.; thence in a westerly direction along said Michigan Avenue, N.W. to Park Place, N.W.; thence north along said Park Place, N.W. to Irving Street N.W.; thence northeast along said Irving Street, N.W. to Kenyon Street, N.W.; thence west along said Kenyon Street, N.W. to Park Place, N.W.; thence north along said Park Place, N.W. to Rock Creek Church Road, N.W.; thence northeast along said Rock Creek Church Road, N.W. to Harewood Road, N.W.; thence southeast along said Harewood Road, N.W. to North Capitol Street, N.E.; thence south along North Capitol Street, N.E. to Irving Street, N.E.; thence east along said Irving Street, N.E. to Michigan Avenue, N.E.; thence southwest along said Michigan Avenue, N.E. to North Capitol Street, N.E.; thence south along said North Capitol Street, N.E. to Rhode Island Avenue, N.E.; thence northeast along Rhode Island Avenue, N.E. to Lincoln Road, N.E.; thence south along Lincoln Road, N.E. to R Street, N.E.; thence east along R Street, N.E. and continuing east along a line extending R Street, N.E. to the east to its intersection with the WMATA railroad tracks; thence southwest along said WMATA railroad tracks to New York Avenue, N.E.; thence southwest along New York Avenue, N.E. to New York Avenue, N.W., and continuing southwest along New York Avenue, N.W. to the point of beginning.

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"(2) Rhode Island Avenue, N.E. Retail Priority Area shall consist of the parcels, squares, and lots within the following area: Beginning at the intersection of Fourth Street, N.E. and Franklin Street, N.E.; thence east on said Franklin Street NE to 15th Street, N.E.; thence north on said 15th Street, N.E. to Girard Street, N.E.; thence east on said Girard Street, N.E. to 17th Street, N.E.; thence north on said 17th Street, N.E. to Brentwood Road, N.E.; thence northeast on said Brentwood Road NE to 18th Street, N.E.; thence north on said 18th Street, N.E. to Irving Street, N.E.; thence east on said Irving Street, N.E. to Rhode Island Avenue, N.E.; thence north along the western boundary of the property at the northeast corner of 20th Street, N.E. and Rhode Island Avenue, N.E. to its northwest corner; thence northeast along the rear boundaries of all properties with frontage along the north side of Rhode Island Avenue, N.E. to the northeast corner of the property at the northwest corner of Rhode Island Avenue, N.E. and Eastern Avenue, N.E.; thence southeast along the eastern boundary of said property at the corner of Rhode Island Avenue, N.E. and Eastern Avenue, N.E. to its southeast corner; thence continuing southeast to the southeast corner of the property at the southwest corner of Rhode Island Avenue, N.E. and Eastern Avenue, N.E.; thence southwest along the rear boundaries of all properties with frontage along the south side of Rhode Island Avenue, N.E. to Montana Avenue, N.E.; thence southeast along said Montana Avenue, N.E. to Downing Street, N.E.; thence southwest along said Downing Street, N.E. to Bryant Street, N.E.; thence west along said Bryant Street, N.E. to 13th Street, N.E.; thence southeast along said 13th Street, N.E. to its end at W Street, N.E.; thence west along a line extending W Street, N.E. west to the continuation of W Street, N.E., and continuing west along W Street, N.E. to Brentwood Road, N.E.; thence southwest along said Brentwood Road, N.E. to its end at T Street, N.E.; thence southwest to the intersection of a line extending Fourth Street, N.E. south and a line extending R Street, N.E. east; thence north along said line extending Fourth Street, N.E. to Fourth Street, N.E., and continuing north along said Fourth Street, N.E. to the point of beginning."

"(3) Within 45 days of the effective date of this act, the Mayor shall submit to the Council for a 45-day period of review, excluding weekends, holidays, and periods of Council recess, a proposed resolution which identifies a funding source for each Retail Priority Area established by this subsection.".

Sec. 3. Applicability.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 4. Fiscal impact statement.

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

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Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-656

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To amend An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, to provide the Mayor with rulemaking and enforcement authority over the outdoor display of signs in the District; to amend the Construction Codes Approval and Amendments Act of 1986 to remove the regulation of exterior signs from the Construction Codes, and to repeal provisions that reference non-existent model building codes, Gallery Place sign rulemaking, and a long-dormant advisory Council; and to make conforming amendments to the Litter Control Administration Act of 1985, the District of Columbia Bus Shelter Act of 1979, section 25-763 of the District of Columbia Official Code, section 7 of Chapter 150 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth nineteen hundred and fourteen, and for other purposes, and the Department of Transportation Establishment Act of 2002.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sign Regulation Authorization Amendment Act of 2012".

Sec. 2. An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.21 *et seq.*), is amended as follows:

(a) Section 1 (D.C. Official Code § 1-303.21) is amended to read as follows:

Amend § 1-303.21

"Sec. 1. Rules.

"(a) The Mayor shall issue, amend, repeal and enforce rules governing the hanging, placing, painting, projection, display, and maintenance of signs on public space, public buildings, or other property owned or controlled by the District and on private property within public view within the District. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved. The rules shall not take effect until approved by the Council.

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"(b) The rules shall:

"(1) Determine the types of signs that shall be allowed and prohibited and establish permit requirements for signs, where appropriate;

"(2) Establish standards for the location, size, and illumination of different types of signs;

"(3) Allow for the display of signs that contribute to a healthy business environment and civic communication while protecting the health, safety, convenience, and welfare of the public, including protection of the appearance of outdoor space throughout the District;

"(4) State the specific requirements for large signs and billboards;

"(5) Establish standards for signs on historic sites or in historic areas;

"(6) Provide structural requirements for signs to ensure their safety;

"(7) Ensure compliance with federal highway requirements;

"(8) Provide for the creation of Designated Entertainment Areas to allow for the display of additional signs;

"(9) Establish permit fees; and

"(10) Be in compliance with section 3107A of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 3107A).".

Repeal § 1-303.22

(b) Section 2 (D.C. Official Code § 1-303.22) is repealed.

Amend § 1-303.23

(c) Section 4 (D.C. Official Code § 1-303.23) is amended to read as follows:

"Sec. 4. Penalties and enforcement.

"(a) Adjudication of infractions of these rules shall be pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"), and the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-801 *et seq.*) ("Litter Control Act"). The Mayor shall enforce the rules applicable to signs on public space, public buildings, and other owned or controlled by the District property under the Litter Control Act and the rules applicable to signs on private property under the Civil Infractions Act. The Mayor may also establish, by rulemaking, a schedule of fines and penalties for infractions of these rules that are separate from the fines and penalties imposed under the Civil Infractions Act and the Litter Control Act. These rules shall be subject to Council review and approval as described in section 1.

"(b) A person or entity, whether as principal, agent, or employee, violating rules issued pursuant to sections 1 or 4 shall, upon conviction in the Superior Court of the District of Columbia, be fined no less than $5 nor more than $200 for each offense, and a fine shall be imposed for each day that the violation continues.".

Sec. 3. The Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1401 *et seq.*), is amended as follows:

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(a) Section 4(a)(1) (D.C. Official Code 6-1403(a)(1)) is amended by striking the phrase "signs, advertising devices" and inserting the phrase "interior signs, advertising devices" in its place. Amend § 6-1403

(b) Section 4a (D.C. Official Code § 6-1403.01) is repealed. Repeal § 6-1403.01

(c) Section 10 (D.C. Official Code § 6-1409) is amended by repealing subsections (a-1) and (b). Amend § 6-1409

(d) Section 10a (D.C. Official Code § 6-1410) is repealed. Repeal §§ 6-1410 6-1411

(e) Section 10b (D.C. Official Code § 6-1411) is repealed.

Sec. 4. Section 3(a)(1) of the Litter Control Administration Act of 1985, effective March 25, 1986 (D.C. Law 6-100; D.C. Official Code § 8-802(a)(1)), is amended as follows: Amend § 8-802

(a) Strike the phrase "of 1988," and insert the phrase "of 1988, effective March 16, 1989 (D.C. Law 7-226); D.C. Official Code § 8-1001 *et seq.*)," in its place.

(b) Strike the phrase beginning with ", and a number of rules" through the end of the paragraph and insert the phrase "a number of rules recorded in § 2221.6, 2407.12, and 2407.13 of 18 DCMR, §§ 101, 102, 103, 104, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR, and any rules relating to signs on public space, public buildings, or other property owned or controlled by the District issued pursuant to sections 1 and 4 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code §§ 1-303.21 and 1-303.23)." in its place.

Sec. 5. Section 10 of the District of Columbia Bus Shelter Act of 1979, effective May 10, 1980 (D.C. Law 3-67; D.C. Official Code § 9-1159), is amended by striking the phrase "The provisions of section 2 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code § 1-303.22), and Title 5A1, Article 14 of the Building Code of the District of Columbia" and inserting the phrase "The provisions of sections 1 and 4 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code §§ 1-303.21 and 1-303.23), and rules issued pursuant to those sections" in its place. Amend § 9-1159

Sec. 6. Section 25-763(f) of the District of Columbia Official Code is amended by striking the phrase "the regulations contained in Chapter 31 of Title 12 of the District of Columbia Municipal Regulations." and inserting the phrase "section 1 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Amend § 25-763

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Stat. 1486; D.C. Official Code § 1-303.21), and any rules issued pursuant to that section." in its place.

Repeal § 42-1801

Sec. 7. Section 7 of Chapter 150 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C. Official Code § 42-1801), is repealed.

Amend § 50-921.04

Sec. 8. Section 5(4)(G)(iii) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code § 50-921.04(4)(G)(iii)), is amended to read as follows:

"(iii) The requirements of sections 1 and 4 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code §§ 1-303.21 and 1-303.23), and rules issued pursuant to those sections, pertaining to outdoor signs and other forms of exterior advertising in the District of Columbia, shall not apply; and".

Sec. 9. Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Sec. 10. Applicability.

Sections 3, 4, 5, 6, 7, and 8 shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2.

Sec. 11. Fiscal impact statement.

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

Sec. 12. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-657

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 27, 2013

To create limited liability for employers who hire or retain returning citizens if the employer has taken certain steps to make a good-faith determination that hiring or retaining a returning citizen is favorable; to amend the Human Rights Act of 1977 to allow individuals access to their full arrest record so that they may determine eligibility for sealing or file a motion to seal; to amend Chapter 8 of Title 16 of the District of Columbia Official Code to exclude certain interpersonal violence as an ineligible misdemeanor, to reduce the time a movant must wait before filing a motion to seal his or her case, to provide individuals an opportunity to seal qualifying arrests despite having ineligible convictions on their record, to permit individuals to whom a District of Columbia arrest has been wrongly attributed the ability to seal the arrest if law enforcement did not take an individual's fingerprints at the time of the arrest, to add a new section dealing with the sealing of arrest records of fugitives from justice, to allow a movant the opportunity to amend the original motion to seal within 30 days if the movant failed to include all misdemeanors and felonies, to provide that a motion to seal a case that is not in the court database or a case that is not in a publicly available database shall also not be made publicly available, and to permit movants to obtain certifications from the court that their records have been properly sealed under Title 16; to amend the District of Columbia Uniform Controlled Substances Act of 1981 to allow an individual to access his or her nonpublic court record after expungement of a first-time conviction of drug possession; to amend the Office on Ex-Offender Affairs and Commission on Re-entry and Ex-Offender Affairs Establishment Act of 2006 to authorize the Mayor to establish a certificate of good standing program; and to amend section 1004 of Title 1 of the District of Columbia Municipal Regulations to allow individuals access to their full arrest record so that may determine eligibility for sealing or file a motion to seal.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Re-entry Facilitation Amendment Act of 2012".

Codification District of Columbi
Official Code
2001 Edition

Summer 2013

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Sec. 2. Limited liability.

Information regarding a criminal history record of an employee or a former employee shall not be introduced as evidence in a civil action against an employer or its employees or agents if that information is based on the conduct of the employee or former employee, and if the employer has made a reasonable, good-faith determination that the following factors favored the hiring or retention of that applicant or employee:

(1) The specific duties and responsibilities of the position being sought or held;

(2) The bearing, if any, that an applicant's or employee's criminal background

will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities related to his or her employment;

(3) The time that has elapsed since the occurrence of the criminal offense;

(4) The age of the person at the time of the occurrence of the criminal offense;

(5) The frequency and seriousness of the criminal offense;

(6) Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and

(7) The public policy that it is generally beneficial for persons with criminal records to obtain employment.

Sec. 3. Section 266 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.66), is amended to read as follows:

"Sec. 266. Arrest records.

"(a)(1) An individual may request production of his or her arrest record for the purposes of determining eligibility for sealing or expunging that record pursuant to Chapter 8 of Title 16, or similar sealing statutes in the District or in another jurisdiction, and may request production of his or her arrest record for filing a sealing or expungement motion.

"(2) The District may charge the individual a nominal fee for processing this request.

"(3) For the purposes of this subsection, an "arrest record" shall contain a listing of all adult arrests, regardless of the disposition of each arrest, and regardless of the date on which the arrest, conviction, or completion of the sentence occurred.

"(b)(1)(A) An individual may request production of his or her arrest record or authorize another person to request production of his or her arrest record for any other purpose.

"(B) The District may charge the individual a nominal fee for processing this request.

"(C) For purposes of this subsection, an "arrest record" shall contain a

listing only of adult convictions for which the sentence was completed not more than 10 years before the date on which the records were requested and forfeitures of collateral in a court proceeding that have occurred not more than 10 years before the date on which the record was requested.

"(2) A person who requires the production of any arrest record or any copy, extract, or statement thereof pursuant to this subsection, at the monetary expense of any individual to whom such record may relate, shall be fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, passed on 2nd reading on November 1, 2012 (Enrolled version of Bill 19-214), or imprisoned for not more than 10 days.".

Sec. 4. Chapter 8 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-801(9)(A) is amended to read as follows:

"(A) Interpersonal violence as defined in § 16-1001(6)(B), intimate partner violence as defined in § 16-1001(7), and intrafamily violence as defined in § 16-1001(9).".

(b) Section 16-803 is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) A person arrested for, or charged with, the commission of an eligible misdemeanor pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

"(A) A waiting period of at least 2 years has elapsed since the termination of the case; and

"(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

"(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

"(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall

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not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.".

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

"(b)(1) A person arrested for, or charged with, the commission of any other offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and court proceedings if:

"(A) A waiting period of at least 4 years has elapsed since the termination of the case or, if the case was terminated before charging by the prosecution, a waiting period of at least 3 years has elapsed since the termination of the case; and

"(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

"(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

"(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.".

(3) Subsection (c)(1) is amended to read as follows:

"(1) A waiting period of at least 8 years has elapsed since the completion of the movant's sentence; and".

(4) A new subsection (c-2) is added to read as follows:

"(c-2) A person to whom a District of Columbia arrest has been attributed, who attests under oath that he or she was incorrectly identified or named, may file a motion to seal publicly available records of the arrest if the law enforcement agency did not take fingerprints at the time of the arrest and no other form of reliable identification was presented by the person who was arrested.".

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(5) Subsection (f) is amended to read as follows:

"(f) In a motion filed under subsections (a), (b), or (c) of this section, the movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a particular conviction or arrest.".

(c) A new section 16-803.01 is added to read as follows:

"Sec. 16-803.01. Sealing of arrest records of fugitives from justice.

"(a) A person arrested upon a warrant issued pursuant to § 23-701 or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued may file a motion to seal the record of the District of Columbia arrest and related Superior Court proceedings at any time after the person has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

"(b)(1) The Superior Court shall grant a motion to seal if:

"(A) The arrest was not made in connection with or did not result in any other District of Columbia Official Code or District of Columbia Code of Municipal Regulations charges or federal charges in the United States District Court for the District of Columbia against the person;

"(B) The person waived an extradition hearing pursuant to § 23-702(f)(1) and was released pursuant to § 23-702(f)(2) or detained pursuant to § 23-702(f)(3); and

"(C) The person proves by a preponderance of the evidence that he or she has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

"(2) In all other cases, the Superior Court may grant a motion to seal if it is in the interest of justice to do so. In making this determination, the court shall consider:

"(A) The interests of the movant in sealing the publicly available records of his or her arrest and related court proceedings;

"(B) The community's interest in retaining access to those records;

"(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability; and

"(D) Any other information it considers relevant.

"(c) If the Court grants the motion to seal:

"(1)(A) The Court shall order the prosecutor and any law enforcement agency to remove from their publicly available records all references that identify the movant as having been arrested.

"(B) The prosecutor's office and law enforcement agencies shall be entitled to retain any and all records relating to the movant's arrest in a nonpublic file.

"(C) The prosecutor's office and law enforcement agencies shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested have been removed from its

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publicly available records.

"(2)(A) The Court shall order the clerk to remove or eliminate all publicly available court records that identify the movant as having been arrested.

"(B) The clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

"(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

"(4) Unless otherwise ordered by the Court, the clerk and any other agency shall reply in response to inquiries from the public concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

"(5) No person as to whom relief pursuant to this section has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest as a fugitive from justice in response to any inquiry made of him or her for any purpose.

"(6) For purposes of this section, the entities listed in § 16-801(11)(D)-(F) shall be considered public.".

(d) Section 16-804 is amended as follows:

(1) Subsection (b) is amended to read follows:

"(b)(1) A motion pursuant to § 16-803 (a), (b), or (c) shall state all of the movant's arrests and convictions and shall:

"(A) Seek relief with respect to all the arrests and any conviction eligible for relief; and

"(B) For any arrest or conviction as to which the waiting period in § 16-803(a), (b), or (c) has not elapsed, waive in writing the right to seek sealing of the records pertaining to that arrest or conviction.

"(2) If the Court determines that the motion does not comply with the requirements of paragraph (1) of this subsection, then the movant shall have 30 days after being notified by the Court of the noncompliance to amend his or her original motion to include all of the movant's District of Columbia Code and Municipal Regulation arrests and convictions and either seek relief with respect to all the eligible arrests and convictions or waive in writing the right to seek sealing of the records pertaining to any arrests or convictions for which relief is not sought. If the movant fails to amend his original motion within 30 days, then the motion shall be dismissed without prejudice.".

(2) Subsection (c) is amended to read as follows:

"(c) A copy of the motion and any amended motion shall be served upon the prosecutor.".

(3) A new subsection (e) is added to read as follows:

"(e) If the movant files a motion to seal an arrest that is not in the Court database or an arrest and related court proceedings that are not in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly. If the Court grants

such a motion, it shall order that the motion and responsive pleadings be sealed to the same extent and in the same manner as the records pertaining to the arrest and related court proceedings. If the Court denies such a motion, the Court, the United States Attorney's Office, the Office of the Attorney General for the District of Columbia, and the law enforcement agency that arrested the movant shall be entitled to retain any and all records relating to the motion in a non-public file.".

(e) Section 16-806 is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) Records sealed on grounds of actual innocence pursuant to § 16-802 shall be opened only on order of the Court upon a showing of compelling need; except, that upon request, the movant, or the authorized representative of the movant, shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under § 16-802 was granted and shall also be entitled to all certifications filed with the Court pursuant to § 16-802(h)(5). A request for access to sealed court records may be made ex parte.".

(2) Subsection (b) is amended as follows:

(A) The lead-in language in amended by striking the phrase "§ 16-803" and inserting the phrase "§§ 16-803 or 16-803.01" in its place.

(B) Paragraph (4) is amended by striking the phrase "To any person or entity" and inserting the phrase "Except for records sealed under § 16-803.01, to any person or entity" in its place.

(C) Paragraph (5) is amended to read as follows:

"(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief under § 16-803 or 16-803.01 was granted. The movant, or the authorized representative of the movant, shall also be entitled to all certifications filed with the Court pursuant to § 16-803(l)(1)(C).".

(3) A new subsection (d) is added to read as follows:

"(d) Except to the extent permitted by this section, all sealed records shall remain sealed.".

Sec. 5. Section 401(e) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-904.01(e)), is amended by adding a new paragraph (3) to read as follows:

"(3) A person who was discharged from probation and whose case was dismissed pursuant to paragraph (1) of this subsection shall be entitled to a copy of the nonpublic record retained under paragraph (1) of this subsection but only to the extent that such record would have been available to the person before an order of expungement was entered pursuant to paragraph (2) of this subsection. A request for a copy of the nonpublic record may be made ex parte and under seal by the person or by

an authorized representative of the person.".

Sec. 6. The Office on Ex-Offender Affairs and Commission on Re-entry and Ex-Offender Affairs Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243; D.C. Official Code § 24-1301 *et seq.*), is amended by adding a new section 4a to read as follows:

"Sec. 4a. Issuance of certificate of good standing.

"(a) The Mayor is authorized to establish a program for the issuance of a certificate of good standing to any person previously convicted of a crime in the District of Columbia.

"(b) A certificate of good standing shall include the following:

"(1) Its date of issuance.

"(2) The date the individual's last sentence, including parole, probation, or supervised release, was completed.

"(3) Any outstanding and pending charges against the individual as of the date that the certificate of good standing is issued.

"(4) Any outstanding and pending writs and holds placed on the individual as of the date that the certificate of good standing is issued.

"(5) A statement that the information on the certificate of good standing reflects only the records, as of the date of issuance, in the database of the Department of Corrections and all other databases to which the department has access, and that the certificate is only a statement of the individual's status and shall not be construed as a statement of the individual's character.

"(c) An individual may petition the Mayor for a certificate of good standing at any time after his or her completion of any and all sentences, including parole, probation, or supervised release.

"(d) The District of Columbia shall not be liable for the actions of an individual to whom a certificate of good standing has been issued.

"(e) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
rules to implement this section.".

Sec. 7. Section 1004 of Title 1 of the District of Columbia Municipal Regulations is amended as follows:

(a) Subsection 1004.1 is amended by striking the phrase "D.C. Official Code § 4-132 (1994 Repl.)" and inserting the phrase "D.C. Official Code § 5-113.02" in its place.

(b) Subsection 1004.4 is amended to read as follows:

"1004.4 Subject to the provisions of §§ 1004.1-1004.3, adult arrest records, as provided under D.C. Official Code § 5-113.02, shall be released in a form which reveals

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only entries relating to offenses which have resulted in convictions or forfeitures of collateral in a court proceeding.".

(c) Subsection 1004.5 is amended to read as follows:

"1004.5 Subject to the provisions of §§ 1004.1-1004.3, adult arrest records, as provided under D.C. Official Code § 5-113.02, shall be released in a form which reveals only entries relating to offenses for which the sentence was completed not more than ten (10) years before the date upon which the records are requested or for which collateral was forfeited in a court proceeding not more than ten (10) years before the date upon which the records are requested.".

(d) A new subsection 1004.9 is added to read as follows:

"1004.9 Notwithstanding subsections 1004.4 and 1004.5, an individual may request production of his or her arrest record for the purposes of determining eligibility for sealing or expunging that record pursuant to § 16-801 *et seq.* or similar sealing statutes in the District or in another jurisdiction and may request production of his or her arrest record for filing a sealing or expungement motion. For the purposes of this subsection, an "arrest record" shall contain a listing of all adult arrests, regardless of the disposition of each arrest, and regardless of the date on which the arrest, conviction, or completion of the sentence occurred.".

Sec. 8. Fiscal impact statement.

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

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

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AN ACT

D.C. ACT 19-658

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 29, 2013

Codification District of Columbia Official Code 2001 Edition

Summer 2013

To amend the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 to eliminate the requirement that a motorized bicycle be insured; to amend An Act To provide for the annual inspection of all motor vehicles in the District of Columbia to eliminate the requirement that a motorized bicycle be inspected; to amend An Act To provide for the recording and releasing of liens by entries on certificates of title for motor vehicles and trailers, and for other purposes to remove motorized bicycles from its requirements; to amend the District of Columbia Traffic Act, 1925 to eliminate the requirement that an operator of a motorized bicycle have a driver's license and to replace motorized bicycles with motor-driven cycles as an exception to the 40 miles per gallon and above exemption for the payment of excise taxes; to amend the District of Columbia Revenue Act of 1937 to eliminate the requirement that a motorized bicycle be registered; to amend Title 18 of the District of Columbia Municipal Regulations to delete moped from the waiver of meeting the requirements of the National Traffic and Motor Safety Act of 1966, to require of those riding motor-driven cycles some of the riding and safety standards required of those riding motorcycles, to revise the definitions of motorcycle, motor-driven cycle, and motorized bicycle, and to repeal the definition of moped.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Motorized Bicycle Amendment Act of 2012".

Sec. 2. The Compulsory/No Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2401 *et seq.*), is amended as follows:

(a) Section 3 (D.C. Official Code § 31-2402) is amended as follows:

Amend § 31-2402

(1) Paragraph (16) is amended to read as follows:

"(16) The term "motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and is designed to travel on no more than 3 wheels in contact with the ground. The term "motorcycle" does not include a 3-wheeled motor vehicle with a cab and windshield tractor, a motor-driven cycle, or a motorized bicycle unless operated at speeds in excess of 30 miles per hour.".

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(2) Paragraph (17) is amended to read as follows:

"(17) The term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by section 2(12) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(12)), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.".

(b) Section 7(c-1) (D.C. Official Code § 31-2406(c-1)), is amended by striking the phrase "except for the operation of motorcycles" and inserting the phrase "except for the operation of motorcycles and motor-driven cycles" in its place. Amend § 31-2406

Sec. 3. Section 8 of An Act To provide for the annual inspection of all motor vehicles in the District of Columbia, effective March 15, 1985 (D.C. Law 5-176; D.C. Official Code § 50-1108), is amended to read as follows: Amend § 50-1108

"Sec. 8. As used in this act, the term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by section 2(12) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(12)), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.".

Sec. 4. Section 1(9) of An Act To provide for the recording and releasing of liens by entries on certificates of title for motor vehicles and trailers, and for other purposes, approved July 2, 1940 (54 Stat. 736; D.C. Official Code § 50-1201), is amended to read as follows: Amend § 50-1201

"(9) "Motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by section 2(12) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(12)), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.".

Sec. 5. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 *et seq.*), is amended as follows:

(a) Section 6(j)(3)(J) (D.C. Official Code § 50-2201.03(j)(3)(J)) is amended by striking the phrase "motorized bicycles" and inserting the phrase "motor-driven cycles" in its place. Amend § 50-2201.03

(b) Section 7(f) (D.C. Official Code § 50-1401.01(f)) is amended to read as follows: Amend § 50-1401.01

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"(f) For purposes of this section and sections 8 and 13, the term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by section 2(12), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.".

Sec. 6. The District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.01), is amended as follows:

(a) Section 1(1) (D.C. Official Code § 50-1501.01(1)) is amended to read as follows: Amend § 50-1501.01

"(1) The term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by section 2(12) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(12)), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.".

(b) Section 3(b)(5) (D.C. Official Code § 50-1501.03(b)(5)) is amended by striking the phrase "motorized bicycle" and inserting the phrase " motor-driven cycle" in its place. Amend § 50-1501.03

Sec. 7. Title 18 of the District of Columbia Municipal Regulations (18 DCMR) is amended as follows: DCMR

(a) Section 413.6 (18 DCMR § 413.6) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(b) Section 422.2 (18 DCMR § 422.2) is amended by striking the phrase "Motorized bicycles" and inserting the phrase "Motor-driven cycles" in its place.

(c) Section 601 (18 DCMR § 601.1 *et seq.*) is amended as follows:

(1) Subsection 601.4 (18 DCMR § 601.4) is amended to read as follows:

"601.4. Except as provided in § 601.5, vehicles registered in the District of Columbia shall be inspected periodically for exhaust emissions and compliance with this Title as follows:

"(a) Passenger vehicle: every two (2) years;

"(b) Motorcycle: every two (2) years;

"(c) Bus: semiannually; except as provided in (d);

"(d) Bus owned or leased by the Washington Metropolitan Area Transit Authority: annually;

"(e) Taxicab and other public vehicles-for-hire: semiannually;

"(f) Motor-driven cycle: every two (2) years;

"(g) Repealed;

"(h) Commercial vehicle: annually;

"(i) Tow truck: annually;

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"(j) Vehicle registered as a class F(I) historic motor vehicle: one (1) time, at time of registration, plus an inspection limited to confirming the odometer reading every two (2) years;

"(k) Vehicle registered as a class F(II) historic motor vehicle: one (1) time, at time of registration; and

"(l) All other motor vehicles: every two (2) years.".

(2) Subsection 601.8 (18 DCMR § 601.8) is amended to read as follows:

"601.8 The fees for inspections shall be as follows:

"(a) Passenger vehicle, including historic motor vehicle: $35;

"(b) Motor driven cycle: $35;

"(c) Motorcycle: $35;

"(d) Commercial vehicles and vehicles-for-hire, including all buses: $35;

"(e) Trailers, based upon the manufacturer's shipping weight: $35;

"(f) Tow truck: $35;

"(g) Salvage vehicle: $35;

"(h) New vehicles for which an inspection is not required but for which a sticker is required: $10; and

"(i) All other motor vehicles: $35.".

(d) Section 607 (18 DCMR § 607) is amended by striking the phrase "motorized bicycles" wherever it appears and inserting the phrase "motor-driven cycles" in its place.

(e) Section 700.9 (18 DCMR § 700.9) is amended by striking the phrase "; except that mopeds need not display such a certification of compliance".

(f) Section 704 (18 DCMR 704 *et seq.*) is amended as follows:

(1) Subsection 704.1 (18 DCMR § 704.1) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(2) Subsection 704.3 (18 DCMR § 704.3) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(3) Subsection 704.4 (18 DCMR § 704.4) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(g) Section 705.2 (18 DCMR § 705.2) is amended by striking the phrase "and motorized bicycles" and inserting the phrase "and motor-driven cycles" in its place.

(h) Section 706 (18 DCMR 706.1 *et seq.*) is amended as follows:

(1) Subsection 706.2 (18 DCMR § 706.2) is amended by striking the phrase "motorized bicycles" and inserting the phrase "motor-driven cycles" in its place.

(2) Subsection 706.4 (18 DCMR § 706.4) is repealed.

(3) Subsection 706.6 (18 DCMR § 706.6) is amended as follows:

(A) Strike the phrase "motorized bicycle" and insert the phrase motor-driven cycle" in its place.

(B) Add the sentence "Each new motorized bicycle sold and operated upon a street or highway shall carry on the rear, either as part of the tail lamp or separately, one (1) red reflector that meets the requirements of this section." at the end.

(i) Subsection 715.4 (18 DCMR § 715.4) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(j) Subsection 718.1 (18 DCMR § 718.1) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(k) Subsection 720.3 (18 DCMR § 720.3) is amended by striking the phrase "motorized bicycles" and inserting the phrase "motor-driven cycles" in its place.

(l) Section 724.1 (18 DCMR § 724.1) is amended by striking the phrase "and motorized bicycles" in Row B1 of Column 1 and inserting the phrase "motor-driven cycles, and motorized bicycles" in its place.

(m) Section 733.1 (18 DCMR § 733.1) is amended by striking the phrase "motorized bicycles" and inserting the phrase "motor-driven cycles" in its place.

(n) Section 737 (18 DCMR § 737) is amended by striking the phrase "motorized bicycles" wherever it appears and inserting the phrase "motor-driven cycles" in its place.

(o) Section 2215 (18 DCMR § 2215) is amended as follows:

(1) The section heading is amended by striking the phrase "RIDING ON MOTORCYCLES" and inserting the phrase "RIDING ON MOTORCYCLES AND MOTOR-DRIVEN CYCLES" in its place.

(2) Subsections 2215.1, 2215.2, and 2215.3 (18 DCMR §§ 2215.1, 2215.2, and 2215.3) are amended to read as follows:

"2215.1 A person operating a motorcycle or motor-driven cycle shall ride only upon the permanent and regular seat attached, and the operator shall not carry any other person nor shall any other person ride on a motorcycle or motor-driven cycle unless the motorcycle or motor-driven cycle is designed to carry more than one person.

"2215.2 If a motorcycle or motor-driven cycle is equipped to carry more than one (1) person, the passenger may ride upon the permanent, regular seat if designed for two (2) persons, upon another seat firmly attached in a position to the rear or side of the motorcycle or motor- driven cycle and provided with foot rests and handgrips, or in a side car attached to the motorcycle.

"2215.3 No person shall operate or ride upon a motorcycle or motor-driven cycle unless wearing a protective helmet in the manner for which the helmet was designed and of a type approved by the Director. [See chapter 7].".

(p) Section 2400.8 (18 DCMR § 2400.8) is amended by striking the phrase "or motorized bicycle" wherever it appears and inserting the phrase ", motor-driven cycle, or motorized bicycle" in its place.

(q) Section 2405.1(h) (18 DCMR § 2405.1(h)) is amended to read as follows:

"(h) On the sidewalk; provided, that a motor-driven cycle may be parked on the sidewalk if it:

"(1) Is outside of the Central Business District, as defined by section 9901.1 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 9901.1);

"(2) Is not attached to any tree, tree box, or planting area; and

"(3) Does not block the path of pedestrians and maintains an ADA compliant clearance from any other obstruction, as defined in section 4.3 of the ADA Accessibility Guidelines.".

(r) Section 2411.13 (18 DCMR § 2411.13) is amended by striking the phrase "motorized bicycle" and inserting the phrase "motor-driven cycle" in its place.

(s) Section 2600.1 (18 DCMR § 2600.1) is amended as follows:

(1) Strike the phrase "Motorized bicycles (See also violations for other vehicles) Operating unregistered minibike or motorized bicycle [§ 411.1] $50" and insert the phrase "Motorized bicycles Operating in excess of 20 miles per hour [§ 9901] $100" in its place.

(2) Insert the phrase "Motor-driven cycle (see also violations for other vehicles) Failure to wear protective helmet while riding a motor-driven cycle. [§ 2215] $75 Improper riding on [§ 2215] $25 Operating in excess of 30 miles per hour [§ 9901] $100" in between the "Motorcycles" and "No bus streets" infractions.

(t) Section 4019.11 (18 DCMR § 4019.11) is amended by striking the phrase "motor scooter" and inserting the phrase "motor-driven cycle" in its place.

(u) Section 4023.5 (18 DCMR § 4023.5) is amended by striking the phrase "motor scooter,".

(v) Section 9901 (18 DCMR § 9901) is amended as follows:

(1) The definition of "moped" is repealed.

(2) The definition of "motorcycle" is amended to read as follows:

"Motorcycle – a motor vehicle that has a seat or saddle for the use of the operator and has two (2) or three (3) wheels in contact with the ground. The term "motorcycle" does not include a tractor, a motor driven cycle or motorized bicycle unless operated at speeds in excess of thirty miles per hour (30 mph), or a three (3)-wheeled motor vehicle with a cab and windshield.".

(3) The definition of the term "motor-driven cycle" is amended to read as follows:

"Motor-driven cycle – a motor vehicle that has:

"(a) A seat or saddle for the use of the operator and has:

"(b) Two (2) or three (3) wheels in contact with the ground;

"(c) A gas, electric, or hybrid motor with a maximum piston or rotor displacement of fifty cubic centimeters (50 cc), or its equivalent, which will propel the device unassisted at a maximum speed no greater than thirty miles per hour (30 mph). A motor-driven cycle shall be a motorcycle when operated at speeds in excess of thirty miles per hour (30 mph) and the operator shall be required to have on his or her possession a valid motorcycle endorsement; and

"(d) A direct or automatic power drive system which requires no clutch or gear shift operation by the operator after the drive system is engaged with the power unit.".

(4) The definition of the term "Motorized Bicycle" is amended to read as follows:

"Motorized bicycle" – a vehicle that has:

"(a) A post mounted seat or saddle for each person that the device is designed and equipped to carry;

"(b) A vehicle with two (2) or three (3) wheels in contact with the ground, which are at least sixteen inches (16 in.) in diameter;

"(c) Fully operative pedals for human propulsion; and

"(d) A motor incapable of propelling the device at a speed of more than twenty miles per hour (20 mph) on level ground.

"A motorized bicycle shall be a motorcycle when operated by motor at speeds in excess of thirty miles per hour (30 mph) and the operator shall be required to have on his or her possession a valid motorcycle endorsement. A motorized bicycle shall be a motor-driven cycle when operated by motor at speeds in excess of twenty miles per hour (20 mph) and the operator shall be required to have on his or her possession a valid driver's license.".

Sec. 8. Fiscal impact statement.

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

Sec. 9. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 29, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 19-659

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 31, 2013

Codification District of Columbi Official Code 2001 Edition

Summer 2013

To amend An Act To enable the blind and the otherwise physically disabled to participate fully in the social and economic life of the District of Columbia to enable persons with physical and mental disabilities, accompanied by a service animal, to have equal access to public accommodations and conveyances, to ensure persons with physical and mental disabilities accompanied by a service animal have equal access to housing, and to clarify applicable definitions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Service Animals Access Amendment Act of 2012".

Sec. 2. An Act To enable the blind and the otherwise physically disabled to participate fully in the social and economic life of the District of Columbia, approved October 21, 1972 (86 Stat. 970; D.C. Official Code § 7-1001 *et seq.*), is amended as follows:

Amend § 7-1001

(a) Section 1 (D.C. Official Code § 7-1001) is amended by striking the phrase "The blind and other persons with physical disabilities" and inserting the phrase "Persons with physical or mental disabilities" in its place.

Amend § 7-1002

(b) Section 2 (D.C. Official Code § 7-1002) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "The blind and other persons with physical disabilities" and inserting the phrase "Persons with physical and mental disabilities" in its place.

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

"(b) Persons with physical or mental disabilities shall have the right to be accompanied by a service animal in any of the places, accommodations, or conveyances listed in subsection (a) of this section without being denied access because of the service animal. Such persons shall not be required to pay an extra charge for the service animal but shall be liable for any damage done to the premises or facilities by the service animal.".

(3) Subsection (c) is amended by striking the phrase "who is blind or deaf" and inserting the phrase "with physical or mental disabilities" in its place.

(4) A new subsection (d) is added to read as follows:

"(d) In making a determination that an individual qualifies under this section, a public accommodation or conveyance may make a reasonable inquiry as to an individual's need for a service animal but shall limit such inquiry to the following:

"(1) Whether the animal is required because of the individual's disability;

"(2) The function or purpose of the animal, including the task or work the animal has been trained to perform;

"(3) Whether the animal meets the definition of a service animal provided in section 8(5); and

"(4) Whether the animal is housebroken.".

(c) Section 5 (D.C. Official Code § 7-1006) is amended as follows: Amend § 7-1006

(1) Subsection (a) is amended by striking the phrase "Blind persons and other persons with physical disabilities" and inserting the phrase "Persons with physical or mental disabilities" in its place.

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

"(b) Persons with physical or mental disabilities who have a service animal shall be entitled to full and equal access to all housing accommodations referred to in this section without being denied access because of the service animal. Such persons shall not be required to pay an extra charge for the service animal but shall be liable for any damage done by the service animal.".

(3) A new subsection (d) is added to read as follows:

"(d) In making a determination that an individual qualifies under this section, a housing provider shall limit any inquiry to the minimum information and documentation necessary to establish that an individual meets the definition of persons with physical or mental disabilities provided in section 8(4) by requiring that a physician or other licensed healthcare professional verify that the individual meets the definition of persons with physical or mental disabilities. A housing provider may also require a person with a disability to demonstrate a nexus between his or her disability and the function that the service animal provides. A housing provider shall not inquire further into the nature or severity of the disability. A housing provider shall not require the individual to provide a description of the disability when making an eligibility determination. A housing provider shall not require the individual to provide eligibility documentation in less than 30 days.".

(d) Section 8 (D.C. Official Code § 7-1009) is amended as follows:

(1) Paragraph (4) is amended to read as follows:

"(4) The term "persons with physical or mental disabilities" refers to an individual who has a medically determinable physical or mental impairment that substantially limits the ability of one to assist one's self, to perform manual tasks, to engage in an occupation, to live independently, to walk, to see, or to hear.".

(2) Paragraph (5) is amended to read as follows:

"(5) The term "service animal" means an animal, permitted in the District under section 9(h)(1) of the Animal Control Act of 1979, effective October 18, 1979 (D.C.

ENROLLED ORIGINAL

Law 3-30; D.C. Official Code § 8-1808(h)(1)), including a guide dog, that is specially trained to assist a person who meets the definition of persons with physical or mental disabilities, and is one which a person with physical or mental disabilities relies on for disability-related assistance. The term also includes an animal in training by an organization that provides service animals to persons with physical or mental disabilities. The term does not encompass an animal whose sole purpose is to serve as a crime deterrent or that serves solely as a companion.".

(3) Paragraph (6)(B) is amended by striking the phrase "a person who is blind or has a physical disability" and inserting the phrase "persons with physical or mental disabilities" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
January 31, 2013

ENROLLED ORIGINAL

Codification
District of Columbi
Official Code
2001 Edition

Summer 2013

AN ACT

D.C. ACT 19-660

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

FEBRUARY 4, 2013

To require the Mayor to create a program that will fund and manage the installation of backwater valves in certain eligible commercial and residential properties in Bloomingdale and LeDroit Park, to provide an appeal process for property owners who have been determined ineligible for the backwater valve program, to require the Mayor to develop a cleanup plan that promptly cleans public streets and walkways that have been flooded by excess sewage and stormwater, to require the District Department of Transportation ("DDOT") and the Department of Public Works to make available sandbags to commercial and residential properties in Bloomingdale and LeDroit Park, and to require the District of Columbia Water and Sewer Authority to conduct a study of Rhode Island Avenue and consult with DDOT to determine whether the structure of the road can be changed to mitigate flooding.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Bloomingdale and LeDroit Park Backwater Valve and Sandbag Act of 2012".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to section 202(a) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.02(a)).

(2) "Backwater valve" means a device installed in the building drain or branch of the building drain that prevents the backflow of water and sewage into the building's drainage system.

(3) "Bloomingdale" means the area defined by the following boundaries: starting at North Capitol Street, N.W., south to Florida Avenue, N.W., northwest to 2nd Street, N.W., north to Bryant Street, N.W., northeast to 1st Street, N.W., north to Channing Street, N.W., east to North Capitol Street, N.W.

(4) "DDOT" means the District Department of Transportation.

(5) "DOH" means the Department of Health.

(6) "DPW" means the Department of Public Works.

(7) "LeDroit Park" means the area defined by the following boundaries: starting at Bryant Street, N.W., east to 2nd Street, N.W., south to Rhode Island Avenue, N.W., southwest to Florida Avenue, N.W., northwest to U Street, N.W., west to Vermont Avenue, N.W., northeast to Florida Avenue, N.W., northwest to Barry Place, N.W., east to Georgia Avenue, N.W., south to Bryant Street, N.W.

(8) "Mayor's Task Force" means the task force established to investigate the causes of flooding in the Bloomingdale and LeDroit Park areas for the purpose of suggesting remedial actions, as set forth in Mayor's Order 2012-132, dated August 21, 2012 (59 DCR 10549).

(9) "Public street" or "street" means a public street, alley, or public right-of-way, recorded as a street, road, or highway in the records of the Office of the Surveyor and owned by or under the administrative control or jurisdiction of the District of Columbia.

(10) "Public walkway" or "walkway" means a public sidewalk or walkway owned by or under the administrative control or jurisdiction of the District of Columbia.

(11) "Program" means the backwater valve program established in section 3.

(12) "Sewer-line backup" means a wastewater backup into a building, which is caused by blockages, flow conditions, or malfunctions within the sewer system. Backup does not include wastewater backups resulting from flow conditions caused by overland flooding or blockages, flow conditions, or malfunctions of a private sewer lateral or internal building plumbing.

(13) "Sewershed" means a geographic and or hydrologic region, or basin, in which wastewater and or stormwater flows are conveyed to a single point, or outlet, before being conveyed elsewhere.

Sec. 3. Backwater valve program.

(a) Within 45 days of the effective date of this act, the Mayor shall establish a program to manage the installation of backwater valves in commercial and residential properties located in Bloomingdale and LeDroit Park that meet the eligibility requirements established in this section.

(b) The Program shall pay the costs associated with the purchase and installation of backwater valves in commercial and residential properties in Bloomingdale and LeDroit Park determined eligible pursuant to this section; provided, that the costs of restoring a property that may be incurred by the installation of a backwater valve shall be the sole responsibility of the property owner.

(c) The Mayor shall develop a proposed budget for the Program and shall submit it to the Council within 45 days of the effective date of this act.

(d)(1) The Program shall:

(A) Coordinate with the Authority to determine which properties in Bloomingdale and LeDroit Park are eligible for the installation of backwater valves;

(B) Develop additional eligibility requirements as needed;

(C) Inform all commercial and residential property owners in Bloomingdale and LeDroit Park of the establishment of the Program within 60 days of the effective date of this act;

(D) Create a system to receive and process applications for the purchase and installation of backwater valves in commercial and residential properties located in Bloomingdale or LeDroit Park determined eligible for the Program;

(E) Notify a property owner, in writing, whether his or her property is eligible for a backwater valve pursuant to section 3(b) within 30 days of receiving a property owner's application; and

(F) Develop additional Program requirements as needed

(2) In determining whether a property shall be eligible for a backwater valve, a property owner shall be required to submit a written application to the Program along with any requested supporting documentation.

(3) In determining whether a property shall be eligible for a backwater valve, the Program shall consider:

(A) The number of times the property has been subjected to damage as a result of a sewer-line backup;

(B) The likelihood of future property damage to the property as a result of a sewer-line backup; and

(C) The topography and elevation of the property.

(4) Notwithstanding paragraph (1)(B) of this subsection, in determining whether a property is eligible, the Program shall not consider the income or assets of the property owner.

(5) Nothing in this subsection shall be construed to exclude from eligibility a District property that is not in compliance with section P3008 of the 2006 International Residential Code or section 715 of the 2006 International Plumbing Code.

Sec. 4. Appeals.

(a) The owner of a commercial or residential property determined ineligible for a backwater valve pursuant to section 3(b) may appeal the decision within 30 days of receiving the decision by submitting a written appeal to the Director of the agency assigned by the Mayor to manage the Program created in section 3(a).

(b) The Director shall issue a final written decision regarding a property owner's appeal within 30 days of receiving the appeal.

Sec. 5. Stormwater and sewage cleanup plan.

(a) Within 180 days of the effective date of this act, the Mayor shall develop a cleanup plan to promptly clean areas of public streets and walkways that have been flooded by excess sewage, waste, or stormwater during a rainstorm.

(b) The Mayor shall coordinate with DOH to identify health hazards associated with exposure to raw sewage, waste, and contaminated water and consider those hazards in the development of a plan pursuant to subsection (a) of this section.

Sec. 6. Sandbag analysis and distribution.

(a) DPW shall make sandbags available to commercial and residential properties in Bloomingdale and LeDroit Park that have a natural inclination or tendency to experience overland flooding.

(b) Pursuant to subsection (a) of this section, DPW shall assist senior citizens and persons with disabilities who request aid with procuring sandbags in preparation for heavy rain.

Sec. 7. Analysis of Rhode Island Avenue.

DDOT shall determine whether certain sections of Rhode Island Avenue shall be shut down when heavy rain occurs until a more permanent solution is devised by the Mayor's Task Force.

Sec. 8. Applicability.

This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Sec. 9. Sunset.

This act shall expire on September 30, 2014.

Sec. 10. Fiscal impact statement.

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

Sec. 11. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
February 4, 2013

ENROLLED ORIGINAL

A RESOLUTION

20-36

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To approve multiyear Contract No. DCHT-2012-C-0014 with Huron Consulting Services, LLC, to implement turnaround operations for the Not-For-Profit Hospital Corporation, commonly known as the United Medical Center.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. DCHT-2012-C-0014 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. DCHT-2012-C-0014, a multiyear contract with Huron Consulting Services, LLC, to implement turnaround operations for the Not-For-Profit Hospital Corporation, in the amount of $12,759,970.

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

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

Sec. 5. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-37

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency, due to Congressional review, with respect to the need to authorize a building owner or tenant of a building owner to reconstruct building projections in public space following the completion of the 18th Street streetscape construction project.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Streetscape Reconstruction Congressional Review Emergency Declaration Resolution of 2013".

Sec. 2. (a) More than 20 ongoing and soon-to-begin roadway construction projects threaten the right of small and local property owners and business owners to the ongoing enjoyment of bay windows, staircases, patios, sidewalk cafes, and other building projections which exist or existed in public space before the commencement of streetscape projects.

(b) Small and local businesses and property owners are disproportionately affected by roadway construction because they are less likely to have the resources to survive a period of reduced income during the construction period.

(c) The impact on small business owners is compounded if they are unable or delayed in reconstructing building projections that may be integral to the operation of their businesses.

(d) Businesses are particularly vulnerable during this economic downturn and have fewer resources to suffer through the delays and expenses that might be incurred in seeking approval to reconstruct building projections after streetscape projects.

(e) Emergency legislation passed by the Council on November 15, 2012 will expire on March 2, 2013, and temporary legislation to be approved by Congress will not take effect until March 22, 2013, resulting in a 20-day gap between effective legislation.

(f) This emergency act is necessary to prevent a gap in the legal authority.

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 Streetscape Reconstruction Congressional Review Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-38

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency with respect to the need to allow the District of Columbia Board of Ethics and Government Accountability to issue advisory opinions upon its own initiative and expand the range of penalties that may be imposed for a violation of the Code of Conduct.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Ethics and Government Accountability Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists an emergency regarding the authority of the District of Columbia Board of Ethics and Government Accountability (the "Ethics Board") to issue advisory opinions upon its own initiative.

(b) Although section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), grants the Ethics Board the authority to issue advisory opinions, that authority only extends to circumstances in which an application is made by an employee or public official for such an opinion.

(c) The Ethics Board has requested clarification as to whether it may issue advisory opinions upon its own initiative.

(d) Expressly granting the Ethics Board authority to issue advisory opinions upon its own initiative would allow it to provide prospective guidance on the laws over which it has jurisdiction and would better inform the public of the District's ethics standards.

(e) In addition, expanding the range of penalties that may be imposed for a violation of the Code of Conduct allows the Ethics Board to impose a penalty commensurate with the seriousness of the violation.

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 Board of Ethics and Government Accountability Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-39

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency with respect to the District's prohibition on government employees' engagement in political activity.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Prohibition on Government Employee Engagement in Political Activity Emergency Declaration Resolution of 2013".

Sec. 2. (a) On December 28, 2012, the President of the United States signed the Hatch Act Modernization Act of 2012, which removed the District government from coverage under the federal Hatch Act, which affects the political rights of government employees.

(b) In light of the changes made by the Hatch Act Modernization Act of 2012, it is necessary to clarify the restrictions on government employees' engagement in political activity.

(c) This emergency legislation addresses the immediate need to add clarifying definitions to the law, clarify that the newly established District of Columbia Board of Ethics and Government Accountability shall enforce its provisions, address non-District elections, and provide enforcement of the act through the Code of Conduct.

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 Prohibition on Government Employee Engagement in Political Activity Emergency Amendment Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-40

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency with respect to the need to approve Modification Nos. 4, 5, 6, 7, 8, and 9 and proposed Modification Nos. 10 and 11 to Contract DCGD-2009-C-0036 with CTB/McGraw-Hill, LLC, for services related to the development and implementation of the District of Columbia Comprehensive Assessment System, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract DCGD-2009-C-0036 Modifications Approval and Payment Authorization Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists a need to approve Modification Nos. 4, 5, 6, 7, 8, and 9 and proposed Modification Nos. 10 and 11 to Contract DCGD-2009-C-0036 with CTB/McGraw-Hill, LLC, for services related to the development and implementation of the District of Columbia Comprehensive Assessment System and to authorize payment for the goods and services received and to be received under the contract.

(b) On June 30, 2011, by Modification No. 4, the Office of Contracting and Procurement ("OCP") exercised a partial option of option year 2, in the amount of $949,266.20 for the period from July 1, 2011, through October 15, 2011.

(c) On October 14, 2011, by Modification No. 5, the OCP exercised another partial option of option year 2, in the amount of $949,266.20 for the period from October 16, 2011, through December 31, 2011.

(d) On December 30, 2011, by Modification No. 6, the OCP exercised the remainder of option year 2, in the amount of $2,944,325.50 for the period from January 1, 2012, through June 30, 2012.

(e) On June 27, 2012, by Modification No. 7, the OCP exercised a partial option of option year 3, in the amount of $835,469.25 for the period from July 1, 2012, through September 30, 2012.

(f) On September 28, 2012, by Modification No. 8, the OCP exercised another partial option of option year 3, in the amount of $836,907.75 for the period from October 1, 2012, through December 31, 2012.

ENROLLED ORIGINAL

(g) On December 18, 2012, by Modification No. 9, the OCP exercised another partial option of option year 3, in the amount of $560,000 for the period from January 1, 2013, through February 28, 2013.

(h) The OCP now seeks Council approval to approve Modification No. 10, which will modify Contract DCGD-2009-C-0036 to increase the requirements under the contract to include new common core state standards and replace the price schedule for option years 2, 3, and 4. Modification No. 10 increases the price for services performed under option year 2 by $2,515,995.95.

(i) The OCP also seeks Council approval of Modification No. 11, which will exercise the remainder of option year 3, in the amount of $3,826,568.18 for the period from March 1, 2013, through June 30, 2013.

(j) Council approval is necessary to allow the continuation of these vital services. Without this approval, CTB/McGraw-Hill, LLC, cannot be paid for services provided in excess of $1 million for each of these option years.

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 DCGD-2009-C-0036 Modifications Approval and Payment Authorization Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-41

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency with respect to the need to approve contract modifications to Contract No. GAGA-2009-C-0051 with City Year, Inc., to continue the Whole School Whole Child program in 12 public schools to provide continuous and intensive support in those schools and to authorize payment for services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Contract No. GAGA-2009-C-0051 Contract Modifications Approval and Payment Authorization Emergency Declaration Resolution of 2013".

Sec. 2. (a) There exists an immediate need to approve Contract Modifications Nos.10, 10A, 10B, 10C, 10D, and 11 to Contract No. GAGA-2009-C-0051 with City Year, Inc., to continue the Whole School Whole Child program in 12 public schools and to authorize payment for the services received and to be received under the contract.

(b) The District of Columbia Public Schools ("DCPS") exercised, as a necessary government function and in the best interest of the DCPS to avoid disruption of services at 12 schools, a partial option year 4 from:

(1) October 1, 2012, through November 30, 2012, in the amount of $257,778;

(2) December 1, 2012, through January 31, 2013, in the amount of $257,778;

(3) February 1, 2013, through February 28, 2013, in the amount of $128,889; and

(4) March 1, 2013, through March 31, 2013, in the amount of $128,889.

(c) Council approval is necessary to allow the continuation and expansion of the Whole School Whole Child program for option year 4 from October 1, 2012, through September 30, 2013, in the amount of $1.16 million.

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. GAGA-2009-C-0051 Contract Modifications Approval and Payment Authorization Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-42

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To declare the existence of an emergency with respect to the need to approve emergency rules to amend certain moving violation fines by extending emergency rulemaking that became effective on November 5, 2012 and decreased the fines for driving up to 10 miles per hour in excess of the speed limit and 11 to 15 miles per hour in excess of the speed limit and increased the fine for driving over 25 miles per hour in excess of the speed limit.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Civil Fines For Moving Infractions Emergency Declaration Resolution of 2013".

Sec. 2. (a) This emergency rulemaking is an extension of emergency rulemaking that was adopted on November 2, 2012, became effective on November 5, 2012, and was published along with a Notice of Proposed Rulemaking in the *D.C. Register* on November 9, 2012 at 59 DCR 12903. The November 2012 emergency rulemaking will expire on March 2, 2013.

(b) On December 18, 2012, the Council passed the Civil Fines for Moving Infractions Disapproval Resolution of 2012, effective December 18, 2012 (Res. 19-732; 60 DCR 293), which disapproved the proposed rulemaking.

(c) Also on December 18, 2012, the Council passed the Safety-Based Traffic Enforcement Amendment Emergency Act of 2012, signed by the Mayor on January 19, 2013 (D.C. Act 19-635) ("Traffic Enforcement Emergency Act"), which sets forth a different set of fines than the emergency and proposed rulemaking published on November 9, 2012, and requires that the schedule of speeding fines may not be amended until the Council has approved proposed rules or proposed rules have been deemed approved. Pursuant to section 401(b)(1) of the Traffic Enforcement Emergency Act, the applicable fine amounts set forth in that act shall not apply before April 1, 2013, leaving a gap between the expiration of the fines adopted in the emergency rulemaking on November 2, 2012 and the effective date of the fines set forth in the Traffic Enforcement Emergency Act.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Civil Fines For Moving Infractions Emergency Approval Resolution of 2013 be adopted on an emergency basis.

ENROLLED ORIGINAL

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-43

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 19, 2013

To approve, on an emergency basis, emergency rules to amend certain moving violation fines by extending emergency rulemaking that became effective on November 5, 2012 and decreased the fines for driving up to 10 miles per hour in excess of the speed limit and 11 to 15 miles per hour in excess of the speed limit and increased the fine for driving over 25 miles per hour in excess of the speed limit.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Civil Fines For Moving Infractions Emergency Approval Resolution of 2013".

Sec. 2. Pursuant to section 105(a)(1) of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.05), the Mayor, on February 13, 2013, transmitted to the Council proposed emergency rules to extend the modification of certain speed-related fines until March 31, 2013. The Council approves the proposed emergency rules to amend Chapter 26 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR§ 2600 *et seq*.).

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

20-44

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 25, 2013

To formally reprimand Councilmember Jim Graham for conduct adversely affecting the confidence of the public in the integrity of the government.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Council Reprimand of Councilmember Jim Graham Resolution of 2013".

Sec. 2. (a) Inherent in the position of Member of the Council of the District of Columbia is the responsibility to act, at all times, with the highest standards of ethical conduct, honesty, integrity, and impartiality. A Councilmember must act in the public interest. A Councilmember must perform the duties of the office to which he or she is elected in a manner that maintains the confidence of the public in the integrity of the District government. A Councilmember must take no action that violates or threatens the public trust. These governing principles are embodied in District statute and regulations, in the Council of the District of Columbia Code of Official Conduct, and are incontrovertible to holding elected office.

(b)(1) Section 1801(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 § 1-618.01(a)) ("CMPA"), is applicable to Councilmembers. It requires that:

> Each employee, member of a board or commission, or a public official of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(2) This requirement of law is reinforced in the Council's Code of Official Conduct, which states, in part, that: "Councilmembers and staff shall maintain a high level of ethical conduct in connection with the performance of their official duties and shall refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government…." Rule 202(a) of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 20, Resolution of 2013, effective January 2, 2013 (Res. 20-1; 60 DCR 627) ("Council Rules").

ENROLLED ORIGINAL

(c) Section 6B-1803.1(a) of the District of Columbia Municipal Regulations ("DCMR"), which sets forth the employee conduct regulations applicable to all District of Columbia employees, requires:

> An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in or create the appearance of the following:
> (1) Using public office for private gain;
> (2) Giving preferential treatment to any person;
> (3) Impeding government efficiency or economy;
> (4) Losing complete independence or impartiality;
> (5) Making a government decision outside official channels; or
> (6) Affecting adversely the confidence of the public in the integrity of government.

(d) Adherence to the ethical principles underlying these statutes and regulations is vital to maintaining the public trust on which the Council of the District of Columbia operates.

Sec. 3. (a) Rule 654 of the Council Rules provides the Council with a formal process for issuing a reprimand to one of its members "based on a particular action or set of actions that is determined to be in violation of the Council's Rules, law, or policy. . . ." A reprimand is a formal statement of the Council officially disapproving the conduct of one of its members.

(b) The Council has a duty to consider reprimanding one of its members when it determines that that member acted contrary to the CMPA, the employee conduct regulations embodied in the DCMR, or the Council Rules. A reprimand should not be easily adopted, but must be considered when the Council, as a body, is embarrassed by a member's actions, the propriety of those actions is questionable, and the public confidence in the Council is harmed.

Sec. 4. (a) In 2008, while serving as both the Ward 1 representative to the Council of the District of Columbia and as a member of the Board of Directors for the Washington Metropolitan Area Transit Authority ("WMATA"), Councilmember Jim Graham was a voting member in the process of 2 separate projects, having a vote to approve or reject the underlying contract for each project. The first was a property development project before WMATA, the second a lottery contract before the Council.

(b) Two distinct companies bidding on each of the contracts, Banneker Ventures, which sought the WMATA development project, and W2Tech (which formed a joint venture with another entity called W2I), which sought to administer the District's lottery, shared a common principal in Warren Williams. Councilmember Graham stated repeatedly and publicly his dislike for Mr. Williams.

(c) On or about May 29, 2008, a meeting was arranged between Councilmember Graham and Mr. Williams, with others in attendance. From the depositions of those present at the meeting, it appears that Councilmember Graham used the occasion to vent his personal issues with Mr. Williams. However, it is alleged that Councilmember Graham also stated at this

meeting his willingness to barter his support. Specifically, that he would support Mr. Williams for the lottery contract if Mr. Williams withdrew from the WMATA development project.

(d) Although Councilmember Graham minimizes the significance of his remark, 3 separate reports conclude that the remark was made:

(1) In its *Report of Investigation into the Office of the Chief Financial Officer's Lottery Contract Award*, OIG No. 2010-0492 ("OIG Report"), dated January 20, 2012, the District Government's Inspector General found:

> During the course of W2I's meeting with a councilmember, who at the time also was a member of the board of a quasi-public entity, the councilmember indicated that he could not or was not inclined to go along with voting for or awarding the lottery contract to W2I because W2I's participating local partner had been awarded a contract with the quasi-public entity. The councilmember told W2I executives that he would support W2I's bid for the lottery contract if its local partner withdrew from the quasi-public entity's contract because he could not give the local partner everything.
> OIG Report at 7.

(2) In its *Report of Investigation for the Board of Directors for the Washington Metropolitan Area Transit Authority* ("WMATA Report"), dated October 11, 2012, the law firm of Cadwalader, Wickersham & Taft LLP found:

> Although Councilmember Graham's exact statements at the May 29, 2008 meeting are unclear ... it appears that Councilmember Graham suggested or, at the very least, implied that he would consider supporting W2I's bid for the lottery before the D.C. Council only if Banneker Ventures withdrew from the Florida Avenue Project. Indeed, Councilmember Graham has not outright denied making the statement, instead positing that he may have said something in passing that was misinterpreted by the participants of the May 29, 2008 meeting.
> WMATA Report at 40.

(3) In its *Memorandum Opinion In Re: Jim Graham*, Case No.: AI-002-12 ("BEGA Opinion"), dated February 7, 2013, the District of Columbia Board of Ethics and Government Accountability ("BEGA") stated:

> The weight of the evidence supports a finding by substantial evidence that Councilmember Graham did, in fact, offer to support Mr. Williams and W2I if he and Banneker Ventures withdrew from the WMATA development project.
> BEGA Opinion at 13.

BEGA's review was based on the WMATA Report, the evidence amassed in support of that report, Councilmember Graham's written response to BEGA, and the arguments made by Mr. Graham's counsel before BEGA.

(e) The meeting participants, as evidenced by their sworn testimony in depositions and supported by contemporaneous e-mails and communications, took Mr. Graham's statement to be a *quid pro quo* offer with regard to the 2 pending contracts. This understanding is expressed in e-mails to Councilmember Graham, to which he did not express surprise or make an effort to correct.

(f) In addition to his dislike for Mr. Williams, it has also been suggested that Councilmember Graham sought Banneker Ventures' withdrawal from the WMATA development project because of his preference for another development company, LaKritz Adler.

(g) Councilmember Graham's preference for LaKritz Adler, which was not the preference of the WMATA Board as a whole, appears initially to have taken the form of his pressuring Banneker Ventures to withdraw from the project. However, when that appeared unlikely, Councilmember Graham appeared to pressure Banneker to bring on LaKritz Adler as a partner or purchase LaKritz Adler's interest in an adjacent property.

Sec. 5. (a) Within several days of the May 29th meeting, an attorney with Mr. Williams of W2I sent an email to his clients in which he said, "this is complete bs [sic] and we are getting very close to corruption, bid rigging, and other inappropriate conduct ... perhaps the us atty [sic] should make the call on this by speaking with Mr. Graham about his request. Am I clear on th[i]s. To even consider it is placing each of us at risk. Period." BEGA Opinion at 11.

(b) Councilmember Graham's conduct in relation to the approval process for the WMATA Florida Avenue development project and the award of the District's lottery contract prompted 3 independent investigations:

(1) OIG Report: While not the primary scope of the investigation, the Inspector General evaluated allegations regarding Councilmember Graham's conduct. Although the Inspector General concluded that he did not find sufficient evidence to support or conclude that the Councilmember acted improperly, he did state that "the councilmember's action, in his capacity as a councilmember and as a member of the quasi-public entity's board, may give the appearance that he lost complete independence or impartiality, and may have affected adversely the confidence of the public in the integrity of government… ." OIG Report at 7.

(2) WMATA Report: A report prepared by the law firm of Cadwalader, Wickersham & Taft LLP at the request of WMATA concluded that "Councilmember Graham acted in a manner contrary to [WMATA's] Standards of Conduct" in that he "pitted the interests of the Council of the District of Columbia against the interests of [WMATA], and thereby unnecessarily created a conflict of interest, or, at the least, the appearance of a conflict of interest" and that he "acted contrary to his duty to appear impartial." As a result, the report concluded, "Councilmember Graham's action resulted in a breach of his duty to place the public interest foremost in any dealings involving [WMATA]." WMATA Report at 53.

(3) BEGA Opinion: The Memorandum Opinion issued by BEGA on February 7, 2013, based only on a preliminary investigation, concludes that there is a "substantial body of

evidence" suggesting that Councilmember Graham "violated at least three provisions of the District of Columbia Code of Conduct." BEGA Opinion at 26.

Sec. 6. (a) Only last year, legislation was enacted to establish the District of Columbia Board of Ethics and Government Accountability (D.C. Law 19-124). The committee report accompanying this legislation makes clear the legislative intent: "to ensure that the ethics reforms contemplated by this bill will be enforced vigorously and without fear of reprisal or undue influence, the Committee establishes an independent Board of Ethics and Government Accountability." Report on Bill 19-511, the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, December 5, 2011, at 21.

(b)(1) The BEGA notified Councilmember Graham, in writing, on November 14, 2012, that it had commenced a preliminary investigation into his conduct as described in the October 11, 2012 WMATA Report. BEGA requested that Councilmember Graham explain: (1) whether he disputed any of the factual findings contained in the WMATA Report; and (2) whether he believed his conduct violated the District's Code of Conduct for employees. BEGA Opinion at 2.

(2) Through counsel, Councilmember Graham responded in a letter dated December 11, 2012, that he disagreed with the core factual finding in the WMATA Report that he offered to support the bidder's effort to secure the lottery contract if the bidder simultaneously withdrew from the WMATA project. He further argued that, even if true, his actions would not be a violation of the District's Code of Conduct. BEGA Opinion at 2-3.

(c) Importantly, BEGA disagreed. The conclusion of BEGA's 27-page Memorandum Opinion is that the allegations do comprise conduct that violates 3 different provisions in the District of Columbia Code of Conduct.

(d) For jurisdictional reasons, BEGA declined to proceed to a formal investigation, but it found preliminarily "there to be sufficient evidence to conclude that Councilmember Graham committed one or more violations of the District of Columbia Code of Conduct, justifying a formal investigation... ." BEGA Opinion at 4. Specifically, the BEGA Opinion states that:

(1) Councilmember Graham displayed a complete lack of impartiality in violation of 6B DCMR § 1803.1(a)(4), as his actions were motivated in significant part by personal animus against Mr. Williams and a desire to secure a contract for a particular company. BEGA Opinion at 17-18;

(2) Councilmember Graham gave preferential treatment in violation of 6B DCMR § 1803.1(a)(2), in that he tried to secure a role for LaKritz Adler in the WMATA development deal months after LaKritz Adler was eliminated from the competition. BEGA Opinion at 19;

(3) Councilmember Graham engaged in conduct adversely affecting the confidence of the public in the integrity of government in violation of 6B DCMR § 1803.1(a)(6), by his "sharp-elbowed political behavior." BEGA Opinion at 19-20.

ENROLLED ORIGINAL

Sec. 7. (a) Councilmember Graham's actions constitute a clear violation of Council Rule 202(a), which requires that, as a Councilmember, he "maintain a high level of ethical conduct" and "refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government." The Council finds, following 2 years of controversy, 3 investigations, and widespread public comments, that Councilmember Graham's actions have adversely affected the confidence of the public in the integrity of the District government.

(b) It should be noted that while the violations discussed in this resolution are serious and a breach of the public trust, there is no indication of criminal conduct by Councilmember Graham.

Sec. 8. To maintain the confidence of the public in the integrity of the legislative branch of government, the Council expresses disapproval of the conduct of Councilmember Jim Graham as detailed in this resolution, and hereby reprimands Councilmember Jim Graham for affecting adversely the confidence of the public in the integrity of government, in violation of D.C. Official Code § 1-618.01(a), 6B DCMR § 1803.1(a)(6), and Council Rule 202.

Sec. 9. The Council shall transmit a copy of this resolution, upon its adoption, to Councilmember Jim Graham.

Sec. 10. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

20-45

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

February 25, 2013

To amend the Rules of Organization and Procedure for the Council of the District of Columbia , Council Period 20, Resolution of 2013 to modify the committee jurisdiction with regard to the regulation of alcoholic beverages.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Council Period 20 Rules Committee Jurisdiction Amendment Resolution of 2013".

Sec. 2. The Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 20, Resolution of 2013, effective January 2, 2013 (Res. 20-1; 60 DCR 627), is amended as follows:

(a) Section 232 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "consumer and regulatory affairs" and inserting the phrase "consumer and regulatory affairs; the regulation of alcoholic beverages" in its place.

(2) Subsection (b) is amended by adding the phrase "Alcoholic Beverage Regulation Administration" to the beginning of the enumerated list of agencies.

(b) Section 238 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "disability services; and the regulation of alcoholic beverages" and inserting the phrase "and disability services" in its place.

(2) Subsection (b) is amended by striking the phrase "Alcoholic Beverage Regulation Administration" from the enumerated list of agencies.

Sec. 3. This resolution shall take effect immediately.

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

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

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

ANNOUNCES A PUBLIC HEARING ON

BILL 20-13, THE "ATTORNEY GENERAL SUBPOENA AUTHORITY AUTHORIZATION AMENDMENT ACT OF 2013"

and

BILL 20-134, THE "ELECTED ATTORNEY GENERAL IMPLEMENTATION AND LEGAL SERVICE ESTABLISHMENT AMENDMENT ACT OF 2013"

Tuesday, March 26, 2013
10:30 A.M.
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, announce a public hearing on Bill 20-13, the "Attorney General Subpoena Authority Authorization Amendment Act of 2013" and Bill 20-134, the "Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013". The public hearing will be held on Tuesday, March 26, 2013, beginning at 10:30 a.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, DC 20004.

The stated purpose of Bill 20-13 is to clarify and broaden the meaning of municipal matter and authorize the Office of the Attorney General (OAG) to issue subpoenas for any matter being investigated. Bill 20-134 would create the Mayor's Office of Legal Counsel (MOLC) and the position of Director; provide for reporting, removal, demotion, termination, and appointment of attorneys working as or for General Counsels; provide for reporting and discipline of attorneys working in agencies; provide training, and establish performance standards; adopt rules to transfer attorneys from OAG to agencies, provide for compensation, transfer of resources, and applicability of attorney-client privilege; and transfer the Child Support Services Division to the Department of Human Services.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 727-8204 or tshuford@dccouncil.us, and provide their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Monday, March 25, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for public witnesses.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 p.m. on Tuesday, April 9, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, DC, 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on Health
Notice of Public Hearing

1350 Pennsylvania Ave., N.W., Suite 115 Washington, D.C. 20004

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

on

Bill 20-128, the "Medical Marijuana Cultivation Center Amendment Act of 2013"

and

Bill 20-30, the "Medical Marijuana Cultivation Center and Dispensary Location Restriction Amendment Act of 2013"

on

Wednesday, March 20, 2013
1:00 p.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 hearing on Bill 20-128, the "Community Renewables Energy Act of 2012" and Bill 20-30, the "Medical Marijuana Cultivation Center and Dispensary Location Restriction Amendment Act of 2013." The public hearing will be held at 1:00 p.m. on Wednesday, March 20, 2013 in Room 412 of the John A. Wilson Building.

Bills 20-128 and 20-30 have been referred to the Committee on Health. The stated purpose of Bill 20-128 is to prohibit locating medical marijuana cultivation centers in Retail Priority Areas. The stated purpose of Bill 20-30 is to limit the number of medical marijuana cultivation centers and dispensaries that may locate in an election ward in the District of Columbia.

Those who wish to testify should contact Mr. Ronald King, Senior Policy Advisor, at (202) 741-0909 or via e-mail at rking@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, March 19, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, March 19th, 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 either to Mr. Ronald King, or to Ms. Nyasha Smith, Secretary to the Council, Room 5 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:30 p.m. on Wednesday, April 3, 2013.

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

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

RESCHEDULED

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

ANNOUNCES A PUBLIC HEARING ON

BILL 20-35, THE "DOMESTIC VIOLENCE HOTLINE ESTABLISHMENT ACT OF 2013"

Monday, March 25, 2013
11:00 am
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-35, the "Domestic Violence Hotline Establishment Act of 2013". The hearing will be held on Monday, March 25, 2013, beginning at 11:00 a.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, DC 20004. **This hearing was rescheduled from Monday, March 4, 2013.**

The purpose of this hearing is to receive public comments on Bill 20-35, which would require the Office of Victim Services to establish and provide a 24-hour, live-assistance, direct toll-free hotline to services for victims and potential victims of domestic violence.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Friday, March 22, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 pm Monday, April 8, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, DC, 20004, or via email at tshuford@dccouncil.us.

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

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

on

Bill 20-142, "JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013"
on

Tuesday, March 26, 2013
11:00 a.m., Room 500, 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 hearing on Bill 20-142, the "JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013." The public hearing will be held at 11:00 a.m. on Tuesday, March 26, 2013 in Room 500 of the John A. Wilson Building.

Bill 20-142 has been referred to the Committee on Health. The stated purpose of Bill 20-142 is to amend the Vital Records Act of 1981 to require the Registrar to issue a new certificate of birth designating a new gender for any individual who provides a written request and signed affidavit from a licensed health-care provider that the individual has undergone a gender transition, to require that an original certificate be sealed when a new certificate of birth is issued, and to amend section 16-2501 of the District of Columbia Official Code to exempt an individual from the publication notification requirement for a name change that is requested in conjunction with a request to change the individual's gender designation.

Those who wish to testify should contact Ronald King, Senior Policy Advisor, at (202) 741-0909 or via e-mail at rking@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, March 25, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, March 25, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Mr. Ronald King, Senior Policy Advisor, Room 115 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, April 9th, 2013.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004 **ABBREVIATED**

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 20-60, Board of Zoning Adjustment Mr. Lloyd J. Jordan, Esquire Confirmation Resolution of 2013

on

Friday, March 15, 2013
11:30 a.m., Council Chamber, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on PR 20-60, the "Board of Zoning Adjustment Mr. Lloyd J. Jordan, Esquire Confirmation Resolution of 2013." The public hearing will be held Friday, March 15, 2013, at 11:30 a.m. in the Council Chamber of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW. **This notice of a public hearing is abbreviated pursuant to Council Rule 421(c)(2). Due to an error on the resolution adopting the ending date of the nominee's prior term, the prior term has expired and the Council must act quickly to approve the re-appointment prior to the expiration of the legal holdover period.**

The stated purpose of PR 20-60 is to confirm the reappointment of Lloyd J. Jordan, Esquire as a member of the Board of Zoning Adjustment. The Board of Zoning Adjustment ("Board") is an independent, quasi-judicial body with the ability to grant relief from the strict application of the District's zoning regulations in the form of variances, to grant special exceptions in approving certain land uses, and to hear appeals from actions taken by the Zoning Administrator of the Department of Consumer and Regulatory Affairs. The purpose of this hearing is to receive testimony from government and public witnesses as to the fitness of this nominee for the Board.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Wednesday, March 13, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on March 13, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, March 18, 2013.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 20-87, Walter Reed Army Medical Center Small Area Plan Approval Resolution of 2013

on

Tuesday, March 26, 2013
11:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing of the Committee of the Whole on PR 20-87, the "Walter Reed Army Medical Center Small Area Plan Approval Resolution of 2013." The public hearing will be held Tuesday, March 26, 2013, at 11:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of PR 20-87 is to approve the proposed Walter Reed Army Medical Center Small Area Plan (SAP). The SAP was initiated by the Office of Planning in the spring of 2010, and is the product of substantial collaboration among community stakeholders and District agencies. The drafting of the SAP involved an October 16, 2012 mayoral hearing and more than ten public meetings that influenced inclusion of the following elements in the plan: comprehensive plan land use designation changes, transportation recommendations, and urban design guidelines.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Friday, March 22, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on March 22, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, April 9, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

The Wisconsin Avenue Upgrade/Streetscape Project

Wednesday, March 27, 2013
11:00 A.M.
Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On March 27, 2013 Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public Roundtable on Wisconsin Avenue Upgrade/Streetscape Project. The Roundtable will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

In 2006, the Office of Planning issued the Glover Park Commercial District Analysis Report, which included a set of recommendations for improving Wisconsin Avenue in Glover Park. Through the Wisconsin Avenue Upgrade/Streetscape Project, the District Department of Transportation has sought to implement the goals of this report and to improve the safety, traffic, pedestrian mobility, and retail accessibility of Wisconsin Avenue from the intersection of 34th Street to the intersection of Massachusetts Avenue.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on Wednesday, April 10, 2013.

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

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

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

on

PR20-63 – the "Commission on Fashion Arts and Events Katherine R. Limon Confirmation Resolution of 2013"

PR 20-64 – the "Commission on Fashion Arts and Events Mariessa R. Terrell Confirmation Resolution of 2013"

PR 20-65 –the "Commission on Fashion Arts and Events Patricia Elam Confirmation Resolution of 2013"

PR 20-66–the "Commission on Fashion Arts and Events Alida R. Sanchez Confirmation Resolution of 2013"

PR 20-67—the "Commission on Fashion Arts and Events Brian L. Evans Confirmation Resolution of 2013"

PR 20-68 – the "Commission on Fashion Arts and Events Janice D. Rankins Confirmation Resolution of 2013"

PR 20-69 – the "Commission on Fashion Arts and Events Michelle Shableski Confirmation Resolution of 2013"

PR 20-70 – the "Commission on Fashion Arts and Events Christine M. Brooks-Cropper Confirmation Resolution of 2013"

Friday, March 15, 2013
10 a.m., John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Vincent B. Orange, Sr. announces a public roundtable for the purpose of considering nominees for the DC Commission on Fashion Arts and Events. The public roundtable will be held at 10:00 a.m. on Friday, March 15, 2013 in Room 412 of the John A. Wilson Building

The stated purpose of the proposed resolutions is to confirm the following nominees for the DC Commission on Fashion Arts and Events: Ms. Katherine R. Limon, Ms. Mariessa R. Terrell, Ms. Patricia Elam, Ms. Alida R.

Sanchez, Mr. Brian L. Evans, Ms. Janice D. Rankins, Ms. Michelle Shableski, and Ms. Christine M. Brooks Cropper.

Those who wish to testify should contact Ms. Faye Caldwell at (202) 727-6683 or via e-mail at fcaldwell@dccouncil.us and furnish their name, address, telephone number, organizational affiliation and title (if any) by close of business March 8, 2013. Persons wishing to testify are encouraged to submit 20 copies of his/her written testimony. Witnesses should limit their testimony to three minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Caldwell in care of the Committee on Business, Consumer and Regulatory Affairs, Room 6, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will remain open until 12 O'clock noon March 29, 2013.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MARCH 6, 2013
2000 14TH STREET, N.W., SUITE 400S,
WASHINGTON, D.C. 20009

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

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00395; The Griffin Group, LLC, t/a Policy, 1902-1906 14th Street NW, License #76804, Retailer CR, ANC 2B
Failed to Maintain on Premises Three Years of Adequate Books and Records Showing All Sales, Purchase Invoices and Dispositions

Show Cause Hearing (Status) **9:30 AM**
Case # 11-CMP-00344; Lin's Entertainment, LLC, t/a Columbia Wine & Liquors, 1151 Bladensburg Road NE, License #60113, Retailer A, ANC 5D
Sold Go-Cups

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00597; Krakatoa, Inc., t/a Chief Ike's Mambo Room 1723 Columbia Road NW, License #17940, Retailer CT, ANC 1C
No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 12-AUD-00042; Pangean Investment Group, t/a 19th 1919 Pennsylvania Ave NW, License #78475, Retailer CR, ANC 2B
Failed to File Quarterly Statements (2nd Quarter 2012)

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00499; The Cheesecake Factory Restaurants, Inc., t/a The Cheesecake Factory, 5345 Wisconsin Ave NW, License #14760, Retailer CR ANC 3E
Failed to File Quarterly Statements (2nd Quarter 2012), Failed to Maintain on Premises Three Years of Adequate Books and Records Showing All Sales, Purchase Invoices and Dispositions

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00398; MT 617 Corporation, t/a Ming's, 617 H Street NW License #83415, Retailer CR, ANC 2C
Substantial Change (Operating After Hours)

Board's Calendar
Page -2- March 6, 2013

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00500;Asefu Alemayehu, t/a Yegna, 1920 9th Street NW License #74241, Retailer CT, ANC 1B
Substantial Change (Operating After Hours), Interfered with an ABRA Investigation

Show Cause Hearing (Status) **9:30 AM**
Case # 11-CMP-00372; TBM Holdings, LLC, t/a TruOrleans, 400 H Street NE License #86210, Retailer CR, ANC 6C
Violation of Settlement Agreement

Fact Finding Hearing (Status) **9:30 AM**
Case # 12-251-00370; Wilson Concepts, Inc., t/a Indulj, 1208 U Street NW License #79843, Retailer CT, ANC 1B
Update from Licensee regarding the Fact Finding Hearing that was held on December 13, 2013.

Show Cause Hearing **10:00 AM**
Case # 12-CMP-00044; 1819 14th Ventures, LLC, t/a El Centro D.F., 1819 14th Street NW, License #84847, Retailer CR, ANC 1B
Failed to Post License in a Conspicuous Place

Show Cause Hearing **11:00 AM**
Case # 11-251-00372; De Amigo, LLC, t/a Sesto Senso/Andulo/Spot/Lupe/MIA 1214 18th Street NW, License #81092, Retailer CT, ANC 2B
Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose, Failed to Follow Security Plan

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

Show Cause Hearing **1:30 PM**
Case # 12-251-00206; Garay Corporation, t/a Corina's Restaurant, 831 Kennedy Street NW, License #79873, Retailer CR, ANC 4D
Operating After Board Approved Hours

Show Cause Hearing **2:30 PM**
Case # 11-251-00216, 11-251-00204, 11-251-00204(a);Inner Circle 1420, LLC, t/a Lotus, 1420 K Street NW, License #75162, Retailer CN, ANC 2F
Allowed the Establishment to be Used for an Unlawful or Disorderly Purpose, Failed to Follow Security Plan

Show Cause Hearing **3:30 PM**
Case # 12-CMP-00407; LCRL, Inc., t/a The Islander Caribbean Restaurant & Lounge, 1201 U Street NW, License #24599, Retailer CT, ANC 1B
Noise Violation

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 1, 2013
Petition Date: April 15, 2013
Hearing Date: April 29, 2013

License No.: ABRA-084939
Licensee: Lee's Mini Market, Inc.
Trade Name: Lee's Mini Market
License Class: Retailer's Class "B"
Address: 3853 Alabama Ave., SE
Contact: Ko Dol 301-708-8202

WARD 7 ANC 7B SMD 7B07

Notice is hereby given that this licensee has applied for a substantial change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such 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.

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

Request a class change from Class B license to Class A license

HOURS OF OPERATION
Sunday through Saturday 7 am – 10 pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 9:30 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 01, 2013
Petition Date: April 15, 2013
Roll Call Hearing Date: April 29, 2013

License No.: ABRA-060821
Licensee: Lucy Enterprises, Inc.
Trade Name: Tenley Mini Market
License Class: Retailer's Class "B" Grocery
Address: 4326 Wisconsin Ave. NW
Contact: Jung-Wha Park, Owner 240-475-9633

WARD 3 ANC 3E SMD 3E05

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

NATURE OF SUBSTANTIAL CHANGE
Request for License Class Change from Retailer's Class "B" Grocery to Retailer's Class "A" Liquor Store

CURRENT HOURS OF OPERATION:
Monday through Sunday 5:30am – 12:00am.

CURRENT HOURS OF ALCOHOL SALES/SERVICE/CONSUMPTION:
Monday through Sunday 7:00am – 12:00am.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: March 1, 2013
Petition Date: April 15, 2013
Hearing Date: April 29, 2013
Protest Date: June 19, 2013

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

WARD 6 ANC 6D SMD 6D04

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 4:30 pm on June 19, 2013.

NATURE OF OPERATION
Upscale private yacht charter with a seating capacity of 42, featuring a pianist for occasional entertainment.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 6 pm – 10 pm

EXECUTIVE OFFICE OF THE MAYOR

NOTICE OF PUBLIC HEARING

Fiscal Year 2014 Budget for Public Schools in the District of Columbia

Tuesday, March 12, 2013
5:30 pm
Turkey Thicket Recreation Center
1100 Michigan Avenue, NE
Washington, DC 20017

Mayor Gray and Interim Deputy Mayor for Education Jennifer Leonard will hold a public hearing on the Fiscal Year 2014 budget for public schools. **The hearing will be held on Tuesday, March 12, 2013 at 5:30 pm at Turkey Thicket Recreation Center, 1100 Michigan Avenue, NE, Washington, DC 20017.**

The purpose of the hearing is to solicit the views of the public on levels of public funding to be sought in the FY 2014 operating budget for public schools in the District of Columbia, pursuant to the District of Columbia Official Code § 38-917.

Members of the public are invited to testify. Testimony is limited to three minutes per witness and five minutes per organization or group. **Those wishing to testify should contact Brandon Starkes in the Office of the Deputy Mayor for Education via email at brandon.starkes@dc.gov or by telephone at (202) 288-9861 by 4 pm on Thursday, March 7, 2013.** Witnesses should bring three (3) copies of their written testimony to the hearing.

Members of the public may submit written testimony, which will be made part of the official record. Copies of written statements should be submitted to the contacts listed above no later than **4 pm on Thursday, March 7, 2013**.

If members of the public need interpretation services, please contact Mr. Starkes to arrange services for the hearing.

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

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

Case No. 12-04: **Brigadier General George P. Scriven House**
Square 97, Lot 56
1300 New Hampshire Avenue, NW

Case No. 13-11: **Bond Bread Factory (General Baking Company Bakery)**
2146 Georgia Avenue, NW
Square 2877, Lot 930

Case No. 13-12: **Washington Railway and Electric Company Garage**
2112 Georgia Avenue, NW
Square 2877, Lot 933

The hearing will take place at **9:00 a.m. on Thursday, April 25, 2013**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10A DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

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

If the Historic Preservation Review Board designates the property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may

apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

NOTICE OF PUBLIC HEARINGS

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

Hearing Date:	**Friday, April 5, 2013, at 1:30 p.m.**
Case Number:	H.P.A. 13-208
Address:	2501 1st Street, NW
Square/Lot:	Parcel 108/8; Square 3128, Lot 800
Type of Work:	Raze – demolition of two filtration cells

Affected Historic Property: McMillan Park Reservoir
Affected ANC: 1B

The Applicant's claim is that issuance of the permit is necessary to construct a project of special merit.

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

BOARD OF ZONING ADJUSTMENT
AMENDED* PUBLIC HEARING NOTICE
TUESDAY, APRIL 23, 2013
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

Note: This notice has been amended to include Application No. 18547*.

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

THIS APPLICATION WAS POSTPONED FROM THE DECEMBER 11, 2012, AND JANUARY 29, 2013, PUBLIC HEARING SESSIONS:

18459 ANC-1B **Application of Quiton Cooper,** pursuant to 11 DCMR § 3104.1, for a special exception to allow additions (cellar, third floor and roof penthouse/deck) to an existing one-family semi-detached dwelling under section 223, not meeting the lot occupancy (section 403), rear yard (section 404), side yard (section 405) and court (section 406) requirements in the R-4 District at premises 513 U Street, N.W. (Square 3079, Lot 28).

WARD THREE

18535 ANC-3C **Application of Joel Starr and Melissa Moye**, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, not meeting the side yard requirements (section 405), for a rear addition to an existing one-family row dwelling in the R-2 District at premises 3411 Quebec Street, N.W. (Square 2063, Lot 87).

WARD SIX

18537 ANC-6B **Application of John Merrick and Heather Phillips**, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, not meeting the lot occupancy (section 403), side yard (section 405) and nonconforming structure (subsection 2001.3) requirements for an addition to an existing one-family semi-detached dwelling in the R-4 District at premises 525 5th Street, S.E. (Square 822, Lot 825).

WARD SEVEN

18534 ANC-7C — **Application of Dean Street Mews LLC,** pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under subsection 401.3, and a variance from the side yard requirements under section 405, to allow the construction of two semi-detached dwellings in the R-2 District at premises 4601 and 4603 Grant Street, N.E. (Square 5145, Lots 10 and 11).

WARD SIX

18538 ANC-6D — **Application of TC MidAtlantic Development IV Inc. on behalf of PNC Realty Investors**, pursuant to 11 DCMR § 3103.2, for a variance from the court width requirements under subsection 776, to allow the construction of a new office building in the C-3-C District at premises 400 6th Street, S.W. (Square 494, Lot 31).

WARD EIGHT

18541 ANC-8B — **Application of Lubertha Payne**, pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (11 children and 2 staff) under section 205, in the R-3 District at premises 620 Southern Avenue, S.E. (Square 6250, Lot 11).

WARD EIGHT

18547* ANC-8A — **Application of Curtis Investment Group**, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to allow the occupancy of an existing warehouse by the Anacostia Playhouse in the C-M-1 District at premises 2020 Shannon Place, S.E. (Square 5772, Lot 984).

PLEASE NOTE:

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

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

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

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, April 25, 2013, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 04-08C/02-45 (District of Columbia Department of Mental Health - Modification of an Approved Planned Unit Development and Related Zoning Map Amendment for St. Elizabeths Hospital (Square 5868S, Lot 2))

THIS CASE IS OF INTEREST TO ANC 8C

This case concerns a proposed modification of an approved planned unit development ("PUD") and related Zoning Map amendment for St. Elizabeths Hospital (1100 Alabama Avenue, S.E.) (Square 5868S, Lot 2) (the "Subject Property").

The Subject Property is included in a PUD and related Zoning Map amendment approved in 2005 pursuant to Z.C. Order No. 04-08/02-45. The PUD has been previously modified in 2004 pursuant to Z.C. Order 04-08A/02-45 and was subsequently modified in 2010 pursuant to Z.C. Order 04-08B/02-45. On the Subject Property, the PUD was approved for the new 448,000 square-foot St. Elizabeths Hospital facility in the SP-1 Zone District, which has since been completed. The proposed modification will remove approximately 13.9 acres from the PUD to reflect the as-built condition of the new St. Elizabeths Hospital facility and to allow for the application of recommended zoning designation for the remainder of the St. Elizabeths East Campus in accordance with the St. Elizabeths East Master Plan and Design Guidelines.

On December 19, 2012, the Zoning Commission received the application of the District of Columbia Department of Mental Health ("Applicant") for the minor modification of an approved PUD and related Zoning Map amendment.

At its public meeting on January 28, 2013, the Zoning Commission decided not to consider the modification as minor, stating that the substantially large area of land proposed to be removed from the PUD boundaries was significant enough to warrant a public hearing and the land area proposed to be removed from the PUD could be topographically sensitive. Therefore, the Zoning Commission set the requested modification down for a public hearing.

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

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status **shall file with the Commission, not less than 14 days prior to the date set for the hearing, a Form 150 – Party Status Application**. 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.

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

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

Time limits.

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

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	60 minutes collectively

3.	Organizations	5 minutes each
4.	Individuals	3 minutes each

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

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

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

OFFICE OF THE CHIEF FINANCIAL OFFICER
NOTICE OF FINAL RULEMAKING

The Office of the Chief Financial Officer (OCFO), through its Central Collection Unit (CCU) established within the OCFO's Office of Finance and Treasury, pursuant to the authority set forth in Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019; P.L. 109-356, D.C. Official Code § 1-204.24d(10) (2012 Supp.)) of the Home Rule Act, and Section 1053 of the Delinquent Debt Recovery Act of 2012, effective September 20, 2012, (D.C. Law 19-0168; 59 DCR 8025), hereby gives notice of the adoption of final rulemaking to amend Title 9 of the District of Columbia Municipal Regulations (DCMR), by adding a new Chapter 38, entitled "Central Collection Unit". The purpose of the final rule is to prescribe, impose, and collect fees from debtors to cover actual costs or expenses associated with the collection of delinquent debt; and to prescribe and impose a fee to be paid by each person who tenders in payment of a financial obligation owed to the District, including a tax, assessment, fee, citation, or charge, a check that is subsequently dishonored or not duly paid, or any delinquent debt transferred and referred to the CCU for action.

The CCU stated its intent to adopt the proposed rules as final in the Notice of Proposed Rulemaking published in the *D.C. Register* on January 11, 2013 at 60 DCR 222. No comments were received and no substantive changes were made to the proposed rulemaking. These rules will become final upon publication in the *D.C. Register*.

Chapter 38 CENTRAL COLLECTION UNIT

3800 **IMPOSITION OF COSTS AND FEES:**

3800.1. Definitions. The terms "central collection unit", "delinquent debt", and "person" shall have the same meaning in this chapter as those terms are defined in the Delinquent Debt Recovery Act of 2012, effective September 20, 2012, (D.C. Law 19-0168; 59 DCR 8025).

3800.2 The amount of actual costs incurred that a person shall pay the central collection unit (CCU), associated with the collection of a delinquent debt, shall be determined as follows: A collection fee of twenty-six (26%) percent shall be imposed after a debt is referred to the CCU.

3800.3 Any person who tenders payment by check for a financial obligation owed to the District of Columbia government, including a tax assessment, fee, citation, or charge, that is subsequently dishonored or not duly paid, shall, in addition to the amount of the financial obligation owed or the amount of the delinquent debt transferred and referred to the CCU for collection, pay a fee to the CCU of $65 dollars for the dishonored or not duly paid check.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2007 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the intent to take proposed rulemaking action by adopting the following amendments to Chapter 90 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from date of publication of this notice in the *D.C. Register*. The purpose of this rulemaking is to extend the registration deadline for persons who were performing the duties of dental assistants on July 15, 2011.

These rules were previously published in the *D.C. Register* as a proposed rulemaking on August 31, 2012, at 59 DCR 010508. No written comments were received from the public in connection with this publication during the thirty (30)-day comment period and no changes have been made to the rulemaking.

Final action to adopt the rules took place on January 16, 2013. These rules will be effective upon publication of the notice in the *D.C. Register*.

Chapter 90 (DENTAL ASSISTANTS) of Title 17 (BUSINESS, OCCUPATIONS, AND PROFESSIONS) is amended as follows:

Section 9001 (REGISTRATION REQUIRED) is amended as follows:

Subsection 9001.2 is amended to read as follows:

9001.2 Notwithstanding subsection 9001.1, a person who is performing the duties of a dental assistant on the effective date of this chapter shall obtain a registration no later than September 17, 2012.

Section 9005 (SCOPE OF PRACTICE OF REGISTERED DENTAL ASSISTANT) is amended as follows:

Paragraph (c) of Subsection 9005.3 is amended to read as follows:

(c) The assistant registers no later than September 17, 2012.

Paragraph (c) of Subsection 9005.5 is amended to read as follows:

(c) The assistant registers no later than September 17, 2012

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2006 Repl. & 2012 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2008 Repl.)), hereby gives notice of the intent to adopt a new Section 940 (Medicaid Pediatric Palliative Care and Hospice Care) to Chapter 9, Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). This rule establishes standards for reimbursement by the District of Columbia Medicaid program for pediatric palliative care and hospice services, and reflects recently enacted federal legislation that allows provision of concurrent hospice and curative care for children.

Pediatric palliative care and hospice (PPCH) services for children with life-threatening conditions focuses on enhancing the child's quality of life, minimizing suffering, optimizing functionality, and providing opportunities for personal and spiritual growth. These services are planned and delivered through the collaborative efforts of an interdisciplinary team with the child, family, and caregivers at its center. These rules also authorize PPCH services to be provided concurrently with ongoing treatment services for the condition by which the child became terminally ill.

PPCH is achieved through a combination of active and compassionate therapies intended to comfort and support the child as well as family members and caregivers. Core services include various therapies, child life services provided by a Child Life Specialist, home health aide services, nutritional counseling, pain/symptom management, pharmacy services and respite care. The Council of the District of Columbia approved the corresponding State Plan Amendment (SPA) on June 15, 2012 (PR-0693), and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, has approved the corresponding SPA with an effective date of August 1, 2012.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days after the date of publication of this notice in the *DC Register*.

A new Section 940 of Chapter 9 of Title 29 DCMR is added to read as follows:

940 **Pediatric Palliative Care and Hospice Care**

940.1 These rules establish the standards and conditions of participation for pediatric palliative care and hospice (PPCH) providers providing pediatric hospice services under the District of Columbia Medicaid Program.

940.2 Pediatric palliative and hospice care is an organized program for delivering care to children with life-threatening conditions. This care focuses on enhancing quality of life for the child and family, minimizing suffering, optimizing functions, and providing opportunities for personal growth.

940.3 An individual shall be eligible to receive PPCH services when he/she is:

(a) Under the age of twenty one (21);

(c) Eligible for Medicaid; and

(d) Certified as terminally ill in accordance with this section.

940.4 The hospice shall obtain the certification that a beneficiary is terminally ill in accordance with the following procedures:

(a) For the initial ninety (90) day period of hospice coverage, the hospice shall obtain, no later than two (2) calendar days after hospice care is initiated, written certification statements signed by:

(1) The hospice medical director or the physician member of the hospice interdisciplinary team; and

(2) The individual's attending physician, specialty care, or primary care physician.

(b) For the second ninety (90) day period, the hospice shall obtain, no later than two (2) calendar days after the beginning of the second election period, written certification prepared by the hospice medical director or the beneficiary's attending physician, specialty care, or primary care physician.

(c) For any subsequent election period of sixty (60) days or one or more thirty (30) day extended election periods, the hospice shall obtain, no later than two (2) calendar days after the beginning of any subsequent election period, written certification prepared by the hospice medical director or the beneficiary's attending physician, specialty care, or primary care physician.

940.5 The certification required in § 940.4 shall include:

(a) A statement that the beneficiary's life expectancy is six (6) months or less; and

(b) The signature of any physician required in § 940.4 to certify the terminal illness.

940.6 Each beneficiary who elects hospice care shall file an election statement with a participating provider entity.

940.7 A parent or legally authorized guardian shall file the election statement for beneficiaries under the age of eighteen (18). Beneficiaries eighteen (18) years of age and over may file the election statement on their own or by a legally authorized representative.

940.8 If the beneficiary electing hospice lacks the mental capacity to make an election, the designated representative shall file the election statement pursuant to the requirements set forth in the Health Care Decisions Act of 1988, effective March 16, 1989 (D.C. Law 7-189; D.C. Official Code § 21-2201 *et seq*).

940.9 An election statement shall include:

(a) Identification of the particular PPCH provider that will provide care to the beneficiary;

(b) An acknowledgement by the beneficiary or their representative that the beneficiary has been given a full explanation of the palliative rather than curative nature of hospice care as it relates to the beneficiary's terminal illness;

(c) An acknowledgement by the beneficiary or their representative that the beneficiary understands that an election to receive hospice care is a waiver of the Medicaid services described in § 940.13;

(d) The effective date of the election to receive hospice care; and

(e) The signature of the beneficiary or their representative.

940.10 The initial election period shall be for ninety (90) days, followed by a second ninety (90) day election period. Subsequent election periods shall be for sixty (60) days or one or more thirty (30) day election periods.

940.11 An election to receive PPCH is considered to continue through the initial election period and through any subsequent election periods without a break in care as long as the beneficiary remains in the care of the PPCH provider and does not revoke the election.

940.12 A beneficiary or their representative may revoke the hospice election by signing and dating a revocation statement. This shall not prohibit a beneficiary from reelecting PPCH services at a later date.

940.13 The beneficiary shall waive all rights to Medicaid coverage for the following services for the duration of the election to receive hospice care:

(a) Hospice care provided by another provider, other than the PPCH provider designated by the beneficiary; and

(b) Any services equivalent to or duplicative of hospice care pursuant to 42 USC 1395(d)(2)(A)).

940.14 An election to receive PPCH services shall not constitute a waiver of rights to receive concurrent treatment services for the condition by which the beneficiary became terminally ill.

940.15 PPCH services shall be provided in accordance with a written plan of care developed by a pediatric interdisciplinary team in accordance with § 940.20.

940.16 The following services, performed by qualified personnel, may qualify as covered PPCH services subject to any requirements or limitations as set forth in § 940.21:

(a) Physician services;

(b) Pediatric nursing services provided by a person who is licensed as a registered nurse pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)), and certified by the National Board of Pediatric Nurse Practitioners or the Pediatric Nursing Certification Board (PNCB);

(c) Child life specialist services provided by someone who completed a child life degree program at the bachelor's or master's level and who holds a certified child life specialist accreditation from the Child Life Council;

(d) Counseling services (pastoral, spiritual, bereavement, as necessary);

(e) Nutritional counseling;

(f) Homemaker services, home health aide services as described in Chapter 51 of Title 29 DCMR, and personal care aide services as described in Chapter 50 of Title 29 DCMR;

(g) Medical social services provided by a licensed social worker;

(h) Durable medical equipment and supplies as described in § 996 of Chapter 9 of Title 29 DCMR;

(i) Pharmacology and pharmacy services for pain control and symptom management;

(j) Physical, occupational, and speech therapy services;

(k) Expressive therapies if necessary;

(l) Massage therapy if necessary; and

(m) Respite care for the recipient's family or other persons caring for the beneficiary at home.

940.17 A child life specialist may provide services that utilize play and psychological therapies to facilitate coping and adjustment of the child and to establish therapeutic relationships with beneficiaries and their families to facilitate the family's involvement in the child's care.

940.18 Pharmacology/pharmacy services shall include the following:

(a) Prescription drug administration used primarily for relief of pain and symptom control related to the child's condition;

(b) Evaluation of the child's response to medication therapy; and

(c) Recommendations for appropriate corrective action administered by licensed pharmacists.

940.19 A provider of PPCH services may include:

(a) A hospital;

(b) A hospice enrolled in the Medicare program; or

(c) A home health agency enrolled in the Medicare program that meets the requirements set forth in the Health-Care and Community Residence Facility Act, Hospice and Home-Care Licensure Act of 1983, effective Feb. 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501, *et seq*. (2005 Repl.; 2011 Supp.)).

940.20 A provider of PPCH services shall employ or contract with a pediatric interdisciplinary team which should include, at a minimum: a hospice medical director or a pediatrician; nurse or pediatric nurse practitioner; licensed social worker, counselor, child life specialist; and spiritual care provider. All members of the interdisciplinary team shall be able to provide pediatric expertise twenty-four (24) hours per day, seven (7) days a week.

940.21 A provider of PPCH services shall be reimbursed on a per diem rate basis at one (1) of the four (4) rates depending on which of the following levels of care is recommended in the plan of care:

(a) Routine home care for a beneficiary who is not receiving continuous home care or general inpatient care as described in§ 940.21 (b) and (c);

(b) Continuous home care consisting of care to maintain a beneficiary at home during a brief period of crisis lasting seventy two (72) hours or less consisting of:

(1) A minimum of eight (8) hours of care, not necessarily consecutive, provided during a twenty-four (24) hour day which begins and ends at midnight;

(2) Nursing care, provided by a registered nurse or licensed practical nurse (LPN) and accounting for more than half of the period of care; and

(3) Homemaker, home health aide, and personal care aide services if needed, to supplement nursing care.

(c) General inpatient care for purposes of pain control or acute or chronic symptom management provided in an approved freestanding hospice, or hospital consisting of:

(1) A minimum of eight (8) hours of care, not necessarily consecutive, provided during a twenty-four (24) hour day which begins and ends at midnight; and

(2) Nursing care, provided by a registered nurse or LPN and accounting for more than half of the period of care.

(d) Inpatient respite care or short term care to relieve family members caring for the beneficiary at home, when the beneficiary does not meet the requirements for continuous home care or general inpatient care. This service shall consist of:

(1) Care limited to five (5) consecutive days at a time not to exceed thirty (30) days per year; and

(2) PPCH services pursuant to a written plan of care.

940.22 A brief period of crisis shall be a period when care, predominantly consisting of nursing care, may be covered on a continuous basis for as long as twenty four (24)

hours a day or as necessary to maintain an individual in the home during an unexpected or dangerous event lasting seventy two (72) hours or less.

940.23 The rates for routine home care, continuous home care, general inpatient care and inpatient respite care shall be those developed by the Centers for Medicare and Medicaid (CMS) Hospice Wage Index guidelines, in accordance with 42 CFR Part 418, Subpart E. The rates shall be posted on the DHCF website at www.dc-medicaid.gov.

940.24 Inpatient respite care shall begin on the date of admission and excludes the date of discharge.

940.25 Medicaid-enrolled providers who are furnishing concurrent curative treatment services relating to the treatment of the condition for which a diagnosis of terminal illness has been made, shall be reimbursed by the Department under the authority of the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services benefit subject to any requirements set forth in State Plan and attendant rules.

940.26 Providers of PPCH services shall be responsible for the coordination of all services described in these rules to avoid duplication of equivalent services.

940.27 All services submitted for the child's ongoing hospice care beyond the initial one hundred and eighty day (180) period during the initial election period described under § 940.10 shall only be reimbursed upon receiving a prior authorization from DHCF's designated quality improvement organization.

940.99 **Definitions**

When used in this section, the following terms and phrases shall have the meanings ascribed:

Beneficiary- An individual who has been determined eligible to receive services under the D.C. Medicaid program.

Continuous home care- A day on which an individual who has elected to receive hospice care is not in an inpatient facility and receives hospice care consisting predominantly of nursing care on a continuous basis at home during a brief period of crisis necessary to maintain the terminally ill patient at home.

Counseling services- Services provided by a person who is licensed or authorized to practice as a licensed professional counselor pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) services Benefit - Comprehensive and preventive health care services as described in

Section 1905(r) of the Social Security Act, including necessary health care services for treatment of all physical and mental illnesses or conditions discovered by any screening or diagnostic procedures, for children under twenty one (21) who are enrolled in the Medicaid program.

Expressive therapies -Art therapy and/or music therapy provided by appropriately licensed professionals.

General inpatient care day -A day on which an individual who has elected hospice care receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in a home or other settings.

Homemaker services - Services consisting of general household activities provided by a trained homemaker, when the individual regularly responsible for these activities is unable to manage the home and care for themselves.

Hospice - A public agency or private organization or a subdivision of either that is primarily engaged in providing care to terminally ill individuals that meets the licensure requirements set forth in the Health-Care and Community Residence Facility Act, Hospice and Home-Care Licensure Act of 1983, effective Feb. 24, 1984 (D.C. Law 5-48; D.C. Official Code, §§ 44-501, *et seq*. (2005 Repl.; 2011 Supp.)) or the laws, and regulations of the particular jurisdiction where the facility is located**.**

Hospice care - A comprehensive set of services described in §1861(dd)(1) of the Social Security Act, identified and coordinated by an interdisciplinary group to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care.

Hospice medical director – A person who is hired by the Hospice as a medical director and licensed or authorized to practice as a physician pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Massage therapy - Services provided by a person who is licensed or authorized to practice as a massage therapist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Nutrition counseling- Services provided by a person who is licensed or authorized to practice as a nutrition counselor pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Occupational therapy services – Services provided by a person who is licensed or authorized to practice occupational therapy services pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Pain and symptom management- The use of pharmacologic and non-pharmacologic methods in compliance with nationally developed standards for pediatric palliative care pain and symptom management by the National Hospice and Palliative Care Organization.

Physician services- Services provided by a person who is licensed or authorized to practice as a physician pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Physical therapy services – Services provided by a person who is licensed or authorized to practice as a physical therapist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Plan of Care- A written document developed by the patient's pediatric interdisciplinary team describing the scope of services and levels of care to be provided.

Respite care -Short-term inpatient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

Routine home care- A day on which an individual who has elected to receive hospice care is at home because he/she is not receiving continuous care or general inpatient care and may receive homemaker, home health aide or personal care services, if necessary to supplement regular at-home care.

Speech therapy services – Services provided by a person who is licensed or authorized to practice as a speech therapist pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2007 Repl.; 2012 Supp.)).

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 899 North Capitol Street, NE, 6th Floor, Washington DC 20002; via telephone at (202) 442-9115; via email at DHCFPubliccomments@dc.gov; or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles ("Director"), pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2009 Repl.)), Section 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-1401.01 (2012 Supp.)), Section 3 of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-402) (2012 Supp.), Mayor's Order 91-161, dated October 15, 1991 and Mayor's Order 2007-168, dated July 23, 2007, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapter 13 (Classification and Issuance of Commercial Driver's Licenses) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

The proposed rules, in compliance with 49 CFR §383.77, would authorize the Director to waive the commercial driver license skills test for qualified candidates with military commercial motor vehicle experience.

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

Chapter 13, CLASSIFICATION AND ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, is amended as follows:

Section 1318, TEST WAIVER, is amended as follows:

A new subsection 1318.3 is added to reads as follows:

1318.3 The Director may waive the skills test specified in §1316 for a commercial driver license applicant with military commercial motor vehicle experience who currently holds a driver license at the time of his or her application for a commercial driver license as follows:

(a) The applicant must certify that, during the two (2)-year period immediately prior to applying for a commercial driver license, he or she:

(1) Has not had more than one (1) license concurrently (except for a military license);

(2) Has not had any license suspended, revoked, or cancelled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in 49 CFR §383.51(b);

(4) Has not had more than one (1) conviction for any type of motor vehicle for serious traffic violations contained in 49 CFR §383.51(c); and

(5) Has not had had any conviction for a violation of military, state, or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he or she was at fault;

(b) An applicant must provide evidence and certify that he or she:

(1) Is regularly employed or was regularly employed within the last ninety (90) days in a military position requiring operation of a commercial motor vehicle;

(2) Was exempted from the commercial driver license requirements in 49 CFR §383.3(c); and

(3) Was operating a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate, for at least the two (2) years immediately preceding discharge from the military; and

(c) An applicant must complete a form designed by the Director, setting forth any additional information the Director may require in order to determine whether the applicant is qualified to receive a waiver.

(d) An applicant may not transfer a school ("S") or passenger ("P") endorsement under this waiver program.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority (the Board), pursuant to the authority set forth in Section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3) and (11) (2010 Repl.) and D.C. Official Code §§ 34-2202.16 (2010 Repl.)); Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a)(2011 Repl.)); and in accordance with Chapter 40, "Retail Ratemaking," of Title 21, "Water and Sanitation," of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of its intention to amend Section 112, "Fees," of Chapter 1, "Water Supply," and Sections 4100, "Rates for Water Service," 4101, "Rates for Sewer Service," and 4104, "Customer Classification for Water and Sewer Rates**"** of Chapter 41, "Retail Water and Sewer Rates," of Title 21, "Water and Sanitation," of the DCMR.

The Board expressed its intention to amend the DCMR at its regularly scheduled Board meeting held on January 3, 2013, pursuant to Board Resolution # 13-12. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

In addition, the Board will receive comments on these proposed rates at a public hearing at a later date. The public hearing notice will be published in a subsequent edition of the *D.C. Register*.

Section 112, FEES of Chapter 1, WATER SUPPLY, of Title 21, WATER AND SANITATION, of the DCMR is amended as follows:

Subsection 112.8 is amended to read as follows:

112.8 Effective October 1, 2013, the District of Columbia Right of Way Occupancy Fee Pass Through Charge and the Payment in Lieu of Taxes (PILOT) Fee, shall be increased from sixty-six cents ($0.66) for each one hundred cubic feet (1 Ccf) (or the equivalent of eighty-eight cents ($0.88) for each one thousand gallons (1,000 gals.) (one hundred cubic feet (1 Ccf) equals seven hundred forty-eight and five hundredths gallons (748.05 gals.)) to seventy cents ($0.70) for each one hundred cubic feet (1 Ccf) (or the equivalent of ninety-three cents ($0.93) for each one thousand gallons (1,000 gals.)) of water used, divided as follows:

(a) District of Columbia Right of Way Fee, assessed to recover the cost of fees charged by the District of Columbia to D.C. Water and Sewer Authority for use of District of Columbia public space and rights of way: An increase from sixteen cents ($0.16) per Ccf or (or the equivalent of twenty-one cents ($0.21) per one thousand gallons (1,000 gals.)) of water used to:

(1) Residential Customers: seventeen cents ($0.17) per Ccf (or the equivalent of twenty-two cents ($0.22) per one thousand gallons (1,000 gals.)) of water used;

(2) Multi-Family Customers: seventeen cents ($0.17) per Ccf (or the equivalent of twenty-two cents ($0.22) per one thousand gallons (1,000 gals.)) of water used; and

(3) Non-Residential Customers: seventeen cents ($0.17) per Ccf (or the equivalent of twenty-two cents ($0.22) per one thousand gallons (1,000 gals.)) of water used; and

(b) Payment in Lieu of Taxes to the Office of the Chief Financial Officer (OCFO) of the District of Columbia, assessed to cover the amount which D.C. Water and Sewer Authority pays each fiscal year to the District of Columbia, consistent with D.C. Water and Sewer Authority's enabling statute for public goods and services received from the District of Columbia: An increase from fifty-three cents ($0.50) per Ccf (or the equivalent of sixty-seven cents ($0.67) per one thousand gallons (1,000 gals.)) of water used to:

(1) Residential Customers: fifty-three cents ($0.53) per Ccf (or the equivalent of seventy-one cents ($0.71) per one thousand gallons (1,000 gals.)) of water used;

(2) Multi-Family Customers: fifty-three cents ($0.53) per Ccf (or the equivalent of seventy-one cents ($0.71) per one thousand gallons (1,000 gals.)) of water used; and

(3) Non-Residential Customers: fifty-three cents ($0.53) per Ccf (or the equivalent of seventy-one cents ($0.71) per one thousand gallons (1,000 gals.)) of water used.

Section 4100, RATES FOR SEWER SERVICE, of Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21, WATER AND SANITATION, of the DCMR is amended as follows:

Subsection 4100.3 is amended to read as follows:

4100 RATES FOR WATER SERVICE

4100.3 Effective October 1, 2013, the rate for retail metered water service shall be increased from three dollars and forty-two cents ($3.42) for each one hundred cubic feet (1 Ccf) (or the equivalent of four dollars and fifty-seven cents ($4.57) for each one thousand gallons (1,000 gals.) (one hundred cubic feet (1 Ccf) equals seven hundred forty-eight and five hundredths gallons (748.05 gals.)) of water used to:

(a) Residential Customers: three dollars and sixty-one cents ($3.61) per Ccf (or the equivalent of four dollars and eighty-three cents ($4.83) for each one thousand gallons (1,000 gals.)) of water used;

(b) Multi-Family Customers: three dollars and sixty-one cents ($3.61) per Ccf (or the equivalent of four dollars and eighty-three cents ($4.83) for each one thousand gallons (1,000 gals.)) of water used; and

(c) Non-Residential Customers: three dollars and sixty-one cents ($3.61) per Ccf (or the equivalent of four dollars and eighty-three cents ($4.83) for each one thousand gallons (1,000 gals.)) of water used.

Section 4101, RATES FOR SEWER SERVICE, of Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21, WATER AND SANITATION, of the DCMR is amended as follows:

Subsection 4101.1 is amended to read as follows:

4101 RATES FOR SEWER SERVICE

4101.1 Effective October 1, 2013, the rates for sanitary sewer service shall be:

(a) The retail sanitary sewer service rate shall be increased from four dollars and eighteen cents ($4.18) for each one hundred cubic feet (1 Ccf) (or five dollars and fifty-nine cents ($5.59) for each one thousand gallons (1,000 gals.) (one hundred cubic feet (1 Ccf) equals seven hundred forty-eight and five hundredths gallons (748.05 gals.)) of water used to:

(1) Residential Customers: four dollars and forty-one cents ($4.41) per Ccf (or the equivalent of five dollars and eighty-nine cents ($5.89) for each one thousand gallons (1,000 gals.)) of water used;

(2) Multi-Family Customers: four dollars and forty-one cents ($4.41) per Ccf (or the equivalent of five dollars and eighty-nine cents ($5.89) for each one thousand gallons (1,000 gals.)) of water used; and

(3) Non-Residential Customers: four dollars and forty-one cents ($4.41) per Ccf (or the equivalent of five dollars and eighty-nine cents ($5.89)) for each one thousand gallons (1,000 gals.)) of water used; and

(b) The annual Clean Rivers Impervious Surface Area Charge (IAC) shall be increased from one hundred fourteen dollars and eighty-four cents ($114.84), billed monthly at nine dollars and fifty-seven cents ($9.57), per

Equivalent Residential Unit (ERU), to one hundred fifty-three dollars and twenty-four cents ($153.24) per ERU, billed monthly as follows:

(1) Residential Customers: twelve dollars and seventy-seven cents ($12.77) per month for each ERU;

(2) Multi-Family Customers: twelve dollars and seventy-seven cents ($12.77) per month for each ERU; and

(3) Non-Residential Customers: twelve dollars and seventy-seven cents ($12.77) per month for each ERU.

Section 4104, CUSTOMER CLASSIFICATION FOR WATER AND SEWER RATES, of Chapter 41, RETAIL WATER AND SEWER RATES, of Title 21, WATER AND SANITATION, of the DCMR is amended as follows:

Subsection 4104.1 is amended to read as follows:

4104.1 The customer classifications for water and sewer rates shall consist of a residential class, multi-family, and a non-residential class:

(a) Residential – a single-family dwelling used for domestic purposes; a condominium or apartment unit where each unit is served by a separate service line and is individually metered and the unit is used for domestic purposes; or a multifamily structure of less than four apartment units where all the units are served by a single service line that is master metered.

(b) Multi-Family – a multifamily structure (such as a condominium or apartment dwelling) used for domestic purposes, with four or more units.

(c) Non-residential – all customers not within either the residential or multi-family class.

Comments on these proposed rules should be submitted in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, by email to Lmanley@dcwater.com, or by FAX at (202) 787-2795. Copies of these proposed rules may be obtained from the DC Water at the same address or by contacting Ms. Manley at (202) 787-2332.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-037
February 21, 2013

SUBJECT: Appointments and Rescission – District of Columbia Homeland Security Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with section 202 of the Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006, effective March 14, 2007, D.C. Law 16-262, D.C. Official Code § 7-2271.02 (2008 Repl.), as amended by section 508 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012, effective January 14, 2013, D.C. Act 19-599, it is hereby **ORDERED** that:

1. **DARRELL DARNELL**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1097, on December 18, 2012, is appointed as a member of the District of Columbia Homeland Security Commission ("Commission"), for a term to end three (3) years from the date a majority of the first members are sworn-in as members.

2. **BARBARA CHILDS-PAIR**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1098, on December 18, 2012, is appointed as a member of the Commission, for a term to end two (2) years from the date a majority of the first members are sworn-in as members.

3. **DANIEL KANIEWSKI**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1099, on December 18, 2012, is appointed as a member of the Commission, for a term to end two (2) years from the date a majority of the first members are sworn-in as members.

4. **JOHN CONTESTABILE**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1100, on December 18, 2012, is appointed as a

member of the Commission, for a term to end three (3) years from the date a majority of the first members are sworn-in as members.

5. **J. MICHAEL BARRETT**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1102, on December 18, 2012, is appointed as a member of the Commission, for a term to end three (3) years from the date a majority of the first members are sworn-in as members.

6. **GLENN GERSTELL**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1103, on December 18, 2012, is appointed as a member of the Commission, for a term to end three (3) years from the date a majority of the first members are sworn-in as members.

7. **ANDREW CUTTS**, who was nominated by the Mayor on November 9, 2012, and approved by the Council of the District of Columbia, pursuant to Proposed Resolution 19-1104, on December 18, 2012, is appointed as a member of the Commission, for a term to end two (2) years from the date a majority of the first members are sworn-in as members.

8. Mayor's Order 2013-018, dated January 22, 2013, is hereby rescinded in its entirety.

9. **EFFECTIVE DATE**: This Order shall be effective on the date a majority of the first appointed members are sworn in, which shall become the anniversary date for all subsequent appointments.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-038
February 22, 2013

SUBJECT: Appointment – Commission on Asian and Pacific Islander Community 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 Supp.), and pursuant to section 305 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 2-1374, which established the Commission on Asian and Pacific Islander Community Development ("Commission"), it is hereby **ORDERED** that:

1. **CHRISTOPHER Y. CHAN,** who was nominated by the Mayor on December 2, 2011 and, following a forty-five day period of review by the Council of the District of Columbia of Proposed Resolution 19-0466, whose nomination was deemed approved on January 30, 2012, is appointed as a public voting member of the Commission, for a term to end April 17, 2014.

2. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to February 8, 2013.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-039
February 22, 2013

SUBJECT: Appointment – District of Columbia State Early Childhood Development 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 of 1973, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and pursuant to section 107 of the Pre-k Acceleration and Clarification Amendment Act of 2010, effective March 8, 2011, D.C. Law 18-285, D.C. Official Code § 38-271.07 (2012 Supp.), it is hereby **ORDERED** that:

1) **GREGORY M. McCARTHY,** is appointed, as a member from the business community, to the District of Columbia State Early Childhood Development Coordinating Council, and shall serve a term to end two (2) years from the effective date of this order.

2) **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-040
February 22, 2013

SUBJECT: Establishment – District of Columbia Community Schools Advisory Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Supp.), and pursuant to section 403(c) of the Community Schools Incentive Act of 2012, effective June 19, 2012, D.C. Law 19-142, D.C. Official Code § 38-754.03 (2012 Supp.), and Mayor's Order 2012-136, dated August 24, 2012, it is hereby **ORDERED** that:

I. ESTABLISHMENT

There is established the District of Columbia Community Schools Advisory Committee in the executive branch of the District government.

II. PURPOSE

The District of Columbia Community Schools Advisory Committee ("Committee") shall advise the Office of the State Superintendent of Education ("OSSE") on the development of the Incentive Initiative, including the development of a results-based framework and accompanying performance indicators with which to measure the success of the Incentive Initiative; participate in the selection process for Incentive Initiative grantees; develop recommendations on how all public schools can become centers of their communities by opening school facilities for nonprofit and community use; identify potential funding sources for the provision of eligible services within the Incentive Initiative; and develop yearly measurable performance goals.

III. FUNCTIONS

A. The Committee shall participate in the selection process for Incentive Initiative grantees by reviewing and evaluating grant applications, and providing OSSE with non-binding recommendations.

B. Within one-hundred and twenty (120) days from the date of the first meeting of its members, the Committee shall submit a written report to the State Superintendent of Education which includes the following:

1. Description of a results-based framework and accompanying performance indicators with which to measure the success of the Incentive Initiative;

2. Recommendations on how all public schools can become centers of their communities by opening school facilities for nonprofit and community use;

3. List of potential funding sources for the provision of eligible services within the Incentive Initiative; and

4. Yearly measurable performance goals to assess:

   a. How to increase the percentage of families and students receiving services for each year of the Incentive Initiative;

   b. The outcomes for students and families, particularly student academic achievement;

   c. The number of public schools and public charter schools that have established formal relationships with community and neighborhood groups to use school facilities.

IV. MEMBERSHIP

A. The Committee shall be comprised of at least nineteen (19) members.

1. There shall be nine (9) voting ex-officio members, each of whom may designate from time to time a representative to perform the member's responsibilities under this Order, as follows:

   a. Chancellor of the District of Columbia Public Schools;

   b. Director of the Department of Health;

   c. Director of the Department of Employment Services;

   d. Director of Department of Parks and Recreation;

   e. President of the State Board of Education;

   f. President of the University of the District of Columbia;

   g. President of the University of the District of Columbia Community College;

h. Deputy Mayor for Education;

i. Director of the Public Charter School Board;

2. There shall be at least ten (10) voting public members appointed by the Mayor, with representation from the following:

a. Representatives from at least four (4) community-based organizations;

b. Representatives from at least four (4) philanthropic or business organizations;

c. Directors of two (2) public charter schools.

B. The Mayor shall appoint the chairperson of the Committee, from among the voting members, who shall serve in that capacity at the pleasure of the Mayor.

C. Vacancies on the Committee shall not be filled.

D. A majority of the voting members of the Committee shall constitute a quorum. An audio or written transcript or transcription shall be kept for all meetings at which a vote is taken.

E. Members of the Committee shall not be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties and shall not be compensated for time expended in the performance of official duties.

F. The Committee shall meet at the call of the chairperson, who shall convene the first meeting of the Committee not later than 15 days after all appointments have been made, and who shall require the Committee to meet not less often than once every thirty (30) days.

V. TERMS

A. The terms of all Committee members shall expire thirty (30) days after the date on which the initial Incentive Initiative grant funds are awarded.

B. The Mayor may remove any member who fails to attend three (3) consecutive meetings.

VI. ADMINISTRATION

A. OSSE shall provide administrative and technical support, office space, staff, and other resources needed by the Committee to carry out the provisions of this Order.

B. Each department, agency, instrumentality, or independent agency of the District shall cooperate with the Committee and provide any information, in a timely manner that the Committee requests to carry out the provisions of this Order.

C. The Committee may establish such advisory groups, committees, or subcommittees, consisting of members or nonmembers, as it deems necessary to carry out the purposes of this Order.

D. The Committee shall cease to exist thirty (30) days after the date on which the initial Incentive Initiative grant funds are awarded.

VII. EFFECTIVE DATE: This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-041
February 22, 2013

SUBJECT: Appointments – District of Columbia Community Schools Advisory Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and pursuant to section 403 of the Community Schools Incentive Act of 2012, effective June 19, 2012, D.C. Law 19-142, D.C. Official Code § 38-754.03 (2012 Supp.), and Mayor's Order 2013-040, dated February 22, 2013, it is hereby **ORDERED** that:

A. The following persons are appointed to the District of Columbia Community Schools Advisory Committee ("Committee"), representing philanthropic or business organizations:

S. JOSEPH BRUNO
KEVIN J. CLINTON

B. The following persons are appointed to the Committee, representing community-based organizations:

DR. SHERYL BRISSETT CHAPMAN
NICOLE HANRAHAN
MARY W. FILARDO
NATHAN A. SAUNDERS

C. **AMANDA ALEXANDER** is appointed to the Committee, representing the Chancellor of the District of Columbia Public Schools, and shall serve as long as she continues in her capacity as a designee of the Chancellor.

D. **DR. RACHEL M. PETTY** is appointed to the Committee, as the Interim President of the University of the District of Columbia, and shall serve in that capacity as long as she continues in her official capacity as President.

E. **CALVIN E. WOODLAND** is appointed to the Committee, as the President of the University of the District of Columbia Community College, and shall serve in that capacity as long as he continues in his official capacity as President.

F. **STEPHEN T. BARON** is appointed to the Committee, as the Director of the Department of Mental Health, and shall serve as long as he continues in his capacity as Director.

G. **JESUS AGUIRRE** is appointed to the Committee, as the Director of the Department of Parks and Recreation, and shall serve as long as he continues in his capacity as Director.

H. **LISA MALLORY** is appointed to the Committee, as the Director of the Department of Employment Services, and shall serve as long as she continues in her capacity as Director.

I. **JUDITH DONOVAN** is appointed to the Committee, representing the Director of the Department of Health, and shall serve as long as she continues in her capacity as a designee of the Director.

J. **SCOTT D. PEARSON** is appointed to the Committee, as the Director of the Public Charter School Board, and shall serve in that capacity as long as he continues in his official capacity as Director.

K. **CHRISTIE R. McKAY** is appointed to the Committee, as a director of a public charter school, and shall serve in that capacity as long as she continues in her official capacity as a director.

L. **LAURA SLOVER** is appointed to the Committee, as the President of the State Board of Education, and shall serve in that capacity as long as she continues in her official capacity as President.

M. **ALEXANDRA PARDO** is appointed to the Committee, as a director of a public charter school, and shall serve in that capacity as long as she continues in her official capacity as a director.

N. **KEVIN J. CLINTON** is appointed as Chairperson of the Committee, and shall serve in that capacity at the pleasure of the Mayor.

TERMS: Unless otherwise removed, the terms of all Committee members shall expire in accordance with section V of Mayor's Order 2013-040.

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 2013-042
February 22, 2013

SUBJECT: Re-Establishment – Ward 5 Industrial Land Transformation Task Force

ORIGINATING AGENCY: Office of the Mayor

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

I. **ESTABLISHMENT**

There is established in the Executive Branch of the Government of the District of Columbia a Ward 5 Industrial Land Transformation Task Force (hereinafter referred to as "Task Force").

II. **PURPOSE**

The purpose of the Task Force is to develop a strategic plan for the modernization and adaptive use of industrial land in Ward 5.

III. **FUNCTIONS**

a. By December 31, 2013, the Task Force shall submit to the Mayor and the Council a report detailing a plan to stimulate and promote the modernization and adaptive use of parcels of Ward 5's industrial land, consistent with applicable laws and zoning regulations (the "Plan"). The Plan shall include:

1. An analysis of the existing conditions of Ward 5's industrial land, including:

i. An inventory of current industrial uses;

ii. Occupancy rate;

iii. The proportion of industrial land dedicated to municipal versus private use.

2. A set of goals, recommendations, and analysis for how to modernize and adaptively use Ward 5's industrial land;

3. A projection of the number of jobs that could be generated through the expansion of industries occupying Ward 5's industrial land;

4. A projection, utilizing data from the Office of the Chief Financial Officer, of the amount of tax revenue that could be generated through the expansion of industries occupying Ward 5's industrial land;

5. Recommendations for various measures and tools to facilitate and incentivize the modernization and adaptive use of industrial land; and

6. An implementation analysis, with a projected timeframe and recommended implementing agents.

IV. COMPOSITION

a. The Task Force shall consist of sixteen (16) voting members, including:

1. Eight (8) government members, including the following Directors, or their designees:

i. The Member of the District of Columbia Council representing Ward 5, with consent;

ii. The Chief Financial Officer of the District of Columbia (OCFO);

iii. The Director of the Office of Planning (OP);

iv. The Deputy Mayor of the Office for Planning and Economic Development (DMPED);

v. The Director of the Department of General Services (DGS);

vi. The Director of the Department of Public Works (DPW);

vii. The Director of the District Department of the Environment (DDOE);

viii. The Director of the District Department of Transportation (DDOT).

2. Eight (8) community members.

V. **TERMS**

Executive Branch government officials shall serve only while employed in their official positions and shall serve at the pleasure of the Mayor.

VI. **ORGANIZATION**

a. The Mayor designates the Director of the Office of Planning to serve as Chairperson of the Task Force.

b. The Task Force may elect other officers from among its members.

c. The Task Force may establish subcommittees as it deems necessary.

d. The Task Force shall conduct community focus groups and may conduct community surveys as it deems necessary.

e. The Task Force may utilize telephone conferencing or video-conferencing technologies.

f. The Task Force may establish its own rules of procedure.

VII. **COMPENSATION**

Members of the Task Force shall serve without compensation except that reasonable expenses of the Task Force members may be reimbursed.

VIII. **ADMINISTRATION**

The Director of the Office of Planning shall be responsible for convening and facilitating the Task Force as well as leading the effort to draft the report required herein.

IX. **SUNSET**

The Task Force shall cease to exist upon submission of its final report to the Mayor and the Council, but in any event, no later than January 31, 2014.

X. Mayor's Order 2013-025, dated January 31, 2013 is rescinded.

XI. **EFFECTIVE DATE:** This order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-043
February 22, 2013

SUBJECT: Appointments – Ward 5 Industrial Land Transformation Task Force

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with Mayor's Order 2013-042, dated February 22, 2013, it is hereby **ORDERED** that:

1. **KENYAN MCDUFFIE** is appointed a member of the Ward 5 Industrial Land Transformation Task Force ("Task Force"), as the Councilmember representing Ward 5.

2. **HARRIET TREGONING** is appointed a member of the Task Force, as the Director of the Office of Planning, and is appointed as Chairperson; she shall serve at the pleasure of the Mayor.

3. **BETSY KEELER** is appointed a member of the Task Force, as the designee of the Chief Financial Officer, and shall serve in that position at the pleasure of the Mayor.

4. **VICTOR HOSKINS** is appointed a member of the Task Force, as the Deputy Mayor for Planning and Economic Development, and shall serve in that position at the pleasure of the Mayor.

5. **STEPHEN CAMPBELL** is appointed a member of the Task Force, as the designee of the Director of the Department of General Services, and shall serve in that position at the pleasure of the Mayor.

6. **HALLIE CLEMM** is appointed a member of the Task Force, as the designee of the Director of the Department of Public Works, and shall serve in that position at the pleasure of the Mayor.

7. **KEITH ANDERSON** is appointed a member of the Task Force, as the Director of the District Department of the Environment, and shall serve in that position at the pleasure of the Mayor.

8. **TERRY BELLAMY** is appointed a member of the Task Force, as the Director of the District Department of Transportation, and shall serve in that position at the pleasure of the Mayor.

9. **ERIC JONES** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

10. **JAIME FEARER** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

11. **PETA-GAY LEWIS** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

12. **VICTORIA LEONARD** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

13. **JALAL GREENE** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

14. **RON DIXON** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

15. **EDWARD JOHNSON** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

16. **CAROL MITTEN** is appointed a public member of the Task Force and shall serve in that position at the pleasure of the Mayor.

17. Mayor's Order 2013-026, dated January 31, 2013 is rescinded in its entirety.

18. **EFFECTIVE DATE:** This Order shall be effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-044
February 22, 2013

SUBJECT: Appointments – Corrections Information Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and pursuant to the Corrections Information Council Amendment Act of 2010, effective October 2, 2010, D.C. Law 18-233, 57 DCR 4514, it is hereby **ORDERED** that:

1. **MICHELLE R. BONNER**, who was nominated by the Mayor on January 10, 2012, and approved by the Council of the District of Columbia, pursuant to Resolution 19-0415, on May 1, 2012, is appointed as a member of the District of Columbia Corrections Information Council ("Council"), for a two year term to end June 7, 2014.

2. **REVEREND SAMUEL W. WHITTAKER**, who was nominated by the Mayor on January 10, 2012, and approved by the Council of the District of Columbia, pursuant to Resolution 19-0416, on May 1, 2012, is appointed as a member of the Council, for a one year term to end June 7, 2013.

3. **MICHELLE R. BONNER** is designated as Chairperson of the Council and shall serve in that capacity at the pleasure of the Mayor.

4. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to June 7, 2012.

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 2013-045
February 22, 2013

SUBJECT: Appointments – Washington Convention and Sports Authority Board of Directors

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with section 205 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.05), it is hereby **ORDERED** that:

1. **MICHELE V. HAGANS,** who was nominated by the Mayor on December 1, 2011 and approved by the Council of the District of Columbia pursuant to Resolution 19-0366 on February 7, 2012, is appointed as a public member, and Chairperson, of the Washington Convention and Sports Authority Board of Directors (hereinafter referred to as "Board"), replacing Mitchell Schear, whose term expired May 16, 2011, for a term that ends on May 16, 2015.

2. **MIRIAM "MIMSY" HUGER LINDNER,** who was nominated by the Mayor on January 10, 2012 and approved by the Council of the District of Columbia pursuant to Resolution 19-0368 on February 7, 2012, is appointed as a public member of the Board, replacing Jim Abdo, whose term expired May 16, 2011, for a term that ends on May 16, 2015.

3. **DENISE ROLARK BARNES,** who was nominated by the Mayor on January 10, 2012 and approved by the Council of the District of Columbia pursuant to Resolution 19-0378 on February 21, 2012, is appointed as a public member of the Board, to fill a vacancy for a term that expired May 16, 2012, for a term that ends on May 16, 2016.

4. **SOLOMON KEENE, JR.,** who was nominated by the Mayor on December 1, 2011 and approved by the Council of the District of Columbia pursuant to Resolution 19-0367 on February 7, 2012, is appointed as a public member of the Board, representing the hotel industry, replacing Beverly Perry, whose term expired May 16, 2011, for a term that ends on May 16, 2015.

5. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, MARCH 6, 2013
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On March 6, 2013 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#13-251-00010 Miriam's Cafeteria, 3931 14TH ST NW Retailer C Restaurant, License#: ABRA-075536

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2. Case#12-251-00382 Mc Faddens, 2401 PENNSYLVANIA AVE NW A Retailer C Restaurant, License#: ABRA-060591

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3. Case#13-AUD-00022 Palena, 3529 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-060263

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4. Case#13-AUD-00023 Panache, 1725 DESALES ST NW Retailer C Restaurant, License#: ABRA-060754

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5. Case#13-AUD-00024 Taberna Del Alabardero, 1776 I ST NW Retailer C Restaurant, License#: ABRA-013218

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6. Case#13-AUD-00025 The Cheesecake Factory, 5345 WISCONSIN AVE NW Retailer C Restaurant, License#: ABRA-014760

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7. Case#13-CMP-00088 WA-ZO-BIA, 618 T ST NW Retailer C Restaurant, License#: ABRA-079306

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8. Case#13-CMP-00092 Homewood Suites, 1475 MASSACHUSETTS AVE NW Retailer D Tavern, License#: ABRA-085095

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9. Case#13-CC-00003 DRAFTING TABLE, 1529 14th ST NW Retailer C Restaurant, License#: ABRA-089190

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, MARCH 6, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of letter, dated February 18, 2013, from Commissioner Will Stepehens of ANC 2B requesting that the Board placard establishments applying for growler sales if the establishment was not previously granted a Single Sales Exception.

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2. Review of letter, dated February 20, 2013, from Commissioner David Holmes of ANC 6A requesting that the Board notify the ANC when a licensee seeks a change in license class; an entertainment endorsement, summer garden, or sidewalk café; a change in seating or occupancy; a change in hours; or other changes.

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3. Review of Request for Reinstatement, dated February 15, 2013, from Lorraine White who was dismissed at the Roll Call for failure to submit a signed protest letter, and response from Andrew Kline, dated February 26, 2013, in opposition to the request. ***Duffy's Irish Restaurant,*** 2106 Vermont Avenue NW Retailer CT02, Lic.#: 72539.

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4. Review of Settlement Agreement Amendment, dated February 13, 2013, between ANC 1A and Lion's Fine Wine & Spirits. ***Lion's Fine Wine & Spirits,*** 3614 Georgia Avenue NW Retailer A, Lic.#: 88221.*

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

BOOKER T. WASHINGTON PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Educational Management Company

Booker T. Washington Public Charter School invites competitive bids for a Management Company with personnel experience in working with special education students, mental health programs, and Medicaid billing.

Contact Mr. Edward W. Pinkard for full RFP and discussion.

Bids must include documentation of experience, qualifications, relevant awards or achievements, and estimated costs.

Bids may be submitted electronically or in person to Mr. Jaiyah M. Jalarue or Mrs. Joyce Williams, at 1346 Florida Avenue, NW, Washington, DC 20009. Phone 202-232-6090 extensions 410 & 416.

The deadline for submission is Friday, March 8, 2013 at 4pm.

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOLS (CAPCS)

REQUEST FOR PROPOSALS

Office and Conference Room Furniture

The Dorothy I. Height Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified vendors for furniture for two private offices and a small conference room, plus 4 fold-up chairs and utility cart(s) for another conference room. Price should include delivery and installation. Two references required. CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME. Contact Wesley Harvey at wesleyharvey@capcs.org or 202-234-5437 for more information. **Final proposals are due Friday, March 8, 2013.**

Culture Education

The Dorothy I. Height Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified vendors for a program to teach PK3-5th graders at two campuses about various cultures, particularly African. Instruction should include, but not be limited to, music and dance. Vendor will work with school staff to develop a schedule for in-school and/or after-school. Program to start immediately and run for approx. 6 weeks. Description of experience, 2 references, and all program costs required. CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME. Submit proposal electronically to Toby Hairston at tobyhairston@capcs.org by **Friday, March 8, 2013.**

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

BUSINESS REGULATORY REFORM TASK FORCE

NOTICE OF MEETING

The Business Regulatory Reform Task Force will be holding its first meeting on Thursday, March 14, 2013 at 8:30 a.m.

The meeting will be held at 1100 Fourth Street, SW, Fourth Floor Conference Room (E-4302), Washington, D.C. 20024.

The location is on the Metro Green Line, at the Waterfront/SEU stop. Limited paid parking is available on site.

D.C. PREPARATORY ACADEMY
REQUEST FOR PROPOSALS

CIVIL ENGINEERING AND LANDSCAPE DESIGN SERVICES

D.C. Preparatory Academy Public Charter School (DC Prep) is seeking competitive proposals for Civil Engineering and Landscape Design Services for a public charter school facility project. For a copy of the RFP, please contact Mr. Ryan Gever of Brailsford & Dunlavey at rgever@programmanagers.com. All proposals must be submitted by 5:00 pm on March 8, 2013.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF DEPUTY MAYOR FOR EDUCATION

STATE EARLY CHILDHOOD DEVELOPMENT COORDINATING COUNCIL

NOTICE OF FULL COUNCIL MEETINGS

The District of Columbia State Early Childhood Development Coordinating Council will be holding meetings on the 3rd Thursday of each month, from January through June of 2013.

Meetings will be held from 2-4 pm in the John A. Wilson Building Room 527, 1350 Pennsylvania Ave, NW, Washington, DC 20001.

Members of the public must register to speak. The time limit for registered speakers is three (3) minutes. A speaker should also submit two (2) copies of any prepared statement to Senior Advisor, C. Hayling-Williams at charlayne.hayling-williams@dc.gov.

Registration consists of your name; affiliation; phone number or email contact; and subject matter. Registration to speak closes at 4:30 pm the day prior to the meeting. To register, contact Tara Lynch in the Office of the Deputy Mayor for Education at 202.727.3636.

DRAFT AGENDA

I. Call to Order

II. Council Action Items

III. Government Communications and Presentations

IV. Chairman's Report

VI. Committee Reports

VII. Special Presentations

VII. Public Comment Period

VIII. Adjournment

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in eight (8) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2) (2001 & 2006 Repl.)

VACANT: 4A05, 5A04, 5A06, 5C06, 7D02, 7F07, 8C04 and 8E03

Petition Circulation Period: **Monday, March 4, 2013 thru Monday, March 25, 2013**
Petition Challenge Period: **Thursday**, **March 28, 2013 thru Wednesday, April 3, 2013**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

GRANT FOR ANALYSIS OF FISH TISSUE FOR CONTAMINANTS OF CONCERN

The District of Columbia District Department of the Environment ("DDOE") is seeking a nonprofit organization, educational institution or government agency to conduct fish tissue analysis of various fish species found in the Anacostia and Potomac Rivers. The fish tissue analysis will assist in the identification of potential contaminants of concern in the District of Columbia's surface water bodies.

Beginning Friday, March 1, 2013, the full text of the Request for Applications ("RFA") will be available online at DDOE's web site. It will also be available for pick-up. A person may obtain a copy of this RFA by any of the following:

Download, by visiting the DDOE's website, www.ddoe.dc.gov. Look for the following title/section, "Resources", click on it, choose "Grants and Funding", in the pull down menu choose "RFA" for the document to download in PDF format;

email a request to fishstudyRFA.grants@dc.gov with "Request copy of Fish Study RFA" in the subject line;

stop by DDOE's offices and ask for a copy at the 5th floor reception desk at the following street address (mention this RFA by name); or

write DDOE at Fish Study RFA Grants, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, "Attention: RFA - Requesting a copy" on the outside of the letter.

The deadline for application submissions is Monday, April 1, 2013, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to fishstudyRFA.grants@dc.gov.

Eligibility: A nonprofit organization, educational institution, or government agency may apply for this grant.

Period of Award: The **g**rant award will be made for a period of eighteen (18) months, assuming continuing funding availability.

Available Funding: The amount available for this award is approximately $86,600. The amount is subject to continuing availability of funding and approval by the appropriate federal agency.

For additional information regarding this RFA, please contact DDOE as instructed in the RFA document, or after reviewing the document, at fishstudyRFA.grants@dc.gov.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue a permit (#6658) to the American Tower Corporation to install and operate one (1) ultra low sulfur diesel-fired 80 kW emergency generator located at 3710 Benning Road NE, Washington, DC. The contact person for the facility is Scot D. Sandefur, Director EH&S, at (602) 284-0280.

The proposed emission limits are as follows:

a. Emissions shall not exceed those found in the following table [40 CFR 60.4205(b) 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]

Emission Standards	
Pollutant	**g/kW-hr**
$NMHC+NO_x$	4.0
CO	5.0
PM	0.30

b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit, operating five hundred (500) hour per year are expected to be as follows:

Pollutant	**Emission Rate (lb/hr)**	**Maximum Annual Emissions (tons/yr)**
Total Particulate Matter (PM -Total)	0.0346	0.0087
Sulfur Oxides (SO_x)	0.268	0.067
Nitrogen Oxides (NO_x)	0.807	0.202
Volatile Organic Compounds (VOC)	0.329	0.083
Carbon Monoxide (CO)	0.202	0.051

The application to operate the generator and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permits and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after April 1, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue a permit (#6650) to The Catholic University of America to install and operate one (1) diesel-fired 50 kW emergency generator located at 620 Michigan Avenue NE, Washington, DC. The unit is proposed to be installed at the residential complex known as Centennial Village. The contact person for the facility is Jerry Conrad, Associate Vice President, Facilities Operations, at (202) 319-5500.

The proposed emission limits are as follows:

a. Emissions shall not exceed those found in the following table [40 CFR 60.4205(b) 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]

Emission Standards	
Pollutant	**g/kW-hr**
$NMHC+NO_x$	4.7
CO	5.0
PM	0.40

b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit, operating five hundred (500) hour per year are expected to be as follows:

Pollutant	**Emission Rate (grams/hr)**	**Maximum Annual Emissions (tons/yr)**
Total Particulate Matter (PM -Total)	8.7	0.00480
Sulfur Oxides (SO_x)	21.75	0.01199
Nitrogen Oxides (NO_x)	314.65	0.17342
Volatile Organic Compounds (VOC)	7.25	0.00399
Carbon Monoxide (CO)	84.1	0.04635

The application to operate the generator and the draft permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permits and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after April 1, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permit renewal #6279-R1 to the Smithsonian Institution, National Museum of Natural History to operate one (1) existing 1,280 kW diesel-fired emergency generator set at10th Street and Constitution Avenue NW, Washington, DC 20560. The contact person for the facility is Paul Tintle, Acting Associate Director, SED at (202) 633-1560.

The renewal application to operate the generator set and the draft renewal permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after April 1, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective candidates to provide the following goods and services:

1.) **Student Transportation Services** in accordance with requirements and specifications detailed in the Request for Proposal.

Prospective candidates can obtain an electronic copy of the full Request for Proposal (RFP) for each service by contacting:

Harold Chandler
hchandler@friendshipschools.org
202-281.1705

DEPARTMENT OF GENERAL SERVICES

NOTICE OF PUBLIC MEETINGS

Surplus Resolutions Pursuant To D.C. Official Code 10-801

The District will conduct a public hearing to receive public comments on the proposed surplus of the following District property. The date, time and location shall be as follows:

Property:	Parcel238/40 at the 800 Block of Barnaby Road, SE (a vacant lot adjacent to a public Right-of-Way and Temple of Praise Church)
Date:	Tuesday, March 19, 2013
Time:	6:30 PM to 7:30 PM
Location:	William Lockridge/Bellevue Library 115 Atlantic Street, SW Washington, DC 20032
Contact:	S.E. Ponds, Realty Program Specialist Department of General Services 202.741.0942 or sheryl.ponds@dc.gov

DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine

Wednesday, February 27, 2013
899 North Capitol Street NE
2nd Floor
Washington, DC 20002

On FEBRUARY 27, 2013 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of maters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The meeting will be open to the public from 10:30 am to 12:00 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 2:00 pm.

Visit the Board of Medicine website www.doh.dc.gov/bomed - select BoMed Calendars and Agendas to view the agenda.

DISTRICT OF COLUMBIA

DEPARTMENT OF HEALTH

PUBLIC NOTICE

Request For Waiver Of Compliance With

Staffing Ratios

Submitted By Brinton Woods

The Interim Director of the District of Columbia Department of Health hereby gives notice that Brinton Woods, a licensed nursing facility located at 2131 O Street, N.W., has submitted a written request for a waiver from compliance with staffing ratio requirements.

The Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, D.C. Official Code §44-501 *et seq*. (hereinafter "the Act"), provides that nursing facilities shall maintain certain staffing ratios, i.e. required on-site professional and personal care staffing levels in particular proportion to a specific number of residents, and that these staffing ratios may be modified under certain conditions. Regulations promulgated pursuant to the Act state that each nursing facility that desires to modify the applicable staffing ratios must request the modification in writing. Section 3211.10 of Title 22-B of the District of Columbia Municipal Regulations (DCMR) provides the following:

> The Department [of Health] shall publish each request for an adjustment of a staffing ratio in the *D.C. Register* no later than fifteen (15) days after the written request is received by the Director.

This is official notice that Brinton Woods has submitted a request for adjustment of the staffing ratio. The written request is available for review at: http://doh.dc.gov/node/315852.

The Department of Health's response to Brinton Woods will be published by notice in the *DC Register*, in accordance with 22-B DCMR 3211.11, and displayed on the Department's website.

If you need more information about this notice, see regulations setting out criteria for requests and responses at 22-B DCMR 3111 . If you have questions regarding this notice or the request for waiver published at the aforementioned website address, please contact Sharon Williams Lewis, DHA, RN-BC, CPM, Program Manager, at 442-4737 or Carmen R. Johnson, Assistant Attorney General, at 442-4744.

DEPARTMENT OF HEALTH

NOTICE OF CERTIFICATION

The Interim Director of the Department of Health, pursuant to the authority set forth in Reorganization Plan No. 4 of 1996, hereby gives notice of certification of a new drug for inclusion in the formulary of the District of Columbia Acquired Immunodeficiency Syndrome Drug Assistance Program (ADAP). The HIV/AIDS Drugs Advisory Committee, at a meeting held on January 16, 2013, certified Zirgan (Ganciclovir) for inclusion on the ADAP program formulary. The U.S. Food and Drug Administration approved Zirgan (Ganciclovir) as topical anti-viral eye drops on September 15, 2009.

ADAP is designed to assist low income individuals with Acquired Immunodeficiency Syndrome (AIDS) or related illnesses to purchase certain physician-prescribed, life-sustaining drugs that have been approved by the U.S. Food and Drug Administration for the treatment of AIDS and related illnesses. Rules for this Program may be found at 29 DCMR § 2000 *et seq.*

For further information, please contact Gunther Freehill, Division Manager, ADAP, HIV/AIDS, Hepatitis, STD, and TB Administration on (202) 671-4900.

DISTRICT OF COLUMBIA

DEPARTMENT OF HEALTH

PUBLIC NOTICE

Determination On

Request For Waiver Submitted By The Methodist Home

The Interim Director of the District of Columbia Department of Health hereby gives notice that a determination has been made in response to a request by The Methodist Home to waive compliance with staffing ratio requirements. The request by the Methodist Home was made in accordance with regulations on nursing facility standards at 22 DCMR 3211, which provide that the Department of Health may grant a waiver from full compliance with staffing ratios as they are set out in subsections 22 DCMR 3211.3-5.

The determination on whether to grant a waiver as requested is to be based on criteria provided at 22 DCMR 3211.9. Based on that criteria, the request for waiver by The Methodist Home has been denied.

The Department's written response to the request for waiver is published for review at the following address: http://doh.dc.gov/node/315852.

If you need further information about this notice or the final determination on the request for waiver as published at the above-referenced address, please contact Sharon Williams Lewis, DHA, RN-BC, CPM, Program Manager, Health Regulation and Licensing Administration, at 442-4737 or Carmen R. Johnson, Assistant Attorney General, at 442-4744.

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THE NOT-FOR-PROFIT HOSPITAL CORPORATION

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00 a.m. on Thursday, February 28, 2013, immediately followed by a closed session pursuant to D.C. Code § 2-575(b)(4A). The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Rooms 2 and 3. Notice of a location or time change will be published in the D.C. Register and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

I. CALL TO ORDER

II. DETERMINATION OF A QUORUM

III. APPROVAL OF AGENDA

IV. CONSENT AGENDA

A. READING AND APPROVAL OF MINUTES

1. January 24, 2013

B. EXECUTIVE REPORTS

1. Chief Medical Officer
2. Chief Nursing Officer
3. Quality, Patient Safety and Regulatory Compliance
4. People Report (HR)

V. NONCONSENT AGENDA

A. EXECUTIVE REPORTS

1. Chief Financial Officer Report
2. Chief Executive Officer Report

B. MEDICAL STAFF REPORT

1. Chief of Staff Report

C. COMMITTEE REPORTS

1. Finance Committee Report
2. Audit Committee Report
3. Strategic Planning Committee Report

D. OTHER BUSINESS

1. Old Business
2. New Business

E. ANNOUNCEMENT

1. The next Governing Board Meeting will be held 9:00am, March 28, 2013 at United Medical Center/Conference Rooms 2 and 3.

F. ADJOURNMENT

G. EXECUTIVE SESSION

1. Settlements (D.C. Official Code § 2-575(b)(4A))

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF PUBLIC MEETING REGARDING
SURPLUS RESOLUTION PURSUANT TO D.C. OFFICIAL CODE §10-801

The District will conduct a public hearing to receive public comments on the proposed surplus of District property. The date, time and location shall be as follows:

Property:	Square: 5197 Lot: 0809 located at 5201 Hayes Street, N.E.
Date:	Tuesday, March 19, 2013
Time:	6:30 p.m.
Location:	HD Woodson Senior High School 540 55th Street, N.E. (auditorium) Washington, DC 20019
Contacts:	Emmanuel Bellegarde, Emmanuel.Bellegarde@dc.gov or Shiv Newaldass, Shiv.Newaldass@dc.gov

DISTRICT OF COLUMBIA TAX REVISION COMMISSION

NOTICE OF PUBLIC MEETING

The District of Columbia's Tax Revision Commission (the "Commission) will be holding a meeting on Monday, March 4, 2013 from 3:00 p.m. to 6:00 p.m. The meeting will be held at One Judiciary Square, 441 4th Street, NW, Room 1107, Washington, DC 20001. The agenda for the meeting is below.

For additional information, please contact Ashley Lee at (202) 478-9143 or ashley.lee@dc.gov

AGENDA

I. Call to Order

II. Approval of Minutes from February 4, 2013 Meeting

III. Muriel Bowser, Ward 4 Councilmember (invited)

IV. David Grosso, At Large Councilmember (invited)

V. Garry Young, Director, George Washington Institute of Public Policy

VI. Commission Business

VII. Adjournment

DISTRICT OF COLUMBIA TAXICAB COMMISSION

AMENDED INVITATION TO MANUFACTURERS

TO BECOME APPROVED TAXICAB DOME LIGHT PRODUCERS

SUMMARY: DCTC is inviting manufacturers to apply to become Approved Dome Light Producers (Approved Producers) of the new District of Columbia taxicab dome lights, required by law to be installed on all District of Columbia taxicabs by October 2013. This amends the Commission's original invitation, which was published in the *D.C. Register* on February 1, 2013 at 60 DCR 1281.

There is no application fee. Any interested manufacturer that believes it can meet the Commission's dome light manufacturing specifications, and wishes to become one of the approved sources for dome lights, is encouraged to apply. Any manufacturer whose application demonstrates to the satisfaction of the Commission that it can meet the dome light specifications will be approved, and will be offered the opportunity to execute an agreement allowing it to produce dome lights for at least 12 months. Contact information for Approved Producers will be posted on the Commission's Website at www.dctaxi.dc.gov and distributed to more than 7,000 taxicab operators and 12 installation centers.

BACKGROUND: The Commission regulates over 8,000 drivers, more than 7,000 public vehicles-for-hire, and 12 certified taximeter installation companies. A new dome light incorporating a new taxicab numbering system is required for all taxicabs in the District of Columbia as part of the ongoing modernization of the taxicab industry. On October 22, 2013, all Approved taxicabs are required by law to be equipped with a new dome light, meeting the specifications described herein and any further specifications required later by the Commission. DCTC will notify each manufacturer that has demonstrated to its satisfaction that they can meet the dome light specifications, and, at that time, offer them an opportunity to execute an agreement to become Approved Producers. **The agreement will not require payment of monetary consideration by the manufacturer.** In April 2013, DCTC expects to make a public announcement of Approved Producers, and to list Approved Producers on its Website and distribute their contact information to all taxicab operators and dome light installation centers. The deadline for vehicle owners to install the dome light is July 1, 2013 or as required by regulation.

NOTICE: A manufacturer that applies to be or that becomes an Approved Producer will not be entering into a contract with the District of Columbia. **This Invitation is not a request for information, bid, or proposal, or other type of procurement action.** The District of Columbia owns all rights, title, and interest in the design of the new dome light, including all intellectual property rights therein. A manufacturer whose application demonstrates to the satisfaction of the Commission that it can meet the dome light manufacturing specifications will

be required to execute an agreement allowing it to be one of the manufacturers of the dome light for at least 12 months.

SPECIFICATIONS: An interested manufacturer can obtain specifications from the District of Columbia Taxicab Commission website at www.dctaxi.dc.gov.

APPLICATION: An interested manufacturer must submit: (1) a letter of interest describing its capabilities, production capacity, expected dome light cost, and prior and current relevant manufacturing experience, (2) two reference letters from current clients, and (3) an operable sample dome light that meets the specifications herein. The letter of interest may not exceed five pages in length, with 1" margins all around and in size 12 font. A sample dome light will remain the property of the manufacturer and will be returned following the review process unless the manufacturer and DCTC agree in writing to a donation under the District's donation procedures.

APPLICATION DEADLINE: March 28th, 2013

LOCATION OF DELIVERY FOR APPLICATIONS (MUST BE DELIVERED IN PERSON):

District of Columbia Taxicab Commission
Attn: Ernest Chrappah
2041 Martin Luther King Ave Jr. S.E., Suite 204
Washington, D.C. 20020-7024

Applications must delivered in-person; applications sent by other means will not be accepted.

If you have questions, please contact Ernest Chrappah at ernest.chrappah3@dc.gov or (855) 484-4966.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will be holding its regularly scheduled General Commission Meeting on Wednesday, March 13, 2013 at 10:00 am. The meeting will be held in the Old Council Chambers at 441 4th Street, NW, Washington, DC 20001.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public must register to speak. The time limit for registered speakers is five (5) minutes. A speaker should also submit two (2) copies of any prepared statement to the Assistant Secretary to the Commission. Registration to speak closes at 3:30 pm the day prior to the meeting. Contact the Assistant Secretary to the Commission, Ms. Mixon, on 202-645-6012. Registration consists of your name; your phone number or email contact; and your subject matter.

DRAFT AGENDA

I. Call to Order

II. Commission Communication

III. Commission Action Items

IV. Government Communications and Presentations

V. General Counsel's Report

VI. Staff Reports

VII. Public Comment Period

VIII. Adjournment

UNIVERSITY OF THE DISTRICT OF COLUMBIA

MEETING OF THE AUDIT, ADMINISTRATION AND GOVERNANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Audit, Administration and Governance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Tuesday, March 5, 2013 at 5:30 p.m. The meeting will be held in the Board Room, Third Floor, Administration Building at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Administration's Response to KPMG Audit

III. Internal Auditor Six Month Status Report

IV. University Technology Status Report

V. Legal Staff Six Month Status Report

VI. Human Resources Six Month Report

VII. Closing

Adjournment

Expected Meeting Closure
In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Audit, Administration and Governance Committee hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Wednesday, March 6, 2013 at 5:00 p.m. in the Board Room, Third Floor, Administration Building at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Approval of Minutes

III. Report of the Chairperson

a. Executive Appointments

IV. Report of the Chief Operating Officer

V. Committee Reports

a. Executive – Dr. Crider
b. Committee of the Whole – Dr. Crider
c. Academic Affairs – Dr. Curry
d. Budget and Finance – Mr. Felton
    i. FY2014 Budget Approval
e. Audit, Administration and Governance – Mr. Shelton
f. Student Affairs – General Schwartz
    i. Communications Task Force – Mr. Pooda
g. Community College – Mr. Dyke
h. Facilities – Mr. Bell
    i. Contracts

VI. Unfinished Business

VII. New Business

VIII. Closing Remarks

Adjournment

Expected Meeting Closure
In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, March 7, 2013, at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

I. Call to Order (Board Chairman)

II. Roll Call (Board Secretary)

III. Approval of February 7, 2013 Minutes (Board Chairman)

IV. Chairman's Overview

V. Committee Reports

1. Human Resource and Labor Relations Committee (Committee Chairperson)
2. Environmental Quality and Sewerage Services Committee (Committee Chairperson)
3. Water Quality and Water Services Committee (Committee Chairperson)
4. DC Retail Water and Sewer Services Committee (Committee Chairperson)
5. Strategic Planning Committee (Committee Chairperson)
6. Audit Committee (Committee Chairperson)
7. Finance and Budget Committee (Committee Chairperson)

VI. General Manager's Report (General Manager)

VII. Consent Items (Joint-use)
Those matters affecting the general management of joint-use sewerage facilities.

VIII. Consent Items (Non-Joint Use)
Those matters not affecting the general management of joint-use sewerage facilities (Voted on by members representing the District of Columbia).

IX. Adjournment (Board Chairman)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 18167–A/17431-C of King's Creek, LLC, Motion for a Third Two-Year Extension of BZA Application Nos. 18167/17431, pursuant to 11 DCMR § 3130 and for a Waiver of § 3130.9 (time extension filing at least 30 days prior to expiration of an order) and a Waiver of § 3130.6 (one extension of the time period permitted).

The most recent application was pursuant to 11 DCMR § 3129.7, for interior and exterior modifications to plans approved by BZA Order Nos. 17431 and 17431-A and an increase in the number of dwelling units from 22 to 31, and for an extension of BZA Order No. 17431, pursuant to 11 DCMR § 3130.6, to allow an addition to and conversion of an existing building for residential use in the RC/R-5-B District at premises 2329 and 2335 Champlain Street, N.W. (Square 2263, Lots 103 and 816).

HEARING DATES (Orig. Application): February 28 and March 14, 2006

DECISION DATE (Orig. Application): May 2, 2006

DECISION ON MINOR MODIFICATION AND 1ST EXTENSION OF ORDER NO. 17431: November 18, 2008

ORDER NO. 17431-A ISSUANCE DATE: December 2, 2008

HEARING DATE ON MODIFICATION AND 2ND ORDER EXTENSION: February 15, 2011

DECISION ON MODIFICATION AND 2ND ORDER EXTENSION: February 15, 2011

ORDER NO. 18167/17431-B ISSUANCE DATE: March 23, 2011

DECISION ON 3rd MOTION TO EXTEND ORDER: February 12, 2013

ORDER ON THIRD MOTION TO EXTEND THE VALIDITY OF BZA ORDER NOS. 18167/17431

Background: the Underlying BZA Orders

On May 2, 2006, the Board of Zoning Adjustment ("Board" or "BZA") voted to approve Application No. 17431, filed pursuant to 11 DCMR § 3104.1 and § 3103.2, for a special exception to allow a building height of 50 feet in the Reed Cooke ("RC") Overlay under § 1403, a variance to permit an addition to a nonconforming structure under § 2001.3, a

variance from the floor area ratio requirement of § 402, and a variance from the court requirements under § 406 to allow an addition to, and conversion of, an existing building for residential use in the RC/R-5-B District at premises 2329 and 2335 Champlain Street, N.W. (Square 2563, Lots 103 and 816). BZA Order No. 17431 approving the application was issued on November 28, 2006. (Exhibit 9.)

2008 Request for Modification of Approved Plans and 1st Time Extension

On November 18, 2008, the Board voted to approve minor modifications to the approved plans and to extend the term of approval of Order No. 17431 for two years until December 2, 2010. This decision was set forth in BZA Order No. 17431-A, which was issued on December 2, 2008. (Exhibit 10.)

2010 Request for Modification of Approved Plans and 2nd Time Extension

On November 30, 2010, the Applicant filed an application (No. 18167), pursuant to 11 DCMR § 3129.7, requesting approval to modify the plans approved pursuant to BZA Order No. 17431 and as modified by BZA Order No. 17431-A. (Exhibit 1.) The Applicant's proposed modifications included revising the building's footprint, which would decrease the lot occupancy from 92.80% to 88.22% on the first and second floors; revising the interior layout and exterior design of the building to simplify and rationalize the interior building configuration and exterior façade treatments; increasing the number of residential units from 22 to 31; and, although no parking was required for the project, providing 20 parking spaces, which would be a reduction of one space from the 21 spaces in the plans previously approved by the Board. The Applicant further amended its application to include a request to extend the validity of the underlying orders, Nos. 17431 and 17431-A, for two more years.

On February 15, 2011, after a public hearing, the Board voted to approve the Applicant's requested modifications to the plans approved pursuant to BZA Order No. 17431, as modified by BZA Order No. 17431-A, and for a second two-year extension of time. The approved modifications included revising the building's footprint by decreasing the lot occupancy on the first and second floors, revising the exterior and interior building configuration and exterior façade treatments, increasing the number of residential units from 22 to 31, and providing 20 parking spaces. BZA Order No. 18167/17431-B approving the modifications and extending the expiration date of Order No. 17431 until December 12, 2012, was issued March 23, 2011. (Exhibit 35.)

2012 Motion to Extend

On December 10, 2012, the Board received a letter from the Applicant, which requested, pursuant to 11 DCMR § 3130.6,[1] upon a showing of good cause, a third two-year extension in the authority granted in the underlying BZA Order, which was due to expire on December 12, 2012, as well as requests for the Board to waive, pursuant to § 3100.5

[1] Section 3130.6 was adopted by the Zoning Commission in Z.C. Case No. 09-01 and became effective on June 5, 2009.

of the Zoning Regulations, the 30-day filing requirement in § 3130.9, to allow tolling of the expiration of the Order, and the restriction to one extension in § 3130.6, to allow more than one extension of the Order. (Exhibit 37.)

Waiver of 30-Day Filing Requirement Pursuant to 11 DCMR § 3130.9

As stated, the Applicant's request for a third extension of the Order that was dated December 10, 2012 and submitted on December 11, 2012, contained a request to waive § 3130.9 of the Zoning Regulations to accept the Applicant's time extension motion that was filed less than 30 days prior to the expiration of the underlying order and to toll that order's expiration. (Exhibit 37.) Subsection 3130.9 says: "A request for a time extension filed at least thirty (30) days prior to the date upon which an order is due to expire shall toll the expiration date for the sole purpose of allowing the Board to consider the request." (11 DCMR § 3130.9.) The request was submitted one day before the Order was due to expire on December 12, 2012, thereby requiring a waiver of the requirements of § 3130.9.

In its December 10, 2012 letter, the Applicant requested that the Board exercise the discretion that it is granted pursuant to 11 DCMR § 3100.5, and waive the 30-day requirement in 11 DCMR § 3130.9. Also in its December 10th submission, the Applicant, to demonstrate good cause for the delay in filing, explained that it believed it would receive the necessary conditional *No Further Action Letter* or the conditional *Case Closure Letter* from the D.C. Department of the Environment ("DDOE") prior to the expiration date of the Order, which would have enabled the Applicant to have filed its plans for the approved project with the Department of Consumer and Regulatory Affairs ("DCRA") prior to December 12, 2012. Once it realized that it would not receive the necessary DDOE letter prior to the Order's expiration date, the Applicant assembled the necessary supporting materials, and prepared and submitted its extension request, which resulted in the Applicant filing its request for an extension less than 30 days prior to the expiration of the underlying Order. The Applicant further indicated that no one was prejudiced by the delay in filing. (Exhibit 37.)

Subsection 3100.5 provides:

> Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As §§ 3100 through 3105, 3121.5, and 3125.4 do not apply to extension requests, the Board concludes that it is authorized, for good cause shown, pursuant to 11 DCMR § 3100.5, to waive the 30-day provision and toll the expiration date of the Order for the sole purpose of allowing the Board to consider the request. At its February 12, 2013 meeting, finding sufficient good cause shown, the Board, by consensus, approved the waiver of the 30-day filing requirement.

Waiver of One-Extension-Only Requirement Pursuant to 11 DCMR § 3130.6

Also as a preliminary matter, the Board addressed whether to waive the limitation to one extension in 11 DCMR § 3130.6 to allow the grant of a third extension of the Order. In Z.C. Case No. 09-01, the Zoning Commission ("Commission") amended 11 DCMR § 3130, in part, by adding § 3130.6. The amendments adopted by the Commission in Z.C. Case No. 09-01 became effective on June 5, 2009. Subsection 3130.6 expressly limits the number of time extensions to one.[2] In Z.C. Case No. 09-01, the Commission also specifically authorized the Board to extend the time limits of § 3130.1 and provided the criteria for doing so. *Z.C. Order No. 09-01*, 56 DCR 4388 (June 5, 2009).

In its letter of December 10, 2012, the Applicant requested that the Board exercise its discretion pursuant to 11 DCMR § 3100.5, and waive the limitation in 11 DCMR § 3130.6 to a single time extension.[3]

To show good cause for granting the waivers and the time extension, the Applicant filed a sworn affidavit in which it indicated that it is unable to move forward with the building permit application by the expiration date of the Board's Order because of delays that are beyond the Applicant's control. In its statement, the Applicant described the extensive efforts it has made to move forward with the project, the substantial funds it has expended to support the remediation and mitigation of any outstanding environmental issues, and its diligent efforts to pursue approval from DDOE. The Applicant further stated that it believed it would have received the necessary conditional *No Further Action Letter* or the conditional *Case Closure Letter* from DDOE prior to the expiration date of the Order, which would have enabled the Applicant to have filed plans for the approved project with DCRA prior to December 12, 2012; however, this did occur ahead of the expiration date.

Moreover, the Applicant indicated that it has not benefitted in any way from the delay of development of the property; and there would be no benefit to the District, the neighborhood, or the Applicant in depriving the Applicant additional time in which to develop the Project. The Applicant also asserted that granting the waiver would be in the interest of administrative efficiency for the Board and the community.

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[2] On December 10, 1012, the Zoning Commission took proposed action to approve Z.C. Case No. 12-11 which included text amendments to the BZA Rules and Procedures – Chapter 31 of the Zoning Regulations including the provisions pertaining to time extensions to the validity of BZA orders. The text amendment would both eliminate the limitation on granting more than one time extension (§ 3130.6) and the 30-day rule for filing before the expiration date of an order (§ 3130.9). The Zoning Commission is expected to take final action in February 2013.

[3] Subsection 3100.5 provides:

> Except for §§ 3100 through 3105, 3121.5 and 3125.4, the Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

As §§ 3100 through 3105, 3121.5, and 3125.4 do not apply to extension requests, the Board concludes that it is authorized, for good cause shown, pursuant to 11 DCMR § 3100.5, to waive the restriction to one extension pursuant to § 3130.6. At its February 12, 2012 meeting, finding sufficient good cause shown, the Board, by consensus, approved the waiver of the one extension restriction requirement. Further, the Board concludes that granting the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The merits of the 2012 request to extend

As noted, the Board received the Applicant's request, dated December 10, 2012, for a two-year extension in the authority granted in the underlying BZA Order, which was due to expire December 12, 2012. Included with the request was a sworn and signed affidavit from Michael Dyer, Chief Operating Officer of G&G, LLC, which is the owner of King's Creek, LLC, which is owner of the property that is the subject of BZA Order Nos. 17431, 17431-A, and 18167/17431-B. The purpose of the Mr. Dyer's affidavit was to show good cause for the requests for the waivers and time extension, pursuant to 11 DCMR § 3130.6. (Exhibit 37.)

The Applicant served its extension request dated December 10, 2012 to the Chair of the Advisory Neighborhood Commission ("ANC") 1C, which is the affected ANC, and to the Office of Planning ("OP"), notifying them of the Applicant's motion for a two-year time extension and sharing all the documentation in support of that motion with them. (Exhibit 37, Tab D.) OP, in its report dated February 5, 2013, noted that the application submitted by the Applicant dated December 10, 2012, has been in the public record since it was filed. (Exhibit 38.)

The project is within the boundaries of ANC 1C. ANC 1C filed a letter report on February 8, 2013, in support of the request for an extension. The ANC stated that at a regularly scheduled, duly noticed meeting held on February 6, 2013, at which a quorum of seven of eight members were present, ANC 1C voted unanimously (7:0) to adopt the resolution supporting the application. (Exhibit 39.)

OP filed a report recommending that the Board grant the Applicant's request for a third two-year extension of Order No. 18167/17431. (Exhibit 38.)

According to the Applicant, the reasons for its request to the Board to extend Order No. 18167/17431 for another two years are because of its inability, despite its diligent efforts, to secure all of the required government agency approvals by the expiration date of the Board's Order due to delays that are beyond the Applicant's control. The Applicant's sworn affidavit stated that since Order No. 17431 was issued, the Applicant had taken many steps to move forward with the overall project, including engaging a leading global real estate agency to market the property to third-party purchasers, creating a marketing brochure, entering into a Letter of Intent with a third-party purchaser in September 2011 and in January 2012, executing an agreement to sell the property to the third-party purchaser. However, the Applicant's statement also indicated that the property is affected

by petroleum contamination from the property to the north. BP Products of America ("BP") has taken responsibility for the clean-up and together with the Applicant has been working with DDOE to remedy the environmental issues. To date, some work has been completed to remedy the environmental issues but it has not been completed in order for DDOE to issue either a conditional *No Further Action Letter* or a conditional *Case Closure Letter* to enable the granting of a building permit. The Applicant also stated that it has engaged a real estate agency to market the property and have been successful in attracting potential purchasers, but in one instance a contract was nullified due to the non-completion of the environmental clean-up. The Applicant has another potential purchaser who has entered into an agreement to purchase the property and begin construction contingent on clearance by DDOE. The Applicant indicated that granting the requested extension would provide the time needed for the Applicant to secure the necessary approvals to move forward with the third party purchaser to develop the property.

In addition, the Applicant indicated that the plans approved for the development of the site and other material facts are unchanged from those approved by the Board in its Order issued on March 23, 2011. Also, there have been no changes to the Zone District classification or the Comprehensive Plan applicable to the property. The extension would allow the Applicant the necessary additional time in which to secure the required government approvals. Accordingly, the Applicant requested that, pursuant to § 3130.6 of the Regulations, the Board extend the validity of its prior Order for an additional two years, thereby allowing the Applicant the additional time to secure those required governmental approvals and apply for a building permit.

The Zoning Commission adopted 11 DCMR § 3130.6 in Zoning Commission Case No. 09-01. The Subsection became effective on June 5, 2009.

Subsection 3130.6 of the Zoning Regulations states in full:

3130.6 The Board may grant one extension of the time periods in §§ 3130.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Board determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

(b) There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application; and

(c) The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control;

(2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or

(3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

(11 DCMR § 3130.6.)

As discussed herein, pursuant to 11 DCMR § 3130.9, for a request for a time extension to toll the expiration date of the underlying order for the sole purpose of allowing the Board to consider the request, the motion must be filed at least 30 days prior to the date on which an order is due to expire. Although the Applicant filed its request with a sworn affidavit on December 11, 2012, which was less than the required 30-day period for tolling, the Applicant presented reasons, as described above, for its delay in filing its motion and the supporting documents. Pursuant to § 3100.5, the Board voted to grant the Applicant's request for flexibility and tolled the effect of the underlying Order.

The Board also found that the Applicant has met the criteria set forth in § 3130.6. The motion for a time extension was served on all the parties to the application and those parties were given 30 days in which to respond under § 3130.6(a). The Applicant's inability to secure the required government approvals due to delays beyond the Applicant's control constitute the "good cause" required under § 3130.6(c)(1).

As required by § 3130.6(b), there is no substantial change in any of the material facts upon which the Board based its original approval. In requesting this extension of the Order, the Applicant's plans for development of the site would be unchanged from those approved by the Board in its Order dated March 23, 2011 (Exhibit No. 35 in the record). There have been no changes to the Zone District classification applicable to the property or to the Comprehensive Plan affecting this site since the issuance of the Board's original Order.

Neither the ANC nor any party to the application objected to an extension of the Order. The Board concludes that the extension of that relief is appropriate under the current circumstances.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and

conclusions of law. Pursuant to 11 DCMR § 3130, the Board of Zoning Adjustment hereby **ORDERS APPROVAL** of Case No. 18167-A/17431-C for a third two-year time extension of Order No. 17431, which Order shall be valid until **December 12, 2014**, within which time the Applicant must file plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit.

VOTE: 4-0-1 (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Anthony J. Hood (by absentee vote), to Approve; the third Mayoral appointee vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: February 21, 2013

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18446 of Edward Bruske, pursuant to 11 DCMR § 3103.2, for variance from the lot area requirements under subsection 401.3, to allow the conversion of a flat (two-unit dwelling) into a three unit apartment building in the R-4 District at premises 1308 Euclid Street, N.W. (Square 2866, Lot 55).

HEARING DATES: November 27, 2012 and January 15, 2013
DECISION DATE: February 12, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

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") 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a timely report recommending approval of the application. (Exhibit 28.) The Office of Planning ("OP") submitted a timely report and supplemental report recommending denial of the application. (Exhibits 27 and 33.) Five letters of support from neighbors were submitted into the record. (Exhibit 25.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from the lot area requirements under subsection 401.3. 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. No letters in support or opposition of the application were received.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking a variance from § 401.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship and a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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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. The waiver will not prejudice the rights of any party, and is appropriate in this case. The waiver is therefore **ORDERED** that this application, pursuant to Exhibit 10 – Architectural Plans, is hereby **GRANTED.**

VOTE: **3-1-1** (Lloyd J. Jordan, Nicole C. Sorg, Marcie I. Cohen (absentee ballot) to GRANT; Jeffrey L. Hinkle to OPPOSE; Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: **_____**

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,

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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. 18489 of GA Views Management LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for special exception approval to waive the rear yard requirements pursuant to §774.2; for special exception approval, pursuant to §1330.2, to permit a building on a corner lot that is not constructed to the property lines abutting the public streets as required under §1328.2; and for a variance of the off-street parking requirements in § 2101.1, in order to permit a mixed-use project that consists of ground floor retail and residential use above in the Georgia Avenue Commercial (GA) Overlay District at 3557-3559 Georgia Avenue, N.W. (Lot 89, Square 3033).[1]

HEARING DATE: January 15, 2013
DECISION DATE: February 12, 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 of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 1A, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 1A, which is automatically a party to this application. At its regularly scheduled meeting on January 9, 2013, ANC 1A voted 10-0-0 to adopt a resolution in support of the Application. The ANC submitted a Form 129 and a copy of its resolution for the record. (Exhibit 28.) Jim Graham, Councilmember for Ward 1, submitted a letter in support of the Application. (Exhibit 30.)

The Office of Planning ("OP") submitted a report, dated January 8, 2013, in which it expressed its support in concept of the proposed application, but indicated that it could not make a recommendation at that time. Nevertheless, OP stated that it was its belief that the Applicant could satisfy the relief standards, but urged the Applicant to provide additional information and address OP's concerns by adopting certain conditions.[2]

[1] The Applicant amended its application by withdrawing its request for variances from the roof structure provisions under §§ 774, adding a request for special exception relief pursuant to §1330.2, to permit a building on a corner lot that is not constructed to the property lines abutting the public streets as required under § 1328.2, and changing its original request for an area variance from the minimum rear yard requirements to a special exception request. The caption has been amended to reflect all of those changes.

[2] The Applicant submitted the requested information and agreed to the conditions proposed by OP and DDOT that addressed the concerns that were raised. (Exhibit 34.) At the public hearing, OP testified that it

(Exhibit 26.) The District Department of Transportation ("DDOT") submitted a memorandum, dated January 8, 2013, stating the Application has a negligible impact to the transportation system and that the agency had no objection to the requested variances provided that the Applicant installs a minimum of 20 bicycle parking spaces and implements the recommended transportation demand management ("TDM") measures. (Exhibit 27.)

Ms. Anna Bowman, who resides at 732 Otis Place, testified at the hearing. She was primarily concerned that the lack of parking at the project would adversely impact the residents on Otis Place.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the off-street parking requirements of § 2101.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing.[3] Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances under § 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board also required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the rear yard requirements in §774.1 and design standards in §1328.2. 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 and ANC reports filed in this case, the Board concludes that the Applicant has met the burden

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was now supportive of the application based on the Applicant's testimony and additional information provided as well as the ANC's unanimous vote in support of the project.

[3] At the public meeting, the Board requested and gave leave to the Applicant to submit a revised roof plan for the project.

of proof for special exception for the waiver of the rear yard requirements and to set the building back from the property lines abutting the public streets, and the relief is in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The Property shall be developed in accordance with the highlighted plans titled "The V at Georgia Avenue" dated December 28, 2012, marked as **Exhibit 25** of the record, except as modified by Sheet A2.2, dated 07-12-2012 and submitted to the Board on February 19, 2013, and marked as **Exhibit 36** of the record.

2. The project shall include the following transportation demand management measures:

a. A member of the property management team will be designated as the Transportation Management Coordinator (TMC). The TMC will be responsible for ensuring that information is disseminated to tenants of the building.

b. The TMC shall provide a packet of information identifying programs and incentives for encouraging retail and residential tenants to use alternative modes of transportation. The packets shall include information regarding Capital Bikeshare, ZipCar, Commuter Connections Rideshare Program, Commuter Connections Guaranteed Ride Home and Commuter Connections Pools Program.

c. Links to CommuterConnections.com and goDCgo.com shall be provided on the property management websites.

d. The Applicant shall provide at least 20 bicycle spaces in the building. Convenient and covered secure bike parking facilities shall be provided.

e. The Applicant shall provide the first occupant of each residential unit, upon closing of a sale or signing of a lease: a car sharing membership at a value of $100.00, or a Capital Bikeshare membership at a value of not less than $150.00; or a *Smart Trip* card at a value of not less than $200.00.

f. There shall be no permanent garbage dumpster in the rear yard.

VOTE: **3-0-2** (Lloyd L. Jordan, Jeffrey L. Hinkle, and Peter G. May to Approve; Nicole C. Sorg not present or participating; 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: February 22, 2013

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12M/03-13M
Z.C. Case No. 03-12M/03-13M
Capper/Carrollsburg Venture, LLC & DCHA
(Two-Year PUD Time Extension @ Square 881W)
July 9, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on July 9, 2012. At the meeting, the Commission approved a request on behalf of Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicant") for a two-year extension of the time period in which to file a building permit for the construction of a community center in Square 88IW, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A, 03-12I/03-13I, and 03-12J/03-13J pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval of a planned unit development ("PUD") for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land area. The approved overall project will include a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and a community center building to be constructed on Square 881W. The approved community center will include a total gross floor area of approximately 28,500 square feet for a child development center and recreation center uses. The building will be constructed to a maximum height of 35 feet, and will have an overall density of 0.78 floor area ratio ("FAR") and an overall lot occupancy of 48%.

2. Condition 20 of that order provided that:

> The Applicants shall file an application for a building permit for the community center building in Square W881 (also known as Reservation 19) by July 1, 2005, subject to review by the National Park Service of the proposed uses. Plans shall be submitted to the Zoning Commission as part of a second-stage application with sufficient lead time to allow this deadline to be met. Construction shall start on the community center no later than 180 days after the issuance of the building permit.

3. Second-Stage PUD approval for the community center was granted in Z.C. Order No. 03-12A/03-13A. Condition No. 5, as stated in that order, read:

> The Applicants shall file an application for a building permit for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application.

4. The order became effective on September 15, 2006, so that the Applicant was required to file for a building permit to construct the community center no later than September 15, 2008.

5. On July 3, 2008, the Applicant filed an application seeking, among other things, an extension of the first-stage approval and overall phasing of the PUD and an extension of the period in which to file a building permit application and to commence construction on the community center. The requests were granted in Z.C. Order No. 03-12I/03-13I, which became effective upon publication in the *D.C. Register* on June 26, 2009. The order modified Condition No. 5 of Z.C. Order No. 03-12A/03-13A to provide that the Applicant must file an application for a building permit for the community center no later than July 1, 2010 and must commence construction of the community center no later than July 1, 2011.

6. Pursuant to Z.C. Order No. 03-12J/03-13J, the Commission approved the Applicant's extension request stating that an application for a building permit for the community center building must be filed no later than July 1, 2012, with construction to begin no later than July 1, 2013.

7. By letter dated and received by the Commission on May 9, 2012, the Applicant filed a request for an extension of the time period in which to file a building permit for the construction of a community center in Square 88IW such that an application for a building permit for the community center building must be filed no later than July 1, 2014, with construction to begin no later than July 1, 2015.

8. The Office of Planning ("OP") submitted a report dated June 1, 2012 indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension. (Exhibit ["Ex."] 4.)

9. On June 14, 2012, Advisory Neighborhood Commission ("ANC") 6B submitted a letter indicating that at the regularly scheduled meeting they voted 10-0 in support of the requested extension. (Ex. 6.)

10. On July 5, 2012, the Arthur Capper Carrollsburg HOPE VI Steering Committee submitted a letter in support of the requested extension. (Ex. 7.)

11. On May 30, 2012, ANC 6D submitted a letter that requesting that the Commission delay consideration of the current extension request in order to provide ANC 6D additional time to review the application. (Ex. 5.)

12. On July 9, 2012, ANC 6D submitted a letter in support of the requested extension. (Ex. 8.)

13. As to the merits, the Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. DCHA indicated that it has been unable to issue the necessary bonds that will be used to help construct the community center building given the current market conditions. DCHA also indicated that the overall project funds which it has received thus far have either been restricted to certain uses, or otherwise used to pay off outstanding private financing that the agency had to undertake to keep the project moving forward, with the remaining portions used for constructing infrastructure improvements also necessary for the overall project to move forward. Thus, the community center building cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control.

14. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe downturn in financing, construction, sales and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to issue the PILOT bonds necessary for construction of the community center building at this time, or otherwise secure project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Commission finds that the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission further finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

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.

2. The Commission concludes that the Applicant 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 finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DCMR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the community center building, following the Applicant's diligent, good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.

5. 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.

6. The Commission concludes that 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.

7. 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.

8. 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)(3)(B)) requires that the Zoning Commission give "great weight" to the issues and concerns raised in the written recommendations of the affected ANC. For this request, the affected ANCs are ANCs 6B and 6D. ANC 6B and ANC 6D both submitted letters in support of the requested extension. The Commission considered the ANCs' recommendations in its deliberations, concurs with their recommendations, and has given them the great weight they are entitled.

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. OP submitted a report indicating that the Applicant met the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension. (Exhibit 4.) The

Commission considered OP's report, and has given OP's recommendation great weight in approving this application.

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 extension of the time in which to file a building permit for the construction of a community center in Square 88IW, which was initially approved in Z.C. Order No. 03-12/03-13, and was modified and extended pursuant to Z.C. Order Nos. 03-12A/03-13A, 03-12I/03-13I, and 03-12J/03-13J. The approval of the community center building by the Commission shall be valid until July 1, 2014, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than July 1, 2015.

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 July 9, 2012, upon the motion made by Commissioner Turnbull, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register;* that is, on March 1, 2013.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12N/03-13N
Z.C. CASE NO. 03-12N/03-13N
Square 769, LLC and District of Columbia Housing Authority
(Two-Year Time Extension for Planned Unit Development @ Square 769)
November 14, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on November 14, 2012. At the meeting, the Commission approved a request from Square 769, LLC and the District of Columbia Housing Authority (collectively the "Applicant") for a time extension for an approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S.E. (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. Pursuant to Z.C. Order No. 03-12/03-13, the Commission granted preliminary and consolidated approval for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land area. The approved overall project includes a maximum of 1,747 residential units, 708,302 square feet of office space, 51,000 square feet of retail space, 1,780 off-street parking spaces, and the approved community center building.

2. The overall development as approved pursuant to Z.C. Order No. 03-12/03-13 included the preliminary approval for the office building to be constructed on the southern portion of Square 769 to be known as 250 M Street, S.E. The approved office building, which is the subject of this extension request, will include a total gross floor area of approximately 234,182 square feet and be constructed to a maximum height of 130 feet, not including roof structures. The Commission approved the last order affecting the office building in Z.C. Order No. 03-12F/03-13F, which became effective upon publication in the *D.C. Register* on November 26, 2010. Z.C. Order No. 03-12F/03-13F requires the Applicant to file an application for a building permit for the office building no later than September 26, 2012. Construction must begin no later than September 26, 2013.

3. By letter dated and received by the Commission on September 24, 2012 the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request would require that an application for a building permit for the office building must be filed no later than September 26, 2014, and construction must be started no later than September 26, 2015. The Applicant's request was supported by a letter from the Applicant's financial mortgage broker setting forth details of the Applicant's inability to obtain project financing, and a letter from the Applicant's leasing broker setting forth details of the broker's efforts to market the approved building to potential tenants.

4. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant's mortgage broker indicated that it submitted

financing requests to several lenders including Wachovia (now Wells Fargo), BB&T Bank, Bank of America, SunTrust, and Local Initiatives Support Corporation. However, no lender thus far has been interested in financing the proposed office building "on-spec," and lenders are now requiring buildings to be at least 70% pre-leased prior to making loan commitments. The Applicant also indicated that in 2009, the Applicant explored the opportunity to utilize New Market Tax Credits to finance the project with the requirement of leasing the building to several non-profits. However, after several months of negotiations the tenants decided to remain in their current location and the deal collapsed. Furthermore, in July 2012, the Applicant worked with the District of Columbia Housing Authority's ("DCHA") wholly-owned subsidiary, District of Columbia Housing Enterprises ("DCHE"), to submit an application to receive a New Market Tax Credit allocation for the Project. The application is currently pending.

5. The Applicant also submitted a letter from its leasing broker indicating that since the project was initially approved, the company has worked to rebrand the building to "250 M at Canal Park" to give the building a sense of identity and differentiate it from competitors by recognizing the proximity to the future Canal Park. The leasing broker indicated that it has also created brochures, a website, and other marketing materials to distribute to potential tenants. The leasing broker further stated that it has worked with Capital Riverfront Business Improvement District to host brokerage events and symposiums to create interest in the building as well as the Capital Riverfront neighborhood. The leasing broker has also presented the project to numerous leads including non-profits, engineering firms, educational institutions, government and quasi-government prospects in an effort to pre-lease 70% of the building, which is the threshold required to obtain construction financing.

6. The Applicant has also taken additional steps to move forward with the office building, including the following: consolidated the prior existing lots into new assessment and taxation lots; completed construction documents for the office building, which documents have been filed and approved by a third party permit reviewer; submitted plans to DC Water for review and approval; responded to several Request for Proposals for major tenants; and completed and submitted an Environmental Impact Screening Form ("EISF") for the project in March 2008. The EISF was approved in June 2009.

7. Further, in the fall of 2011, infrastructure work along 2nd Place related to the construction of Canal Park was installed that will also serve the future improvements at the site of the approved office building. The work included the following: installation of the private service drive entrance curb cut and ramp on 2nd Place; installation of a Pepco duct bank to serve the future transformers for the approved office building located in the private service drive; installation of a grey water storm drain system to be connected to the approved office building; installation of curb gutter, handicap ramps, crosswalk, re-grading, paving, striping, signage, storm drain, street lights, street trees and tree pits,

temp sidewalk, layby parking spaces along 2nd Place; and installation of a new M Street fire hydrant to allow the future approved office building to have the proper FDC connection and distance from a fire hydrant. These public space improvements were funded in part by DCHA, a partner in the approved office building development.

8. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe downturns in 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 it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

9. On September 24, 2012, the Applicant served a copy of the request on Advisory Neighborhood Commission ("ANC") 6D, which was the only other party to this case. ANC 6D submitted a letter, dated November 13, 2012 in support of the requested extension. (Exhibit ["Ex."] 6.)

10. The Office of Planning ("OP") submitted a report dated October 22, 2012 indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations. (Ex. 5.) OP thus recommended that the Commission approve the requested two-year PUD extension.

11. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.

12. Based on the OP report, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not 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 Zoning 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.

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 § 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 affected ANC's written recommendations. ANC 6D submitted a letter in support of the requested extension. (Ex. 6.) The Commission carefully considered the report in its deliberations and has given ANC 6D's recommendation great weight in approving 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 submitted a report indicating that the Applicant meets the standards of § 2408.10 and 2408.11(a) of the Zoning Regulations and therefore recommended that the Commission approve the requested extension. (Ex. 5.) The Commission carefully considered the OP recommendation in its deliberation and has given OP's recommendation great weight in approving 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). 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.

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.

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 for the approved planned unit development ("PUD") for the southern portion of Square 769 to be known as 250 M Street, S.E. approved in Z.C. Case No. 03-12F/03-13F. The project approved by the Commission shall be valid until September 26, 2014, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than September 26, 2015.

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 14, 2012, upon the motion made by Commissioner May as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; third mayoral position vacant, not voting).

In accordance with the provisions of 11 DCMR §3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 1, 2013.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12O/03-13O
Z.C. Case NO. 03-12O/03-13O
District of Columbia Housing Authority
(Minor Modification to PUD @ Squares 767, 768, & 882)
December 10, 2012

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public meetings on November 16, 2012 and December 10, 2012 to consider a request from the District of Columbia Housing Authority (the "Applicant") for a minor modification to the planned unit development ("PUD") approved pursuant to Z.C. Order No. 03-12/03-13, dated October 8, 2004. The matter was placed on the Consent Calendar pursuant to §§ 2409.9 and 3030 of the D.C. Zoning Regulations (Title 11 DCMR), and, for the reasons stated below, was approved without a hearing or referral to the National Capital Planning Commission.

FINDINGS OF FACT

By Z.C. Order No. 03-12/03-13, dated October 8, 2004, the Commission approved the Applicant's application for a consolidated PUD and zoning map amendment for Squares 739, 767, 768, 769, 797, 798, 800, 825, 825S, and 882 and portions of Squares 737, 799, 824, N853, and 880. The property included in the PUD approval is located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land.

Pursuant to 11 DCMR § 3028, Z.C. Order No. 03-12/03-13 ("Original Order") became effective upon publication in the *D.C. Register* on October 8, 2004.

The Original Order has been corrected and modified since its issuance. On October 14, 2005, the Commission issued Z.C. Order No. 03-12C/03-13C to correct an error in the Original Order. On April 7, 2006, the Commission issued Z.C. Order No. 03-12B/3-13B approving a minor modification to the Original Order. On September 15, 2006, the Commission issued Z.C. Order No. 03-12A/03-13A to permit final approval of the first phase of the approved PUD and modify the Original Order. On October 26, 2007, the Commission issued Z.C. Order No. 03-12D/03-13D approving a minor modification to the Original Order. On October 26, 2007 the Commission issued Z.C. Order No. 03-12E/03-13E, approving a minor modification to the Original Order to provide for commercial parking on a temporary basis by patrons of the Nationals Park for a period of five years until April 1, 2013, consistent with the adoption of Z. C. Order No. 07-08. On September 26, 2008, the Commission issued Z.C. Order No. 03-12F/03-13F approving a modification to the second-stage approval of the PUD. On June 26, 2009, the Commission issued Z.C. Order No. 03-12I/03-13I approving an extension of time for the first-stage approval and building the community center. On August 14, 2009, the Commission issued Z.C. Order No. 03-12G/03-13G approving the second-stage PUD and modifying the first-stage approval. On August 14, 2009, the Commission issued Z.C. Order No. 03-12H/03-13H approving a modification to the Original Order. On October 22, 2010, the Commission issued Z.C. Order 03-12J/03-13J approving a time extension to file a building permit for construction of the community center. On November 26, 2010, the Commission issued Z.C. Order No. 03-

12K/03-13K approving a time extension for the approved PUD. On December 30, 2011, the Commission issued Z.C. Order No. 03-12L/03-13L approving a time extension for the approved PUD.

By letter dated November 5, 2012, counsel for the Applicant filed a request for a further modification to the Original Order on the Commission's Consent Calendar pursuant to § 3030 of the Zoning Regulations. This letter requested that the Commission grant approval of a modification to permit Squares 767, 768, and 882, which are rezoned to C-R under the PUD, to continue to be used as temporary surface parking lot accessory to the Nationals Park.

The Applicant's request for a modification was placed on the Consent Calendar for the Commission's November 19, 2012 regular public meeting. At that meeting, the Commission requested supplemental information from the Applicant. The Commission also indicated that it was premature to move on Z.C Case No. 03-12O/03-13O because the Commission had not yet taken final action to approve Z.C. Case No. 07-08B, which concerned a text amendment to generally extend the period for temporary parking in the Ballpark District for an additional five years. Final action on that case was scheduled for the Commission's December 10, 2012 public meeting. For these reasons, the Commission deferred a vote on the Applicant's request to that same time.

By letter dated December 4, 2012, counsel for the Applicant provided supplemental information requested by the Commission at its November 19, 2012 meeting regarding the U.S. Department of Housing and Urban Development's ("HUD") and the Capper/Carrollsburg Steering Committee ("Steering Committee") input into the Applicant's request for the modification. The Applicant's letter explained that neither HUD nor the Steering Committee is required to approve the Authority's request for the modification but that both entities were made aware of the Applicant's request and neither expressed any objections.

The Applicant served full copies of its request for a modification on the following parties: Advisory Neighborhood Commission 6D, Advisory Neighborhood Commission 6B, Capper/Carrollsburg Venture, LLC, and Square 769 LLC. No objections were received by any of these parties.

On December 10, 2012, the Commission held a public meeting on Z.C. Case 07-08B and Z.C. Case No. 03-12O and 03-13O and took action to adopt the zoning text amendment and approve the Applicant's request for a modification by a single motion.

The Commission finds that the modification is minor and may be approved without a hearing pursuant to 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modification is minor and consistent with the intent of the Commission Order No. 03-12/03-13. The Commission concludes that the proposed modification is in the best interest of the District of Columbia and is not inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the requested modification will not affect any of the project benefits and amenities. The modification is of such a minor nature that its consideration as a Consent Calendar item without public hearing or referral to the National Planning Commission for review and comment is appropriate.

DECISION

In consideration of the reasons set forth herein, the Commission hereby **ORDERS APPROVAL** of a modification to allow for Squares 767, 768, and 882 to be used as temporary surface parking lot accessory to the ballpark at South Capitol and N Streets, S.E. for a period of five years from April 1, 2013 to April 1, 2018. The use shall be consistent with the plans submitted to the Commission record in Z.C. Order No. 03-12E/03-13E. Accordingly, Condition No. 30, added to page 36 of Z.C. Order No. 03-12/03-13 by Z.C. Order 03-12E/03-13E, is hereby stricken and replaced with the following:

30. Notwithstanding anything to the contrary, Squares 767, 768, and 882 may be used as a temporary surface parking lot accessory to the Ballpark as permitted by 11 DCMR § 601.1(dd) and in accordance with 11 DCMR § 2110 of the Zoning Regulations through and until April 1, 2018.

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. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On December 10, 2012, upon the motion Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt; Marcie I. Cohen 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 March 1, 2013.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-34A
Z.C. Case No. 08-34A
Center Place Holdings, LLC
(Second-Stage Planned Unit Development for the South Block)
January 28, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 29, 2012, to consider an application from Center Place Holdings LLC[1] (the "Applicant") for approval of a second-stage planned unit development ("Second-Stage PUD") for development of the South Block (the "Application") in accordance with the Commission's approval in Z.C. Case No. 08-34 ("Z.C. Order No. 08-34") under Chapter 24 of the District of Columbia Zoning Regulations, 11 DCMR ("Zoning Regulations"). The project site is located in Lot 44, Square 568, generally bounded by 2nd Street, N.W., to the east, E Street. N.W., to the south, 3rd Street, N.W., to the west and the extension of F Street, N.W., to the north (the "Site"). The Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On June 4, 2012, the Applicant filed the Application, including architectural plans and drawings, for approval of the Second-Stage PUD for the Site in accordance with Z.C. Order No. 08-34 (the "PUD Submission"). (Exhibit ["Ex."] 3.)

2. At its July 9, 2012, public meeting, the Commission set the case down for hearing.

3. The Applicant filed a Prehearing Submission on August 31, 2012, including a Prehearing Statement and modified architectural plans and drawings. (Ex. 15-16A8.) The Applicant then filed additional materials in its Supplemental Prehearing Submission on November 8, 2012, (the Supplemental Prehearing Submission") along with fully re-issued plans and elevations (the "South Block Second-Stage PUD Plans"). (Ex. 20-21A5.)

4. A Notice of Public Hearing was published in the *D.C. Register* on October 5, 2012. The Notice of Public Hearing was mailed to all property owners within 200 feet of the Site as well as to Advisory Neighborhood Commission ("ANC") 6C.

[1] The Application was originally submitted by Center Place Holdings, LLC, on behalf of the District of Columbia, through the Office of the Deputy Mayor for Planning and Economic Development, the owner of the property at that time. Since then, Center Place Holdings, LLC has acquired the property.

5. The Commission held a public hearing on the Application on November 29, 2012. The parties to the case were the Applicant and ANC 6C, the ANC within which the Site is located.

6. The Applicant presented the following witnesses: Sean Cahill, representing the Applicant; William Pedersen, architect with the firm of Kohn Pedersen and Fox ("KPF"); and Steven Sher, land planner with Holland & Knight. Messrs. Pedersen and Sher were accepted as experts in their respective fields.

7. The Office of Planning ("OP") submitted a report dated November 19, 2012, in support of the Application. (Ex. 23.) The OP report stated that the proposal is not inconsistent with the first-stage PUD approval or the Comprehensive Plan. In its testimony at the hearing, OP reiterated its support for the Application and rested on the record.

8. The District Department of Transportation ("DDOT") submitted a report dated November 19, 2012. (Ex. 24.) DDOT testified in support of the project at the hearing.

9. ANC 6C submitted a letter dated October 15, 2012, indicating that with a quorum present, ANC 6C voted unanimously to support the Application. (Ex. 22.)

10. At the conclusion of the hearing, the Commission took proposed action to approve the Application, including the South Block Second-Stage PUD Plans. The Commission requested that the Applicant provide additional details to indicate the materials and architectural details of the seven-story portion of the project. On December 21, 2012, the Applicant submitted its Post-Hearing Submission (the "Post-Hearing Submission") with this information. (Ex. 31-31A.)

11. 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. NCPC, by delegated action dated January 15, 2013, found that the Application would not have an adverse effect on federal interests nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 33.)

12. The Commission took final action to approve the Application at its public meeting held on January 28, 2013.

The Site and the Area

13. The Site consists of the land located in Lot 44 in Square 568 in the area generally bounded by 2nd Street to the east, E Street to the south, 3rd Street to the west, and the proposed extension of F Street to the north, in Northwest DC. The Site contains approximately 85,364 square feet of land area.

14. The Site was approved as part of a first-stage PUD (the "First-Stage PUD") in Z.C. Order No. 08-34 and is known as the South Block. Z.C. Order No. 08-34 approved the First-Stage PUD for the entire area of development in the air rights above the Center Leg Freeway, a zoning map amendment to C-4 for the entire site, and a consolidated PUD for the following: (1) the construction of the entire platform; (2) the proposed mix of uses, the height and density of each building, and site plan for the overall project; (3) the construction of the office building in the North Block; (4) the construction of all below-grade parking, concourse and service levels; and (5) the proposed landscaping and streetscape design for the overall Site.

15. The Application requests approval for the Second-Stage PUD for the South Block building ("South Block Building" or "Building"). The First-Stage PUD for the Site also includes the construction of facilities for the Jewish Historical Society ("JHS"), including relocation of the historic Adas Israel Synagogue to the northwest corner of the Site. The JHS facilities are not included in this Application and will be brought forward in a separate second-stage PUD application.

16. The Commission concluded through Z.C. Order No. 08-34 that the Site was appropriate for C-4 zoning.

17. The Site is not within a historic district. The JHS Synagogue is a designated historic landmark and will be relocated to the Site in the future.

Design of South Block Building

18. The South Block Building is a 12-story office building with ground-floor retail. The maximum height of the building is 130 feet.

19. In the PUD Submission, the Applicant presented a modern designed glass building organized into two parallel bars with a full-height, central glass atrium. The exterior of the Building incorporated vertical fins and a horizontal and vertical architectural canopy, which created a unique and distinctive architectural characteristic to the Building. The canopy structure rose to 18 feet, six inches above the roof. The bulk of the massing has been placed along 2nd and F Streets, and the Building steps down on the west side, closer to F and 3rd Streets. Entrances on E, F, and 2nd Streets were recessed from the main street wall to further articulate the Building. The overall gross floor area of the Building in the PUD Submission was approximately 713,587 square feet, with 674,486 square feet of gross floor area devoted to office use and 19,101 square feet of gross floor area devoted to retail use.

20. At the set down, the Commission expressed concern relating to the height of the canopy structure above the roof of the Building. In response to these concerns, and as set forth in the Prehearing Submission, the Applicant lowered the overall height of the canopy

covering the Building to match the maximum height of the Building at 130 feet. The canopy element continues to maintain the same structure and design as proposed in the PUD Submission, with the canopy being lightweight and slim without additional cladding to hide the structure. The canopy will consist of an open-grate brise-soleil spanning between cantilevered structural members and will likely be fabricated out of aluminum or stainless steel rods. The canopy highlights the important corners of the building and provides aesthetic dimension in these areas.

21. In addition to lowering the overall height of the canopy structure, the Applicant incorporated other massing refinements to maintain the architectural expression in keeping with the original design intent of the Building. These changes include providing setbacks at levels 11 and 12 at the southeast corner of the building and at level 12 at the northwest corner. These setbacks help define the separation between the Building and the canopy above, which was the intent of the original design and an important element of the architectural composition of the Building. Similarly, the entrances were brought closer to the street to increase the area of the ground floor and allows for more sunlight to enter the atrium on the south façade. Finally, the Applicant also reconfigured the roof structure as a result of the lowered canopy. Specifically, the eastern penthouse was split into two spaces and relocated to either side of the penthouse to harmonize with the overall design intent of the building.

22. The reduced height of the canopy structure and the related modifications that maintain the original design intent of the Building responds positively to the Commission's concerns. The Commission finds that the building's design creates an appropriate massing for the South Block.

23. The modifications presented in the Prehearing Submission resulted in a slightly reduced overall gross floor area for the building. Accordingly, the South Block Building as proposed in the South Block Second-Stage PUD Plans includes 689,352 square feet of gross floor area, with 670,251 square feet devoted to office use and 19,101 square feet devoted to retail use.

24. The Applicant commits to provide a minimum of 19,101 square feet of gross floor area devoted to retail use in the South Block Building, which will go towards the minimum of 62,687 square feet which the Applicant is required to provide for the overall project by Z.C. Order No. 08-34. This retail space will be located generally along 2nd Street, E Street, and F Street, with ceiling heights of 12 feet, as shown on the South Block Second-Stage PUD Plans. The Applicant requested flexibility to increase the amount of retail space up to an additional 13,954 square feet by converting those areas identified as office/retail flex spaces on the South Block Second-Stage PUD Plans.

25. In Z.C. Order No. 08-34, the overall project was approved to include a total of 1,146 parking spaces in the consolidated, below-grade parking facility. This Application

proposes no change to the amount or location of parking approved in Z.C. Order No. 08-34.

26. In Z.C. Order No. 08-34, loading was approved for the overall project to be located in a consolidated, below-grade loading facility accessed from E Street. The below-grade loading facility continues to be accessed from E Street. However, given the design of the Building, the loading entrance has shifted approximately 30 feet to the west as compared to that approved in Z.C. Order No. 08-34. This location results in better coordination of the ramp with the below-grade facilities.

27. The South Block Building includes an eco-chimney as a sustainable building feature designed to clean exhaust from the below-grade parking facility and the loading docks before releasing it into the atmosphere. The eco-chimney will be located on the west side of the Site, as shown on the South Block Second-Stage PUD Plans and consistent with the First-Stage PUD approval. The eco-chimney will be a two-story structure clad in glass panels similar to the typical building curtainwall system. Because the eco-chimney represents very new technology, the exact dimension of the structure may evolve somewhat as it is further developed.

28. The streetscape design for the South Block Building is consistent with the approval in Z.C. Order No. 08-34. The streetscape design of 2nd and 3rd Streets follows the basic Downtown grid street palette of street trees and No. 16 Washington Globe streetlights. F Street extends the Downtown character from the west as Downtown's "Main Street," with more widely spaced street trees and DC Twin-25 streetlights in pairs. The design now incorporates two additional planters on F Street, east of the Building entrance. These planters extend the same design of trees and plans previously approved. On E Street, the Applicant has set back the building façade six feet, 10 inches to create a 14-foot sidewalk along E Street, with a continuation of the streetscape from the east and west. Three low planters with trees and groundcover have been added on E Street to frame the building entrance similar to F Street.

29. The Commission requested additional information regarding the design and materials of the seven-story portion of the Building. In its Post-Hearing Submission, the Applicant provided supplemental information to indicate that the façade of the seven-story structure at the northwest corner of the Site continues the stainless steel spandrel detail from the glass fin wall, with the glass and spandrel panels recessed from the face of building. The stainless steel frame also turns the corner onto the west façade in order to give it depth and weight. On the west façade fronting the JHS property, the material will be stucco on masonry infill construction with metal reveals. The stuccos will be painted a warm, neutral tone to complement the brick color on the relocated JHS synagogue. When the JHS facilities are constructed, this wall will be covered and no longer visible.

Connection to 3rd Street, N.W.

30. The Commission requested clarification as to the connection of the Building to 3rd Street. The Applicant provided this clarification in its Prehearing Submission, indicating that the Site fronts on all four streets which define the boundaries of the Square: 3rd Street, F Street, 2nd Street, and E Street. The width of the right-of-way of 3rd Street is 110 feet, which permits a maximum height of 130 feet under the Act of 1910. The Building fronts on all four streets, and there are entrances to the Building on all four streets. For purposes of the width of the street to determine the permitted height and for purposes of determining the point of measurement, the Applicant may choose the street which gives the greatest advantage.

31. The Applicant has elected to use 3rd Street as the street to determine the permitted height. A portion of the Site between the west façade and 3rd Street is not proposed to be developed as part of this Application. Because there is no requirement that a building be constructed to the property line in order to front on that street, the South Block Building has frontage on 3rd Street and is permitted a maximum height of 130 feet by the Act of 1910.

32. The Applicant provided additional information in the Supplemental Prehearing Submission to evidence that the proposed JHS facilities will include a connection to the South Block Building to form a single building under the Zoning Regulations and will be considered as an addition to the Building. As shown on the South Block Second-Stage PUD Plans, the connection will be made through the doors provided in the west façade of the Building, which will lead to a public corridor that opens onto the ground floor level of the central atrium in the building. The nature and design of the connection must be provided to the Commission in the second-stage PUD application for the JHS facilities.

Central Atrium

33. A primary element of the South Block Building is the central atrium. The atrium provides an important central space that maximizes the daylight for the relatively deep floor plates.

34. The Commission requested clarification as to the height of the atrium above the main roof. Specifically, the central atrium rises to a maximum height of 18 feet, six inches above the roof. This height includes the glass atrium which extends 15 feet above the roof as well as the structural element which extends an additional three feet, six inches, for a total of 18 feet, six inches above the roof.

35. The Applicant provided detailed information in its Supplemental Prehearing Submission regarding the Zoning Regulations with respect to those types of elements that are permitted to exceed the maximum permitted height of building. The Commission finds

that the design and height of the atrium above the roof is in accordance with the long-standing application of the Zoning Regulations as applied to coverings of an atrium in buildings in the District.

Phasing of the Project

36. Condition No. 27 of Z.C. Order No. 08-34 approved the consolidated PUD for a period two years from the effective date of the order. Within such time, an application must be filed for a building permit for the construction of the platform and base infrastructure. Construction of the platform and base infrastructure must begin within three years of the effective date of the order. The Commission provided that within two years of the completion of the construction of the platform and base infrastructure, the Applicant must apply for a building permit for the construction of the North Block. The Applicant must commence construction of the North Block within four years of the completion of the construction of the platform and base infrastructure.

37. Given the necessity of having the platform constructed prior to the vertical development, the Applicant requests that the Second-Stage PUD for the South Block Building be approved in the same manner as the consolidated PUD was approved for the North Block. Specifically, the Applicant requests that upon approval of the Second-Stage PUD for the South Block Building, a building permit application must be submitted within two years of the completion of the construction of the platform and base infrastructure and that construction must commence within four years of that date. The Commission finds that the proposed timeframe for approval of the Second-Stage PUD is acceptable.

Development Flexibility and Incentives

38. In this Application, the Applicant requested additional flexibility from the roof structure requirements. Specifically, the South Block Building incorporates two mechanical penthouses on the roof of the Building and two enclosures for the elevator override and stair towers. These roof structures are not placed in a single enclosure as required by § 411.3 of the Zoning Regulations, which results primarily from the design of the Building, the independent mechanical systems for the separate portions of the Building, and incorporation of the central atrium. Each of the penthouses achieves a 1:1 setback, and the penthouse structures have been designed to harmonize with the overall design intent of the Building. The Commission finds that the development flexibility requested is acceptable.

39. No additional flexibility was requested or is granted through this order.

Compliance with PUD Standards

40. The Applications comply with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.

41. The Commission finds that the South Block Building is consistent with the First-Stage PUD approval in Z.C. Order No. 08-34.

42. The overall project, including the South Block Building, provides important public benefits and project amenities which are described in detail in Z.C. Order No. 08-34. These public benefits and project amenities have not changed with this Application. Accordingly, the Commission's finding that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the overall project, including the South Block Building, should not change

43. The South Block Building has been evaluated under the PUD guidelines for the C-4 Zone District. The density of the South Block Building is below the density permitted for a PUD within the C-4 Zone District and is less than that approved in Z.C. Order No. 08-34. The maximum height of the South Block Building is within that permitted for a PUD in the C-4 Zone District and is consisted with the First-Stage PUD approval in Z.C. Order No. 08-34.

44. The Application has been evaluated by the relevant District agencies and has been found to have no unacceptable adverse impact. The Commission finds that the South Block Building will have a positive impact on the city and will have no unacceptable adverse impacts.

45. As set forth in Z.C. Order No. 08-34, the Commission finds that the South Block Building advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. The Commission finds that the South Block Building is not inconsistent with the Comprehensive Plan of 2006.

Office of Planning

46. By report dated November 19, 2012 and through testimony presented at the public hearing, OP recommended approval of the Application. (Ex. 23).

47. In the OP Report and its testimony at the hearing, OP concluded that the proposal is not inconsistent with the First-Stage PUD approval or the Comprehensive Plan. OP recommended approval of the Application.

District Department of Transportation

48. DDOT filed a report dated November 19, 2012, summarizing the transportation analysis for the project, including the roadway capacity and operations, safety, bicycle and pedestrian facilities, transit services, site access and loading, parking, streetscape and public realm, and Transportation Demand Management. (Ex. 24.) In response to questions from the Commission, DDOT testified in support of the project.

ANC 6C Report

49. By letter dated October 15, 2012, ANC 6C indicated that it voted to support the Applications by a vote of 8-0-0. (Ex. 22.)

50. The Commission afforded the views of ANC 6C the "great weight" to which they are entitled.

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 and approve the Second-Stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the South Block Building carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The Application is consistent with the First-Stage PUD approval in Z.C. Order No. 08-34.

5. The South Block Building is within the applicable height, bulk, and density standards of the Zoning Regulations for a PUD within the C-4 Zone District. This mixed-use project

which serves to reconnect the city is appropriate for the Site. The impacts of the South Block Building are not unacceptable.

6. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.

7. The number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested.

8. Approval of the Application is not inconsistent with the Comprehensive Plan.

9. 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 affected ANC's recommendations. The Commission has carefully considered ANC 6C's support for the project and has given that support great weight.

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. The Commission has carefully considered OP's support for the project and has given that support great weight.

11. The approval of the Application will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

12. Notice was provided in accordance with the Zoning Regulations and applicable case law.

13. The Application is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a Second-Stage PUD for the South Block Building. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

For the purposes of these conditions, the term "Applicant" means the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party

shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

A. PROJECT DEVELOPMENT

1. The South Block Building shall be developed substantially in accordance with the plans prepared by Kohn Pedersen Fox Associates, dated November 8, 2012, in the record at Exhibits 21A1-21A5, as supplemented by the two additional plan pages dated December 20, 2012, submitted with the Post-Hearing Submission in the record at Exhibit 31A, (collectively, the "South Block Second-Stage PUD Plans") all as modified by the guidelines, conditions, and standards herein.

2. The South Block Building shall have an approximate gross floor area of 689,352 square feet, of which a minimum of 19,101 square feet of gross floor area shall be devoted to retail use.

3. The maximum height of the South Block Building shall be 130 feet, as shown on the South Block Second-Stage PUD Plans.

4. The Applicant shall have flexibility with the design of the PUD in the following areas:

    a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

    b. 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;

    c. To vary the location, attributes and general design of the public spaces and streetscapes incorporated in the project to comply with the requirements of and the approval by the District Department of Transportation Public Space Division;

    d. To locate retail entrances in accordance with the needs of the retail tenants and vary the façades as necessary within the general design parameters proposed for the project and to locate retail or service uses where "retail" is identified and to locate retail, service, or office uses where "retail/office" is identified; and

e. To make minor refinements to exterior materials, details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals.

B. PUBLIC BENEFITS

5. **The Applicant shall submit with its building permit application** a checklist evidencing that the portion of the project for which the permit is submitted has been designed to meet the USGBC LEED Platinum standard for the core and shell of the office building.

6. **During construction of the project**, the Applicant shall abide by the First Source Employment Agreement under which the Applicant has agreed to fill 51% of all new jobs resulting from the construction of the project with District residents and to fill 67% of all new apprenticeship positions with District residents.

7. **During construction of the project**, the Applicant shall abide by an agreement that provides for Certified Business Enterprises to represent 20% of the developer's equity and development participation in the project and that provides for the Applicant to contract with Certified Business Enterprises for at least 35% of the contract dollar volume of the project.

8. **During the life of the project**, the South Block Building shall include a minimum of 19,101 square feet of gross floor area devoted to retail uses generally in the locations shown on the South Block Second-Stage PUD Plans.

9. **During the life of the project**, the Applicant shall provide a Transportation Management Program for all office tenants as approved in Condition 20 of Z.C. Order No. 08-34, which requires the Applicant to provide a Transportation Management Program for all office tenants, as set forth in the Supplemental Report to the Transportation Impact Analysis attached at Tab 4 to the Supplemental Prehearing Submission in the record for Z.C. Case No. 08-34 at Exhibit 30.

C. MISCELLANEOUS

1. 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 owner of the Site and the District of Columbia, that is satisfactory to the Office of the Attorney

General and 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 Commission.

2. The Second-Stage PUD approved by the Commission shall be valid for a period of two (2) years from the date of completion of the platform and base infrastructure approved in Z.C. Order No. 08-34. Within such time, the Applicant shall apply for a building permit for the construction of the South Block Building. The Applicant shall commence construction of the South Block Building within four years of the completion of the construction of the platform and base infrastructure.

3. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq. 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*., 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 November 29, 2012, upon the motion of Commissioner May, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the Application at the conclusion of the public hearing by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen not present, not voting).

On January 28, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Order was **ADOPTED** by the Zoning Commission at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, and Peter G, May to adopt; Michael G. Turnbull to adopt by absentee ballot; Marcie I. Cohen not participating, 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 March 1, 2013.

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:	
International Union of Public Employees,	
Petitioner,	
and	PERB Case No. 12-RC-02
	Certification No. 153
District of Columbia Office of Unified Communications,	
Agency,	
and	
National Association of Government Employees, Local R3-07,	
Intervener.	

CERTIFICATION OF REPRESENTATIVE

A representation proceeding having been conducted in the above-captioned matter by the Public Employee Relations Board ("Board"), in accordance with the District of Columbia Comprehensive Merit Personnel Act of 1978, the Rules of the Board, and an Election Agreement executed by the parties, and it appearing that the majority of the valid ballots have been cast for a representative for the purpose of exclusive recognition;

Pursuant to the authority vested in the Board by D.C. Code § 1-605.02(2) and Section 515.3 of the Board rules;

IT IS HEREBY CERTIFIED THAT:

The National Association of Government Employees, Local R3-07, has been designated by the employees of the above-named public employer in the unit described below, as their

exclusive representative for the purpose of collective bargaining over terms and conditions of employment, including compensation, with the named employer.

Unit Description:

All employees of the Government of the District of Columbia Office of Unified Communications, excluding all management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-1139.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 31, 2013

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 Employees, Local 2978,	
Complainant,	PERB Case No. 09-U-62
	Opinion No. 1348
v.	**AMENDED**
District of Columbia Office of the Chief Medical Examiner,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On September 10, 2009, the American Federation of Government Employees, Local 2978 ("Complainant" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Office of the Chief Medical Examiner ("Respondent" or "Agency"), alleging violations of the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.04(a)(1),(3), and (5). (Complaint at 3). Respondent filed an Answer to the Unfair Labor Practice Complaint ("Answer"), denying the alleged violations of D.C. Code § 1-617.04(a)(1), (3), and (5). (Answer at 5).

On October 1, 2009, the Union filed a Motion for Preliminary Relief ("Motion"), seeking an order requiring the Agency to delay its reduction-in-force ("RIF") of employee Muhammad Abdul-Saboor ("Grievant"). (Motion at 1). The Board denied the Motion and referred the Complaint to a Hearing Examiner for disposition. (Slip Opinion No. 1112).

A hearing was held on September 8, 2011. Both parties filed post-hearing briefs. On December 22, 2011, Hearing Examiner Gloria Johnson issued a Report and Recommendation ("Report") in which she found that the Agency violated D.C. Code § 1-617.04(a)(1), (3), and (5) by retaliatory conduct resulting in the termination of the Grievant. (Report at 38). The hearing

examiner recommended the Agency post notices, and retained jurisdiction for sixty days for the parties to propose make-whole remedies. *Id.*

The Agency filed Exceptions with the Board ("Exceptions"), alleging that the hearing examiner "overlooked critical evidence of Respondent's legitimate business reason for reducing its workforce," specifically the budgetary restraints imposed on the Agency at the time of the RIF. (Exceptions at 2). The Union filed an opposition to the Exceptions ("Opposition"), maintaining that the Exceptions "amount to nothing more than disagreement with the hearing examiner's factual conclusions, and not how she came to that conclusion." (Opposition at 6).

The hearing examiner's Report is before the Board for disposition.

II. Background

The hearing examiner found the following facts:

> Grievant was the only employee member of AFGE Local 2978 employed at the Agency. On November 19, 2008, Grievant received an admonition for allegedly refusing to drive a friend of the Chief Medical Examiner to Walter Reed Hospital after this friend gave a lecture to Agency staff.
>
> On March 19, 2009, the Grievant and his union representative met with his first line supervisor, Management Services Officer Peggy Fogg (in person), and Chief of Staff Beverly Fields (telephonically).
>
> Both the Grievant and his representative maintain that the purpose of the meeting was to attempt to, *inter alia*, informally resolve a grievance and discuss issues regarding a grievance alleging Grievant was working outside of his position description.
>
> An e-mail from Beverly Fields to Union Local President Robert Mayfield dated April 9, 2009, confirms that there was a discussion of the grievance on March 19. It states in relevant part "...the agency responded only on the date the grievance was filed (March 19, 2009), stating that the grievance was untimely and relief requested was denied. The Union clearly understood the oral response as you, Mr. Mayfield, stated that based on our response, you would take the matter to arbitration."
>
> Ms. Fields also stated in an e-mail that "[d]uring the [March 19th] discussion, you stated that the employee had a grievance regarding working outside of his position description. I informed you orally at that time that any grievance regarding this issue was

untimely…[t]he agency's oral response during the March 19, 2009, meeting was a denial of the grievance itself."

Joint Exhibit 1 bears a date stamp March 19, 2009, and is directed to Peggy J. Fogg. It purports to be a step one grievance challenging both the issuance of an illegal admonition as well as the requirement that the Grievant work outside his position description in violation of the collective bargaining agreement.

On April 13, 2009, [the Agency] denied the grievance as untimely. On April 23, 2009, [the Union] filed an amended grievance.

By letter dated May 21, 2009, Chief Medical Examiner Pierre-Louis denied Grievant's grievance as flawed, untimely, and without merit.

By notice dated August 28, 2009, [Grievant] was advised that effective September 30, 2009, he would be separated from service as Fleet Management Specialist CS-2101-07, pursuant to a reduction in force in the competitive area of Office of the Chief Medical Examiner, competitive level DS-2101-07-01-N.

Grievant's August 28, 2009, RIF notice, singed by Chief Medical Examiner Marie-Lydia Y. Pierre-Louis, M.D., indicated it was delivered by Peggy Fogg to the employee, who purportedly refused to sign.

On September 10, 2009, Local 2978 filed an unfair labor practice complaint challenging the reduction in force as retaliation for the Grievant having engaged in the protected act of filing and pursuing a grievance, and subsequent statements made in a March 19, 2009, meeting with Agency managers, Grievant, and his union representative, Robert Mayfield, who also serves as President of AFGE Local 2978.

On September 10, 2009, the Union filed an unfair labor practice complaint. On September 30, 2009, the Agency answered the complaint and denied the allegations.

(Report 2-5).

III. Discussion

A. Alleged Retaliation

The hearing examiner determined that the dispositive issues are: (1) Did the Agency engage in an unfair labor practice in violation of D.C. Code § 1-617.04(a)(1),(3), and (5) by interfering, restraining, intimidating, or retaliating against the Grievant for having engaged in protected activity; (2) Is the Agency insulated from liability by its articulated legitimate business reason for imposing its RIF of the Grievant's position, because it would have taken the employment action anyways, regardless of the protected union activity; (3) If not, what is the appropriate remedy?

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003).

To determine whether the Agency violated D.C. Code § 1-617.04(a)(1), (3), or (5) by interfering, restraining, intimidating, or retaliating against an employee for engaging in a protected activity, the hearing examiner applied the test articulated by the National Labor Relations Board ("NLRB") in *Wright Line v. Lamoureux*, 251 N.L.R.B. 1083, 1089 (1980), *enforced* 622 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).[1] Under *Wright Line*, a complainant has the burden to establish a *prima facie* showing that an employee's protected union activity was the motivating factor in the employer's decision to discharge him. *Id.* at 1090. To establish a *prima facie* case of a violation, the union must show that the employee (1) engaged in protected union activity; (2) the employer knew about the employee's protected union activity; (3) there was anti-union animus or retaliatory animus by the employer; and (4) as a result, the employer took an adverse employment action against the employee. *Doctors Council of the District of Columbia v. D.C. Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at p. 3, PERB Case No. 99-U-06 (2000); *see also D.C. Nurses Association v. D.C. Health and Hospitals Public Benefit Corporation,* 46 D.C. Reg. 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999). The employer's employment decision must be analyzed according to the totality of the circumstances, including the history of anti-union animus, the timing of the employment action, and disparate treatment. *Doctors Council*, Slip Op. No. 636 at 3.

If the complaint establishes a *prima facie* case of a violation, the employer may rebut the inference by establishing, by a preponderance of the evidence, that the employment action would have occurred regardless of the protected union activity. *Wright Line*, 251 N.L.R.B. at 1089. The employer must show that it had a legitimate business reason for the employment action, and that it would have initiated the employment action even in the absence of protected union activity. *Wright Line*, 251 N.L.R.B. at 1089; *D.C. Nurses Association*, Slip Op. No. 583.

[1] The Board has previously adopted the NLRB's reasoning in *Wright Line. See Bagenstose v. D.C. Public Schools*, 38 D.C. Reg. 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991); *Ware v. D.C. Department of Consumer and Regulatory Affairs*, 46 D.C. Reg. 3367, Slip Op. No. 571, PERB Case No. 96-U-21 (1998).

The hearing examiner concluded that the Grievant was engaged in protected union activity when he pursued a grievance against the Agency for requiring him to perform work outside of his job description, and that the Agency was aware of this protected union activity. (Report at 18). The filing of a grievance is a protected activity under the CMPA. *See Teamsters Local Union No. 739 v. D.C. Public Schools*, 43 D.C. Reg. 5585, Slip Op No. 375 at pgs. 3-4, PERB Case No. 93-U-11 (1996). At the hearing, Agency chief of staff Beverly Fields testified that there was no discussion of the grievance at the March 19 meeting. (Report at 18-19). The hearing examiner did not find this testimony credible, particularly because it conflicted with written evidence showing that the grievance was brought up at the meeting. (Report at 18-19).

It is the function of the hearing examiner to determine issues of credibility. *Doctors Council*, Slip Op. No. 636 at p. 4. The Board finds that these findings are reasonable and supported by the record. Therefore, these conclusions are affirmed.

Next, the hearing examiner concluded that anti-union animus and retaliatory animus existed on the part of the Agency. (Report at 20-27). The hearing examiner determined that Ms. Fields' statement "well, we will just have to RIF him" was "intentional, threatening, [and] meant to discourage." (Report at 20). Further, she found that "telling an employee who is embroiled in a grievance meeting...that if he continues to pursue his anti-driving grievance he may lose his job, supports the reasonable interpretation that he has received a threat, discouragement from moving forward, or [an] intimidating statement." (Report at 22). Additionally, the hearing examiner concluded that the statements made at the March 19 meeting were made to interfere, restrain, and coerce the Grievant in the exercise of his rights under D.C. Code § 1-617.06. (Report at 26).

In reaching her conclusion on this point, the hearing examiner made credibility determinations and assessed the evidence presented to her. *Doctors Council*, Slip Op. No. 636 at p. 4. The Board finds that this finding is reasonable and supported by the record. Therefore, the conclusion is affirmed.

The hearing examiner concluded that the Grievant was terminated as a part of the RIF because of the Agency's anti-union animus and retaliatory animus. (Report at 31). In support of this conclusion the hearing examiner noted that Ms. Fields made her threat to the Grievant in March, and "the Agency appears to have made its decision quickly thereafter, having notified [the Grievant] in August." *Id.* The hearing examiner found "such a short time between threat and the RIF action demonstrates the necessary timing for a *prima facie* case of retaliation." *Id.* Additionally, the hearing examiner states that she was "struck by the lack of credibility and disregard for the truth shown before her at the hearing" in regards to Ms. Fields' statements, which, "considered with the other reported matters supports the contention that a violation occurred." (Report at 35).

In its Exceptions, the Agency alleges that the hearing examiner's analysis "is not supported by sound reasoning because she uses the third element of Wright Line (whether there is anti-union animus) to support the fourth element of Wright Line (that the anti-union animus was the basis for the subsequent employment action). (Exceptions at 7). The Agency states that:

> The [hearing examiner] claimed that "here there is no legitimate business reason for the statements made in the March 19 meeting..." (Report at 28). The hearing examiner found that the statement regarding whether the [Grievant] was properly represented by the [Union], and the statement that if he pursues this grievance he will be riffed, as the business reason. The [hearing examiner] committed a critical error in her analysis by stating that there was no legitimate business reason for the March 19 statement. The fourth element of *Wright Line* relates to whether [the Agency] had a legitimate business reason for taking the employment action. In this case, whether there was a legitimate business reason to make statements at the March 19 meeting. By merging the two steps, the [hearing examiner] did not address each element of the law. The law requires that a subsequent employment action occur as a result of the protected activity. The statements were not the employment action taken by the Agency. The RIF was. Hence, an analysis of why Respondent engaged in a RIF is critical. The failure of the [hearing examiner] to analyze the Respondent's legitimate business reason renders the [Report] unsupported by reasoning or the record.

(Exceptions at 7-8). Further, the Agency alleges that the hearing examiner did not consider "critical evidence of the Respondent's legitimate business reason for engaging in the reduction in force." (Exceptions at 3). Specifically, the Agency contends that the following evidence was omitted from the Report's factual record:

1. On June 25, 2009, a second gap closing measure was imposed on [the Agency] by the City Administrator. (Ex. 1).
2. [The Agency] had one week to cut its budget by another 10 percent (Tr. At 136, 211; Ex. 1).
3. In the first round of budget cuts, [the Agency] had eliminated all vacant positions.
4. The second round of budget cuts forced [the Agency] to cut nonessential employees. (Tr. At 212).
5. Prior to the second gap closing measure, [the Agency] had no intention of conducting a RIF or of eliminating [the Grievant's] position. (Tr. at 212).

(Exceptions at 4). In addition, the Agency alleges that the hearing examiner failed to analyze the burden-shifting paradigm of the *Wright Line* test by ignoring the Agency's legitimate business justification for the RIF. (Exceptions at 7). The employment action must be analyzed according to the totality of the circumstances, which in the instant case require the hearing examiner to examine the economic conditions at the time of the RIF. (Exceptions at 10).

In its Opposition, the Union states that the Hearing Examiner "carefully analyze[d] the whole of the evidence of how [the Grievant] was identified to be separated in reaching the conclusion, not that [the Agency] was constrained from running a RIF, but that the [Agency] had an unlawful motive in selecting [the Grievant] to be RIF-ed." (Opposition at 5). Further, the Union contends that the Hearing Examiner focused on the statements made at the March 19 meeting as a violation of the CMPA and as evidence of animus which, "along with a number of other factors," demonstrated that the Agency's business reason was pretextual. *Id.* The Union states that "[t]here is no authority or rationale to support the [Agency's] argument that a RIF is a special kind of business justification that if performed according to its procedural rules excuses what would otherwise be an unlawful separation of an employee." (Opposition at 5-6).

In *Wright Line*, the NLRB formulated a causation test to determine violations of the National Labor Relations Act turning on employer motivation:

> First, we shall require that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

Wright Line, 251 NLRB at 1089. The Board has adopted the *Wright Line* test, stating that "under the burden shifting analysis, the Union carries the initial burden of setting forth a *prima facie* case. Once a *prima facie* showing is established, the burden will shift to the employer to demonstrate that the same action (the employee's termination) would have taken place even in the absence of the protected conduct or activity." *AFGE, Local 2978 v. D.C. Department of Health*, Slip Op. No. 1256 at p. 5, PERB Case No. 08-U-47 (March 27, 2012). Relevant factors in determination the employer's motivation include a history of anti-union animus, the timing of the action, and disparate treatment. *Doctors Council*, Slip Op. No. 636 at p. 3.

In the instant case, the Hearing Examiner's reasoning for her conclusion that the Agency's legitimate business reason was pretextual is unclear. The Report states that "there is no legitimate business reason for the statements made in the March 19 grievance meeting – no way to take back the chilling effect and potential loss of confidence those illegal statements made on March 19." (Report at 28). While the March 19 statements represent a separate unfair labor practice violation (see below), the issue in the *Wright* Line burden-shifting analysis is whether the Agency demonstrated a legitimate business reason for the *employment action. See, e.g., Rodriguez v. D.C. Metropolitan Police Department*, Slip Op. No. 954, PERB Case No. 06-U-38 (July 8, 2010); *Fraternal Order of Police/Department of Corrections Labor Committee v. D.C. Department of Corrections*, Slip Op. No. 888, PERB Case Nos. 03-U-15 and 04-U-03 (September 30, 2009).

The Board has found that a complainant's *prima facie* showing creates "a kind of presumption that the unfair labor practice has been committed," and that "[o]nce the showing is made the burden shifts to the employer to produce evidence of a non-prohibited reason for the

action against the employee. This burden, however, does not place on the employer the onus of proving that the unfair labor practice did not occur." Instead, "the employer's burden is limited to a rebuttal of the presumption created by the complainant's *prima facie* showing. The First Circuit in *Wright Line* articulated this standard as 'producing evidence to balance, not [necessarily] to outweigh, the evidence produced by the [complainant].'" *Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 888 at p. 4. The Hearing Examiner found, and the Board affirms, that the Union made a *prima facie* showing that the Grievant's RIF was the result of anti-union and retaliatory animus. The burden then shifted to the Agency, which produced evidence that although anti-union and retaliatory animus existed, the Grievant was RIFed for economic reasons. It was then up to the Hearing Examiner to analyze the evidence of the Agency's legitimate business reason to determine if it balanced the *prima facie* showing.

Instead, the Report includes no analysis of the Agency's evidence of its legitimate business reason for taking the employment action against the Grievant. (Report at 29). In a paragraph titled "Legitimate Business Reason," the Hearing Examiner states that "there is no legitimate business reason for the statements made in the March 19 grievance meeting," (Report at 28), while under a paragraph titled "Motivation and Pretext," she states that "[i]n the instant case, there is no legitimate reason for the statements made – and once uttered, no way to take back the chilling effect and potential loss of confidence." (Report at 37). The March 19 statements can be used to show anti-union animus and support an allegation of intimidation and undermining the Union, but do not replace an analysis of the Agency's proffered legitimate business reason.

Similarly, the discussions on pages 28-37 of the Report represent at "totality of the circumstances" analysis purporting to support the Hearing Examiner's determination that the Agency did not successfully meet the *prima facie* case of retaliation. The Hearing Examiner examines the issue of the Agency's motivation for RIFing the Grievant and determines that the stated reasons are pretextual, but without first analyzing the legitimate business reason for the RIF, the Report is incomplete. As written, the Board cannot affirm this portion of the Report as reasonable and supported by the record. The Board remands this portion of the Report back to the Hearing Examiner for an analysis of the Agency's legitimate business purpose.

B. Alleged Intimidation and Undermining of the Union

In addition to her finding that the Grievant was RIFed in retaliation for filing a grievance, the Hearing Examiner concluded that the Agency violated the CMPA by making threatening statements at the March 19 meeting which had a "chilling effect" and created a "potential loss of confidence" in the Union's ability to represent its members. (Report at 28). Specifically, the statement that the Grievant would be RIFed for pursuing his grievance, and the statement questioning whether the Union was the proper union to represent the Grievant, were construed as threats intended to intimidate the Grievant and undermine the Union. (Report at 24).

The Agency does not except to this determination, other than to state that the analysis of the March 19 statements do not pertain to the burden shifting paradigm of the *Wright Line* test.

(Exceptions at 8). In its Opposition, the Union alleges that the Agency's "exceptions muddle the Hearing Examiner's retaliation findings with her findings that [the Agency] also violated the CMPA by undermining the Union and threatening and coercing [the Grievant]." (Opposition at 7).

The Board finds that the Hearing Examiner's conclusion that the Agency violated the CMPA by making threatening the Grievant and undermining the Union is reasonable and supported by the record. Therefore, this finding is affirmed.

In conclusion, the Hearing Examiner's conclusions as to the first three elements of the *Wright Line* test are affirmed. The Board is unable to affirm the Hearing Examiner's conclusion regarding the fourth element of the *Wright Line* test due to an incomplete analysis. The Hearing Examiner's conclusion that the Agency violated the CMPA by threatening the Grievant and undermining the Union is affirmed.

ORDER

1. The Hearing Examiner's Report and Recommendation is affirmed in part.

2. The District of Columbia Office of the Chief Medical Examiner shall cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by D.C. Code § 617.04(a)(1), (3), and (5) by threatening employees with termination for pursuing grievances or undermining an exclusive representative.

3. The District of Columbia Office of the Chief Medical Examiner shall conspicuously post, within ten (10) days from the issuance of this Decision and Order, the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

4. The District of Columbia Office of the Chief Medical Examiner shall notify the Public Employee Relations Board in writing within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly.

5. The issue of whether the District of Columbia Office of the Chief Medical Examiner presented sufficient evidence of a legitimate business reason for the employment action against the Grievant is remanded to the Hearing Examiner for analysis and a further Report and Recommendation. If there was a legitimate reason for the employment action, the Hearing Examiner will make a determination as to the fourth element of *Wright Line* to the case at hand.

6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached AMENDED Decision and Order in PERB Case No. 09-U-62 was transmitted via U.S. Mail and e-mail to the following parties on this the 9th day of January, 2013.

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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA OFFICE OF THE CHIEF MEDICAL EXAMINER ("OCME"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1348, PERB CASE NO. 09-U-62 (January 2, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered OCME to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1), (3), and (5) by the actions and conduct set forth in Slip Opinion No. 1348.

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA") by threatening employees with termination for pursuing grievances or undermining an exclusive representative.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

District of Columbia Office of the Chief Medial Examiner

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 25, 2013

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:	
University of the District of Columbia Faculty Association/NEA,	
Complainant,	PERB Case No. 07-U-17
v.	Opinion No. 1349
University of the District of Columbia,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant University of the District of Columbia Faculty Association/NEA ("Complainant" or "Union") filed an unfair labor practice complaint ("Complaint") against Respondent University of the District of Columbia ("Respondent" or "UDC"), alleging a violation of D.C. Code § 1-617.04(a)(1) and (5) by "unilaterally implementing a program presenting online teaching of University courses or so-called 'distance learning,' a matter that unequivocally...affects the terms and conditions of bargaining unit members' employment, and by failing and refusing to supply information reasonably requested by the UDCFA in preparation for negotiations." (Complaint at 1).

In its Answer, UDC denies committing an unfair labor practice, contending that while introducing an online course program is a management right, no such program was instituted at UDC. (Answer at 2).

On June 8, 2007, an evidentiary hearing took place before Hearing Examiner Lois Hochhauser. The Hearing Examiner issued a Report and Recommendation ("Report"), in which she determined that the Union did not meet its burden of proof that UDC violated the Comprehensive Merit Personnel Act ("CMPA") by unilaterally introducing a program of online instruction, or by refusing to or failing to provide requested information regarding the online

instruction program. (Report at 11-12). The Union filed Exceptions to the Report. The Report and Exceptions are now before the Board for disposition.

II. Discussion

A. Report and Recommendation

The Hearing Examiner found the following relevant facts: Use of new technology at UDC was discussed informally among faculty members starting in 1999 (Report at 4). UDC started using an internet-based tool, Blackboard Learning Management, the same year (*Id.*)A training institute on online teaching was conducted in the summer of 2006. All faculty were invited to attend and advised that a stipend would be provided. (Report at 5). Teaching online and training were voluntary. *Id.*

In 2003, faculty interested in expanding the use of technology created the Task Force on Online Learning ("TFOOL"). *Id.* At the request of the Provost, TFOOL was convened by Dean Cascerio, and all faculty members were invited to join. *Id.* TFOOL did not extend a separate membership invitation to the Union. *Id.* Participation in TFOOL is voluntary and faculty-driven. *Id.* In February 2007, TFOOL issued a Policy and Procedures Manual for Online Courses. *Id.* The University has not issued policies or procedures for online teaching. *Id.*

The first online course at UDC was offered in 2002. *Id.* UDC estimated that at the time of the hearing, approximately six online courses were being offered. *Id.* The decision to teach online is voluntary and determined by the instructor. *Id.*

Via letter to Union President Dr. Leslie Richards, dated December 11, 2006, Provost and Vice-President Wilhelmina Reuben-Cook informed the Union that it was "preparing to formally introduce distance learning (on-line courses)" and asked to meet with the Union to bargain over the "impact of the faculty workload, compensation, and any other issues of implementation." *Id.* A meeting was held December 19, 2006, but there was no substantive discussion about online instruction. *Id.* UDC requested another meeting, but could not schedule one at the time because Dr. Richards was going on leave until the beginning of the Spring semester. *Id.* The parties agreed to meet again after Dr. Richards returned. *Id.*

At the December 19, 2006, meeting, the Union requested information regarding the nature of the online courses and the names of the faculty teaching online courses. *Id.* The Union filed the instant Complaint on January 16, 2007. (Report at 6). In a letter dated February 2, 2007, the Provost wrote to Dr. Richards about the matters discussed at the December 19 meeting, and stated that she had planned to address the issues related to the online courses in the letter, but felt "it would be inappropriate to address" those issues since the Union had filed the Complaint. *Id.* On February 23, 2007, UDC's counsel contacted the Union's counsel requesting a meeting, and stated that she had misplaced the requested list of faculty teaching online courses. *Id.* UDC's counsel indicated she would provide the list, but as of the date of the hearing (June 8, 2007), no additional meetings have taken place and no documents have been provided. *Id.*

On the issue of unilaterally introducing an online course program, the Hearing Examiner noted that while UDC "has the right to implement policies and procedures related to online instruction, with that right comes the duty to bargain with the [Union] over the impact or effects of the implementation of its decision which impact on the terms and conditions of employment." (Report at 9; *citing Int'l Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994)). Further, "an agency commits an unfair labor practice when it refuses to bargain in good faith with an exclusive representative, upon request." (Report at 9; *citing* D.C. Code § 1-617.04(a)(5)).

In the instant case, the Hearing Examiner concluded that UDC "has not developed any policies or practices related to online teaching, and certainly none have been implemented." (Report at 10). While UDC "must engage in bargaining over the impact" of the online course program it ultimately develops, "the matter is not yet ripe for determining if a ULP has been committed." *Id.* A ULP would be appropriate if UDC refuses to bargain upon request once specific proposals have been submitted. *Id.*

Further, the Hearing Examiner concluded that UDC's failure to engage in a second meeting did not establish bad faith. *Id.* UDC anticipated more meetings, but scheduling was delayed due to the Union President's scheduled leave. *Id.* The instant Complaint was filed approximately one month after the first meeting, and before a second meeting was requested. *Id.* Coupled with the fact that UDC decided it would be "inappropriate" to negotiate issues that were the subject of the Complaint, the Hearing Examiner found that the Union had not proven that UDC acted in bad faith. *Id.*

The Union alleged that UDC excluded the Union from participation in TFOOL when it failed to extend an invitation to the Union. *Id.* The Hearing Examiner determined that no evidence of exclusion or bad faith existed; rather, "it was the decision of TFOOL members, most of whom were members of [the Union], that the [Union] was well represented." *Id.* Further, TFOOL was "begun by faculty, is open to all faculty, and is driven by faculty," and was "not created to develop University policy." *Id.*

On the issue of failing or refusing to produce requested documentation, the Hearing Examiner concluded that the Union did not meet its burden of proof that UDC acted in bad faith. (Report at 11). The Hearing Examiner states that the Union "filed its Complaint less than a month after it made its first request. At that time, [UDC] had not articulated a refusal to provide the information. It was not until a month later that University counsel responded that the information had been misplaced and would be sent." *Id.* Additionally, even if UDC had refused to provide the information, "the ULP should be dismissed as premature since both PERB and the courts have consistently held that a one-time refusal to bargain is not sufficient." *Id.* (*citing Int'l Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322 at p. 4, PERB Case No. 91-U-14 (1992)).

B. Union's Exceptions

The Union excepts to the Hearing Examiner's failure to find the following facts, and alleges that "the inclusion of these facts changes the overall structure of events heading into the Fall 2006 semester and the letter from the Provost to the [Union]":

> 1. During the summer of 2006, [UDC] offered an institute, which was put on by [UDC's online learning software vendor], that certified faculty for online instruction. The faculty who attended the online training received an $8,000 stipend.
> 2. [Union] President Leslie Richards expressed concerns about the implementation of online courses to Provost Reuben-Cooke for almost a year before the Provost agreed to meet with her. In August 2006, Assistant Provost Ellis informed the Provost that he believed it was time to bargain so that courses could be instituted in the Spring of 2007.
> 3. TFOOL reconvened in the Fall of 2006 to edit and revise its recommendations to the Provost. TFOOL identified several tasks, including developing an Intellectual Property Policy for the University, identifying areas that would be well suited to online learning, identifying potential funding, and establishing a template for online courses. TFOOL formed three subcommittees to deal with the issues outlined above. The three subcommittees addressed: (1) workload; (2) policy and procedure: and (3) intellectual property.
> 4. On November 16, 2006, the Intellectual Property Subcommittee produced its "Report and Recommendations" detailing its recommended guidelines concerning Intellectual Property produced for online courses. A Policy and Procedures Manual for Online Courses was produced by TFOOL in February 2007.

(Exceptions at 3-4). Additionally, the Union alleges that the facts above relate to its exceptions to two of the Hearing Examiner's conclusions. The first conclusion is:

> The University is now undertaking a much needed effort to develop practices and policies related to online instruction, and to address such issues as class size, compensation, and proprietary rights. It must engage in bargaining over the impact of these decisions. But the matter is not yet ripe for determining if a ULP has been committed. Once UDC has specific proposals, [the Union] may file a ULP with PERB, if UDC refuses to bargain upon request.

(Report at 10; Exceptions at 3). Additionally, the Union excepts to the conclusion that:

> Online instruction has not changed since it began in 2002. It remains the individual decision of individual instructors. There are no policies or procedures that guide the decision and no standards in place.

(Report at 11; Exceptions at 3).

The Union contends that UDC's announcement that it was "preparing to formally introduce distance learning (on-line courses) to our UDC students" was an exercise of UDC's management right to implement online courses, and triggered UDC's obligation to bargain over the impact and effects of that decision. (Exceptions at 5). Further, the Union alleges that the status quo changed in the Fall 2006 semester when the English Department decided that it "could offer on-line classes" and awarded more credit to instructors teaching those classes. (Exceptions at 6-7). The Union asks the Board to find that UDC "made the decision to implement on-line courses, that the [Union] requested bargaining, that bargaining began, but that [UDC] did not bargain in good faith by failing to be prepared to bargain." (Exceptions at 7).

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). A hearing examiner has the authority to determine the probative value of evidence and draw reasonable inferences from that evidence. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996).

In the instant case, the Hearing Examiner found that UDC notified the Union of its intent to implement an online course program, and that the parties met to bargain on December 19, 2006. (Report at 5). She determined that UDC wanted additional bargaining, but that the parties could not schedule another meeting until the spring of 2007, when the Union president returned from leave. *Id.* The Complaint was filed approximately one month after the December 19 meeting. The Union president's absence, together with UDC's reluctance to discuss issues related to the Complaint, led the Hearing Examiner to conclude that the failure to schedule a second meeting was not the result of bad faith by UDC. (Report at 10).

The Board agrees with the Union that UDC "made the decision to implement online courses, that the [Union] requested bargaining," and that "bargaining began," but it cannot find that UDC "did not bargain in good faith by failing to be prepared to bargain." (Exceptions at 7). The Hearing Examiner determined that UDC did not act in bad faith after considering the evidence at the hearing and drawing inferences from that evidence. (Report at 2). The Board finds the Hearing Examiner's conclusion is reasonable and supported by the record. Therefore, the Union's exceptions relating to UDC's alleged failure to bargain in good faith are denied.

Next, the Union excepts to the Hearing Examiner's conclusion that the Union "prematurely filed the Complaint alleging a refusal to supply requested information because the Complaint was filed less than a month after the first request, because [the Union] failed to submit

a second request for the information, and because 'a one-time refusal to bargain is not sufficient.'" (Exceptions at 3). In support if this exception, the Union alleges that the Hearing Examiner erroneously relied upon *Int'l Brotherhood of Police Officers v. D.C. General Hospital*, Slip Op. No. 322, in which the Board held that the "better approach" when faced with a refusal to bargain is to make a second request. (Exceptions at 8). Instead, the Union asserts that the Board "has never held that 'the better approach' was the only approach." *Id.* The Union cites to *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, in which the Board held that "a second request to bargain is not required to establish a violation of the CMPA." 47 D.C. Reg. 1449, Slip Op. No. 607, PERB Case No. 99-U-44 (1999). (Exceptions at 8). Additionally, the Union cites to *AFGE Local 631 v. D.C. Water and Sewer Authority*, 52 D.C. Reg. 2510, Slip Op. No. 730, PERB Case No. 02-U-19 (2003), and *AFGE Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003), in support of this allegation. (Exceptions at 8).

The Union is correct that the Board held that a second request to bargain is not required to establish a violation of the CMPA, but the cases it cites do not all support its argument. In Slip Op. No. 607, the Board held that although a second request is not required, the Union had "made no attempt to identify the issues of concern to it or present to [the agency] any specific impact and effect proposals. *Id.* at 4. In Slip Op. No. 730, the union made a similar exception to that of the Union in the instant case – that "it had no obligation to request documents twice, as it claims the Hearing Examiner suggests in her decision." *Id.* at p. 4-5, n. 9. The Board found no merit to that exception, concluding that the hearing examiner in that case did not require that the union request the documents twice, but rather suggested that "'where there has not been a negative response, but a somewhat vague and delayed communication,' it may be helpful to make a second request." *Id.* In Slip Op. No. 702, the Board rejected an agency's exception that the hearing examiner erred by not requiring the union to make a second request to bargain. *Id.* at p. 2, n. 4.

Precedent indicates that the Board has not established a specific number of times a party must request to bargain before an unfair labor practice violation occurs. Nonetheless, in the instant case, the Hearing Examiner's conclusion that the Union should have made a second request is not unreasonable or unsupported by the record. Therefore, the Union's exception is denied.

Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's Report, and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia's Faculty Association/NEA's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-17 was transmitted via U.S. Mail and e-mail to the following parties on this the 2nd day of January, 2013.

Ms. Andrea Bagwell, Esq.
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Erin E. Wilcox, Esq.
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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:	
University of the District of Columbia Faculty Association/NEA,	
Complainant,	PERB Case No. 07-U-52
v.	Opinion No. 1350
University of the District of Columbia,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant University of the District of Columbia Faculty Association/NEA ("Complainant" or "Union") filed an unfair labor practice complaint ("Complaint") against Respondent University of the District of Columbia ("Respondent" or "UDC"), alleging violations of the parties' collective bargaining agreement ("CBA") and § 617.04 of the Comprehensive Merit Personnel Act ("CMPA"). Specifically, the Union alleged that UDC failed to adhere to guidelines for faculty promotions and student evaluations, and that this failure constituted a refusal to bargain in good faith. (Complaint at 2-3).

In its Answer ("Answer"), UDC denied that it refused to bargain in good faith, and asserted several affirmative defenses: (1) the portion of the Complaint alleging a failure to follow the faculty evaluation guidelines is untimely; (2) the allegation of a failure to meet an October 1, 2007, deadline is not ripe; (3) the Union failed to provide specific instances of UDC's alleged failure to bargain in good faith; and (4) the Complaint fails to state a claim upon which relief can be granted. (Answer at 2-3).

On June 6, 2008, Hearing Examiner Lois Hochhauser conducted a hearing in the instant case, and subsequently issued a Report and Recommendation ("Report"). The Hearing Examiner determined that the Union failed to prove by a preponderance of the evidence that UDC refused

to bargain or otherwise acted in bad faith, and recommended that the Complaint be dismissed. (Report at 8). The parties did not file exceptions. The Report is before the Board for disposition.

II. Discussion

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003).

The Hearing Examiner found the following undisputed facts:

> The [CBA] addresses faculty evaluations, which include student assessments of faulty. Among other requirements is that the assessment form is administered in the Fall semester beginning on the third Friday in November and in the Spring semester between the third Friday in March and the first Monday in April. Faculty members are responsible for assembling an Evaluation Portfolio which must be submitted to the Department Chair by the third Friday in March. The Department Evaluation and Promotion Committee (DPEC) and/or Department Chair must assist the member in obtaining information, including the student evaluation data. The Dean forwards the recommendation and rating decisions of all faculty to the Provost and Provost and Vice President for Academic Affairs by May 9.
>
> The Agreement also contains provisions related to faculty promotions. Applications must be submitted to the Department Chair by the third Friday in September. The Chair must make a recommendation by no later than the fourth Friday in October. The DEPC must make its recommendation to the College Promotion Committee (CPC) by the third Friday in November. Comments from the applicant are due by the first Friday in January. The CPC must complete its review by the first Friday in February. The Dean's recommendations are due by the fourth Friday in February. A dissatisfied applicant can appeal the result by April 1.
>
> Compensation is governed by Article XVIII of the [CBA]. Faculty hired in Academic Year 2006 and thereafter are part of the merit pay system and are evaluated annually. Faculty hired prior to that time may remain eligible for step increases or opt into the merit pay system. The University was required to set aside a percent of the total faculty salary as a Merit Pool, beginning October 1, 2006 (1%) and October 1, 2007 (2%). The Merit Pool funds were divided into the Standard Merit Pool and Discretionary Merit Pool

> components. All funds in the pool had to be paid to eligible faculty members yearly, with the funds distributed based on performance during the most recent evaluation cycle.

(Report at 3-4) (internal citations omitted).

First, the Hearing Examiner addressed the fact that the Complaint raised both contractual and statutory violations. (Report at 6). The Hearing Examiner stated that although a violation that is solely contractual is not properly before the Board, the contractual violation will be deemed an unfair labor practice if the Complainant can establish that it also violates the CMPA, or constitutes a repudiation of the contract. (Report at 6) (*citing American Federation of Government Employees, Local 3721 v. D.C. Fire Department*, 39 D.C. Reg. 8599, Slip Op. No. 287, PERB Case No. 90-U-11 (1991).

The Hearing Examiner found that the Union presented evidence that UDC failed to meet deadlines imposed by the CBA, and that UDC conceded that some (but not all) deadlines were missed. (Report at 7). The Hearing Examiner concluded that "failure to adhere to contractual time frames is a contractual violation, which, standing alone, would not constitute a ULP." *Id.* Nonetheless, the Union claimed that UDC's actions are equal to a failure to bargain in good faith – a charge that, if proven, would constitute a violation of the CMPA. *Id.* The Hearing Examiner concluded that the Union's claims were properly before the Board. *Id.* The Board finds that the Hearing Examiner's conclusion is reasonable and supported by the record.

Further, the Hearing Examiner determined that there was documentary and testimonial evidence to support a conclusion that UDC continued to bargain in good faith with the Union over the issues of merit pay, promotions, and student evaluations. (Report at 7). The Hearing Examiner stated that "[t]he evidence did not establish that [UDC] refused at any point to discuss these issues with the Association, although the parties did not agree on the meaning of all the terms." *Id.* The failure to agree on the meaning of all of the terms of the CBA was not evidence of bad faith or a refusal to bargain, but rather that in developing the "complex procedures" of promotions, merit pay, and student evaluations, "the parties did not reach accord on every item." *Id.* Based upon the evidence presented, the Hearing Examiner concluded that "the parties met in person and communicated by email on a number of occasions to discuss, and possibly resolve," the issues over merit pay, promotions, and student evaluations. *Id.* Additionally, the evidence established "that [UDC] believed, in good faith, that it was meeting its responsibilities..." *Id.* The Board finds that the Hearing Examiner's conclusion is reasonable and supported by the record.

Based upon the evidence presented and her analysis of the issues, the Hearing Examiner concluded that the Union did not meet its burden of proof by a preponderance of the evidence, as required by Board Rule 520.11. (Report at 8). The Hearing Examiner recommended that the Board dismiss the Complaint. *Id.*

A hearing examiner has the authority to determine the probative value of evidence and draw reasonable inferences from that evidence. *Hoggard v. District of Columbia Public Schools*,

46 D.C. Reg. 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1996). The Board will adopt a hearing examiner's recommendation if it is reasonable and supported by the record. *American Federation of Government Employees*, Local 872, Slip Op. No. 702. Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's Report, and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia's Faculty Association/NEA's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-52 was transmitted via U.S. Mail and e-mail to the following parties on this the 3rd day of January, 2013.

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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:	
Christopher Collins,	
Complainant,	PERB Case No. 10-S-10
v.	Opinion No. 1351
American Federation of Government Employees National Office & Local 1975,	**Motion for Reconsideration**
Respondents.	

DECISION AND ORDER

I. Statement of the Case

On July 6, 2010, Christopher Collins ("Collins" or "Complainant") filed a Standards of Conduct complaint against American Federation of Government Employees National Office & Local 1975 ("AFGE," "Local 1975," collectively "Respondents") alleging a Standards of Conduct violation. Respondents filed a Motion to Dismiss ("Motion to Dismiss") on October 27, 2010. Complainant responded by filing a Response to Motion to Dismiss ("Response to Motion"). Respondents countered with a Reply to Opposition to Motion to Dismiss ("Reply").

On June 27, 2012, the Board issued a Decision and Order in this case. *Collins v. American Federation of Government Employees National Office & Local 1975*, Slip Op. No. 1289, PERB Case No. 10-S-10 (June 27, 2012). In Slip Op. No. 1289, the Board held that because the Respondents' responsive pleading was untimely, the Motion to Dismiss and all subsequent filings would not be considered, in accordance with Board Rule 544.6. Slip Op. No. 1289 at p. 2. Furthermore, in accordance with Board Rule 544.7, the Board deemed the material facts alleged in the Complaint to be admitted, and subsequently granted the Complaint. *Id.* at 3.

On July 12, 2012, Respondent AFGE submitted a Motion for Reconsideration ("Motion for Reconsideration"), alleging that the Board erred in failing to consider the issues of mootness and subject matter jurisdiction raised in the Respondents' untimely Motion to Dismiss. (Motion for Reconsideration at 2). Specifically, AFGE alleges that subject matter jurisdiction is a question of law that must be addressed by the Board, and that the Board does not have subject matter jurisdiction over AFGE. (Motion for Reconsideration at 5). In support of that allegation, AFGE contends that the CMPA's standards of conduct for labor organizations apply only to labor organizations that have been accorded exclusive recognition, and that AFGE is not the exclusive representative of Collins' bargaining unit. (Motion for Reconsideration at 7-8). Additionally, AFGE alleges that the Complaint is moot because it has provided Collins with the financial records he requested. (Motion for Reconsideration at 8).

Collins filed an Opposition to AFGE's Motion for Reconsideration ("Opposition"), calling AFGE National Office's arguments "unfounded, conclusory, and offer[ing] no tangible point which is necessarily fatal to PERB's Order of June 27, 2012, a proper exercise of its regulatory authority over public employee unions in the District of Columbia." (Opposition at 3). Collins states that he made multiple requests to AFGE for financial records, and that AFGE has "taken no steps whatsoever to address and remediate over six years of malfeasance and negligence by the Local 1975 leadership." (Opposition at 2). Additionally, Collins contends that AFGE never alleged that it did not receive service of the Complaint or the opportunity to timely respond. (Opposition at 3). Further, Collins alleges that "AFGE cannot be permitted to collect union dues and act as a public employee union within the District of Columbia, but not be subject to the ordinary regulation of one," and that Local 1975 is a "subservient element" of AFGE. (Opposition at 8).

II. Discussion

In its Motion for Reconsideration, AFGE National Office specifically contends that the Board's application and dismissal of its Motion to Dismiss on the basis of Board Rule 544.7 was erroneous. (Cite). AFGE argues that Board Rule 544.7 applies "only to material facts and does not extend to questions of law," and that the Board was obligated to consider the legal defenses raised in its Motion to Dismiss, even if Board separately properly determined that the *material facts* of the Complaint were deemed as admitted under Board Rule 544.7. (Motion for Reconsideration at 2). PERB notes that AFGE's argument in this regard is without merit.

Board Rule 544.6 states "[a] respondent shall file, within fifteen (15) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint." In this case, on July 6, 2010, Complainant filed their initial Standards of Conduct complaint against AFGE. (R. at). On October 27, 2010, one-hundred and thirteen (113) days later, Respondents filed a Motion to Dismiss. (R. at). PERB submits that nowhere in the record before the Board, is there evidence that AFGE ever requested from PERB an extension for filing its response. Board Rule 501.1 states in pertinent part that "[w]hen an act is required or allowed to be done within a specified time by these rules, the Board, Chair, or the Executive Director shall have the discretion, upon timely request therefore, to order the time period extended or reduced to effectuate the purposes of the CMPA..." The record is clear that AFGE National Office did not file its Answer within the fifteen (15) day time frame, nor did it

request from PERB that the deadline be extended under Board Rule 501.1. As such, the Board properly found that under Board Rule 544.6, the Respondent's response in this case, was untimely. Board Rule 544.6 specifically states: "[a] respondent shall file, within fifteen (15) days from service of the complaint, an answer..." As Therefore, the Board did not err when, in accordance with its rules, it stated that AFGE's "Motion and all subsequent filings will not be considered." Slip Op. No. 1289 at p. 2.

In its Motion for Reconsideration, AFGE cites to PERB's reliance on Board Rule 544.7 and seems to argue that while the Board's adoption of the Complainant's facts under this Rule was proper, the Board's dismissal of its substantive legal arguments under the same Rule was somehow improper. (Cite). PERB submits that AFGE's arguments in this regard are erroneous at best. As discussed *supra*, the Board did not consider *any matter*, substantive or non-substantive, that was raised in Respondent's response, because it was untimely filed. Simply stated, an untimely response - without a requested exception in the form of a requested for and granted extension - does not exist in the eyes of PERB. As such, the only matter that could have been considered by PERB at the time of Board's initial adjudication came in the form of the July 6, 2010, Complaint. Board Rule 544.7 specifically provides that in these very circumstances, the material facts alleged in the complaint *must be* admitted. *See* Board Rule 544.7. The Board therefore, properly admitted the facts provided in Complainant's Complaint as material. (R. at). Contrary to Respondent's assertions however, Rule 544.7 does not provide for any other matter to be admitted in an untimely filed response. In fact, under Rule 544.6 any such matter *cannot* be considered. (*See* Board Rule 544.6).

As PERB properly applied its rules to the facts of this case, AFGE's argument submitted in its Motion for Reconsideration amounts to no more than a disagreement with the Board's underlying decision. The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." *E.g., Univ. of D.C. Faculty Assoc/National Educ. Assoc, v. Univ. of D.C.*, ___ D.C. Reg. ___, Slip Op. No. 1004, *10, PERB Case No. 09-U-26 (Dec. 30, 2009) (*citing AFGE Local 2725 v. D. C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, ___ D.C. Reg. ___, Slip Op. No. 969, PERB Case No. 06-U-43 and 02-A-05 (2003). AFGE's Motion for Reconsideration has not provided any authority which compels reversal of the Board's decision. A simple disagreement with the Board's findings does not merit reconsideration of its Decision and Order. Therefore, we conclude the AFGE's Motion for Reconsideration cannot be granted.

ORDER

IT IS HEREBY ORDERED THAT:

1. American Federation of Government Employees National Office's Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-S-10 was transmitted to the following parties on this the 2nd day of January, 2013.

Mr. Matthew LeFande
4585 North 25th Road
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FILE & SERVE EXPRESS

Mr. Andres M. Grajales
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Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
University of the District of Columbia,	
Petitioner,	PERB Case No. 10-UM-01
v.	Opinion No. 1352
American Federation of State, County, & Municipal Employees, District 20, Local 2087,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner University of the District of Columbia ("Petitioner" or "UDC") filed the instant Petition for Modification of Bargaining Unit ("Petition"), asking the Public Employee Relations Board ("Board") to "modify the Bargaining Agreement/Compensation Units 1 and 2" by "remov[ing] itself and the non-faculty bargaining unit represented by Local 2087 from this multi-agency/multi-union Compensation Bargaining Unit." (Petition at 1, 3). Respondent American Federation of State, County, and Municipal Employees, District 20, Local 2087 ("Respondent" or "Union") filed an Opposition ("Opposition") and a Motion to Dismiss Petition for Modification of Bargaining Unit ("Motion"). UDC opposed the Motion. ("Opposition to Motion").

On October 19, 2010, Hearing Examiner Lois Hochhauser conducted a hearing on the instant matter. In her Report and Recommendation ("Report"), the Hearing Examiner determined that the Petition should be dismissed, and she recommended that the Board grant the Union's request for costs. (Report at 13). The Report is now before the Board for disposition.

II. Discussion

A. Findings of Fact

Respondent is the certified bargaining representative of non-faculty educational services employees and career service employees at UDC. (Report at 4). Prior to February 4, 2005, the bargaining unit members belonged to Compensation Unit 15. *Id.* On February 4, 2005, the Board granted a joint petition filed by the Government of the District of Columbia, UDC, and the Union, requesting that Compensation Units 1 and 15 be consolidated. *Id.*

The bargaining unit members represented by the Union share job classifications with other Compensation Unit 1 members at other D.C. government agencies. (Report at 5). The D.C. Office of Labor Relations and Collective Bargaining negotiates on behalf of all agencies in Compensation Unit 1, including UDC. *Id.* Respondent and Petitioner are parties to the Compensation Collective Bargaining Agreement between the District of Columbia and the Labor Organizations representing Compensation Units 1 and 2 (Effective through Fiscal Year 2010). *Id.*

On April 13, 2010, UDC informed the Union that UDC "formally withdraws effective immediately from joint collective bargaining regarding Compensation Units 1 and 2." *Id.* UDC requested the Union consent to the withdrawal and commence negotiating a collective bargaining agreement directly with UDC. *Id.* The Union had previously declined an informal request to agree with UDC's proposed actions. *Id.* UDC did not participate in any of the Compensation Unit 1 and 2 negotiations in 2010. (Report at 6).

B. Unit Modification

UDC stated that it seeks to withdraw from the multi-employer bargaining arrangement of Compensation Units 1 and 2, and instead bargain directly with the Union on compensation issues related to bargaining unit members. (Report at 6). UDC contended that its membership in Compensation Unit 1 is consensual, so it should be able to withdraw from Compensation Unit 1 as long as it does so before negotiations for a new contract are set. *Id.* UDC relied on National Labor Relations Board ("NLRB") precedent to support this assertion. *Id.* Further, UDC alleged that as an agency with independent personnel and compensation bargaining authority, it meets the Board's criteria to negotiate compensation matters independently. *Id.* UDC witnesses testified that UDC requires independence from Compensation Unit 1 in order to have the "flexibility" necessary to meet "its own policy objectives and mission." *Id.*

The Union contended that the parties considered this issue in 2004, when they jointly requested the Board merge Compensation Unit 15 with Compensation Unit 1. (Request at 8). Further, the Union alleged that nothing has changed to justify removing the bargaining unit from Compensation Unit 1. *Id.* UDC's Enabling Act has not changed with regard to personnel matters since 2002, and removing the bargaining unit from Compensation Unit 1 would reinstate the problems that prompted the parties to merge the compensation units in 2004. (Report at 9).

Further, the Union rejected UDC's reliance on NLRB precedent as "directly contradictory to the statutory terms of the Comprehensive Merit Personnel Act ("CMPA")." (Report at 8).

The Hearing Examiner acknowledged the statutory requirements for compensation units set forth by CMPA, specifically that "the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes." D.C. Code § 1-617.16(b). In her analysis of the issue, the Hearing Examiner considered the Board's two-pronged approach to determining whether a compensation unit is appropriate: first, whether the employees in the proposed unit are in broad occupational groups, and second, whether the proposed unit will minimize the number of pay systems in use. (Report at 9) (*citing American Federation of Government Employees, Local Union 1403 v. District of Columbia Government*, __ D.C. Reg.__, Slip Op. No. 806, PERB Case No. 05-CU-02 (2005). She further noted that single-agency compensation units do not confirm with the requirement for "broad occupational groups" unless there is clear statutory authority for establishing a separate compensation unit, or where there are unique pay schedules. (Report at 9) (*citing International Brotherhood of Teamsters, Local 246 v. D.C. Department of Corrections*, 34 D.C. Reg. 3495, Slip Op. No. 152, PERB Case No. 85-RC-07 (1987); *D.C. Water and Sewer Authority v. American Federation of Government Employees, et al.*, Slip Op. No. 1308, PERB Case Nos. 96-UM-07, 07-UM-01, 07-UM-03, and 07-CU-01(August 15, 2012); *Service Employees International Union, Local 722 v. D.C. Department of Human Services/Home Services Bureau*, 48 D.C. Reg. 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994)).

In applying Board precedent to the instant case, the Hearing Examiner concluded that UDC presented no statutory authority to merit removing the bargaining unit from Compensation Unit 1, and that UDC failed to establish that its mission and objectives would be undermined or destroyed by remaining in Compensation Unit 1. (Report at 11). Calling UDC's reliance on private sector and NLRB precedent "misplaced," the Hearing Examiner held that the CMPA "expressly makes compensation unit certification a matter of law, not contract." *Id.* The Hearing Examiner recommends that the Board dismiss the Petition. *Id.*

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's conclusion on this issue, and the Petition is dismissed.

C. Request for Costs

The Union seeks an award of the costs incurred in defending against the Petition. (Request at 11). The Hearing Examiner concluded that UDC's claim was without merit, and that its actions, while not taken in bad faith, had the foreseeable impact of undermining the Union's position with its members. (Report at 12). Particularly important to the Hearing Examiner was the fact that "UDC made it clear to the Union, and thus its members, that it would not participate

in negotiations, and in fact it did not participate in negotiations. This would reasonably undermine the faith of bargaining unit members in [their] exclusive representative." *Id.*

The Board finds that the Hearing Examiner's conclusion is reasonable and supported by the record, as well as consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's recommendation, and awards reasonable costs to the Respondent.

Thus, the Board adopts the Hearing Examiner's Report, the Petition is dismissed, and UDC is ordered to pay reasonable costs to the Union.

ORDER

IT IS HEREBY ORDERED THAT:

1. The University of the District of Columbia's Petition for Modification of Bargaining Unit is dismissed.

2. The University of the District of Columbia will pay the Union's reasonable costs in defending against the Petition for Modification of Bargaining Unit.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 2, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-UM-01 was transmitted to the following parties on this the 2nd day of January, 2013.

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E. E. Wilcox

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Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, AFL-CIO Local 2978,	
Complainant,	PERB Case No. 09-U-23
	Opinion No. 1356
v.	
	Motion to Dismiss
District of Columbia Department of Health,	Motion for Decision on the Pleadings
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant American Federation of Government Employees, AFL-CIO Local 2978 ("Complainant" or "AFGE" or "union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Department of Health ("Respondent" or "DOH" or "Agency"), alleging DOH violated the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.04(a)(1) and (5), when it "failed and refused to respond to [a Union] information request." (Complaint at 2). Further, AFGE alleged that DOH "failed and refused to bargain in good faith." *Id.*

In its Answer, DOH denied the union's allegations. (Answer at 1-4). In addition, DOH raised an affirmative defense that the "Complainant [failed] to allege any conduct that constitutes an unfair labor practice under § 1-617.04 of the D.C. Official Code (2001 ed.)[,]" and moved for the Public Employee Relations Board ("PERB" or "Board") to dismiss the Complaint "with prejudice." (Answer at 4).

AFGE later filed a Motion for Decision On the Pleadings ("Motion for Decision"), in which it argued: the dispositive facts in the matter were undisputed; "Board precedent clearly establishes that an agency has an obligation to provide information in response to a request made by a union[;]" and "DOH's anticipated defense that it did not need to respond because the Union did not ask quite the correct questions is unavailing." (Motion for Decision at 2-5).

DOH filed a Response to Complainant's Motion for Decision On the Pleadings ("Response to Motion for Decision"), in which DOH stated that it "does not oppose Complainant's [Motion for Decision]." (Response to Motion for Decision at 1). In addition, DOH requested that the PERB "allow the parties to brief and/or give oral argument on the remaining legal issues as allowed within PERB Rule 520.10." *Id.* Furthermore, DOH requested "that the parties stipulate to the facts as they are stated in the pleadings, and stipulate to the authenticity of the documents attached to the pleadings." *Id.* Lastly, DOH requested that the "record be amended to include an affidavit from Mr. Dennis Jackson [("Mr. Jackson)], a representative of the Agency and attorney with the Office of Labor Relations and Collective Bargaining, concerning his conversation with Mr. Robert Mayfield [("Mr. Mayfield")], President of the Union, on or around January 22, 2009." *Id.* at 2. The Affidavit was submitted as an attachment to DOH's Response to Motion for Decision.

AFGE then filed a Reply to Respondent's Response to Motion for Decision On the Pleadings ("Reply to Respondent's Response to Motion for Decision"), arguing that it did not believe that DOH's request for additional briefing on the remaining legal issues was "justified or necessary" because it (AFGE) was not aware of any legal issues, "presumably raised in the complaint and answer...[,] that cannot be decided on the basis of those pleadings." (Reply to Response to Motion for Decision at 1-2). Furthermore, AFGE argued that DOH did not identify any such issues. *Id.* at 2. AFGE disputed DOH's request to amend the record to include Mr. Jackson's Affidavit on the basis that the case would no longer be "one where [the] decision is being made on the pleadings." *Id.* Moreover, AFGE contended that it would be likewise unnecessary to grant DOH's requests that the parties stipulate to the facts as well as stipulate to the authenticity of the documents attached to the pleadings because "DOH has not disputed any of the Union's facts or identified any dispute over the authenticity of the documents." *Id.* at 1. AFGE then renewed "its request that the PERB decide whether DOH violated the CMPA based on the pleadings already in the record." *Id.* at 2. Notwithstanding, AFGE argued that if the PERB did allow DOH's affidavit to enter the record, it (AFGE) should be given an opportunity to "file a substantive opposition to DOH's response" or that a hearing be set in the matter "promptly". *Id.*

DOH filed a Reply to Complainant's Reply to Respondent's Response to Complainant's Motion for Decision on the Pleadings ("Reply to Reply to Response to Motion for Decision"), stating that it would withdraw Mr. Jackson's Affidavit if AFGE would "stipulate to the time,

place and content of the conversation between [Mr. Jackson] and [Mr. Mayfield]" on the grounds that the details of the conversation were "included in Respondent's Answer." (Reply to Reply to Response to Motion for Decision at 1). Furthermore, DOH averred that "the legal issue of whether Respondent is obligated to provide Complainant with requested information that clearly, according to the undisputed facts, does not exist[,] still remains." *Id.* As a result, DOH renewed its request that the PERB "allow the parties to brief and/or give oral argument on this remaining legal issue." *Id.* at 1-2. Lastly, DOH offered that "[i]f the issue regarding the conversation between Mr. Jackson and Mr. Mayfield is resolved, [the Agency] agrees with Complainant that a fact finding hearing would be unnecessary." *Id.* at 2.

II. Background

On January 6, 2009, Robert Mayfield ("Mr. Mayfield") of AFGE sent a letter to DOH Director, Dr. Pierre N.D. Vigilance, MD, MPH ("Dr. Vigilance"), requesting information from DOH about the "[imminent]... contracting out" of the services provided by the Community Supplemental Food Program ("CSFP"). (Complaint at 2, and Motion for Decision at Exhibit #1). The January 6 letter requested information about the "closure of the CFSP ... and/or a Reduction-In-Force [("RIF")] among the bargaining unit employees working in the CFSP." The letter, which was included as an exhibit with AFGE's Motion for Decision, shows that AFGE specifically requested that DOH provide AFGE: any and all documents justifying the contracting out of CSFP services; copies of all current DOH contracts for services formerly or currently provided by DOH employees; access to the "Official Contract Files ([per] D.C. Code § 2-301.05b(a))"; copies of "all notices of [DOH's] contracting out of the CSFP provided to the Union in accordance with Articles 42, 47, and 48 of the labor agreement"; citations and copies of any and all legal authority "dealing with contracting out services formerly or currently provided by DOH employees"; copies of "the estimate of the fully allocated cost associated with providing the relevant services using District government employees that is part of the official contract file for contracting out the CSFP in accordance with [D.C. Code § 2-301.05b(a)]"; information on how to bid on the contract for the services provided by the CSFP "in accordance with D.C. Code § 2-301.05b(b)]"; a detailed explanation of DOH's plan to comply with D.C. Code § 2-301.05b(c) along with any supporting documents; a description of the impact that contracting out the CSFP would have on each District government employee who works "in any amount or respect on the CSFP"; a description of DOH's plan to comply with D.C. Code § 2-301.05b(d); a detailed explanation of DOH's plan to comply with D.C. Code § 2-301.05b(e) along with any supporting documents; and a list of "any applicants who applied and will be considered for receiving an award in accordance with [a 2008 DOH request for applications] along with certain specific information of each candidate. (Motion for Decision at Exhibit #1). In the letter, Mr.

Mayfield stated that time was of the essence and requested that DOH respond to AFGE's request by no later than January 16, 2009. *Id.*

DOH, in its Answer, admitted that it received the January 6 letter requesting information about the CSFP. (Answer at 2). However, it denied that the letter requested any information about a [RIF] of bargaining unit employees in the CSFP or about the closure of the CSFP. *Id.* The letter itself confirms that AFGE indeed did not request any information related to a RIF of CSFP employees or the closure of the CSFP. (Motion for Decision at Exhibit #1). In its Answer, DOH averred that the letter "[limited] its request for information ... only [to] the possible contracting out of the CSFP." (Answer at 2).

AFGE alleged that on or about January 14 and again on or about January 21, 2009, Mr. Mayfield sent emails to DOH Attorney-Advisor, Dennis Jackson ("Mr. Jackson"), asking when DOH would respond to its information request. (Complaint at 2). As of February 23, 2009, the date of the filing of the Complaint, AFGE alleged that DOH had not responded to either email. *Id.* In its Answer, DOH admitted that it received the emails, but denied that it never responded to them. (Answer at 2). DOH argued that Mr. Jackson spoke verbally with Mr. Mayfield on or about January 22, 2009, and informed him that DOH "was still working on the Union's information request." *Id.* In its Response to Motion for Decision, DOH provided an affidavit signed by Mr. Jackson which provided additional details about what was conveyed by Mr. Jackson to Mr. Mayfield on that date. (Response to Motion for Decision at 3). In the affidavit, Mr. Jackson claimed he told Mr. Mayfield that DOH "was still working on the request and would not be able to respond until it was determined if the [CSFP's services] were being contracted out pursuant to the Procurement Practices Act [("PPA")] [codified in D.C. Code § 2-301.05], which the Union cites to throughout [its] request." *Id.* In addition, Mr. Jackson further claimed he told Mr. Mayfield on that date that "if it was found the services of CSFP were not contracted out[,] there would be no information to provide since the entire information request concerned the contracting out of CSFP services." *Id.*

In its Reply to Response to Motion for Decision, AFGE did not admit or deny that this conversation took place, but argued that the PERB should not consider Mr. Jackson's affidavit in the event that it grants AFGE's motion to decide this matter on the pleadings because it was not included with DOH's original pleading (i.e. Answer). (Reply to Response to Motion for Decision at 2).

In the Complaint, AFGE alleged that on or about January 30, 2009, "all of the bargaining unit employees working on the CSFP were terminated from their positions with DOH." (Complaint at 2). DOH admitted that on January 30, 2009, "pursuant to a [RIF] order signed by the Mayor on December 29, 2008, all employees in the [CSFP], including non-bargaining unit positions, were removed from their positions with the Agency." (Answer at 3).

In the Complaint, AFGE contended that as of February 23, 2009, the date of the Complaint, DOH had "failed and refused to produce any of the information requested by the Union in its [January 6] information request." (Complaint at 2). In its Answer, Respondent denied this allegation and contended that it had "been found that the services of the CSFP [had] not been contracted out such that the actions of the Agency fall within the guidelines of the [PPA]." (Answer at 3). DOH further contended in its Answer that, as a result of its finding that the services had not been contracted out, "the information requested by the Union cannot be provided because it does not exist." *Id.* In its Motion for Decision, AFGE argued that "[a]t a minimum, if information exists that abrogates DOH's obligation to respond substantively to the Union's request, i.e. information supporting the DOH's position that the CSFP was not contracted out, that itself is responsive information that should be produced in order for the Union to understand and investigate its rights to proceed in the grievance procedure, negotiations, or elsewhere." (Motion for Decision at 6). AFGE further contended that "the Union's broad request [required] that DOH produce a substantive response, even if the District's privatization law does not apply." *Id.*

In the Complaint, AFGE contended that as of February 23, 2009, the date of the complaint, the DOH had not responded to its information request and therefore "failed to bargain in good faith in violation of D.C. Code § 1-617.04(a)(1) and (5)." (Complaint at 2). In its Answer, DOH denied this allegation and stated that "at no time [had] it refused or received a request by the Union to bargain in good faith in accordance with [the provisions of the CMPA quoted by AFGE]." (Answer at 3). In its Motion for Decision, AFGE noted that "DOH's failure and refusal to produce any of the requested information [had] made it extremely difficult for the Union to investigate any grievances or competently consult and negotiate with DOH over the closure of the CSFP and the RIF of bargaining unit employees." (Motion for Decision at 4).

III. Discussion

A. Motion to Dismiss

In its Answer, DOH raised the affirmative defense that the "Complainant [failed] to allege any conduct that constitutes an unfair labor practice under § 1-617.04 of the D.C. Official Code (2001 ed.)[,]" and moved for the PERB to dismiss Complaint "with prejudice." (Answer at 4).

A Complainant does not need to prove its case on the pleadings, but it must plead or assert allegations that, if proven, would establish a statutory violation. See *Virginia Dade v. National Association of Government Employees, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No.

491 at p. 4, PERB Case No. 96-U-22 (1996); *Gregory Miller v. American Federation of Government Employees Local 631 v. District of Columbia Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994); and *Goodine v. Fraternal Order of Police/District of Columbia Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

In addition, agencies are obligated to provide documents in response to a request made by the union. *American Federation of Government Employees, Local 631 v. District of Columbia Water and Sewer Authority*, 59 D. C. Reg. 3948, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04 (2007) (citing *Teamsters, Local 639 and 730 v. District of Columbia Public Schools*, 37 D.C. Reg. 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1989) and *Psychologists Union, Local 3758 of the District of Columbia Department of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health*, 54 D.C. Reg. 2644, Slip Op. No. 809, PERB Case No. 05-U-41 (2005). Moreover, the United States Supreme Court has held that an employer's duty to disclose information "unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." *National Labor Review Board v. Acme Industrial Co.*, 385 U.S. 32, 36 (1967).

Furthermore, when an agency has failed and refused, without a viable defense, to produce information that the union has requested, the agency resultantly fails to meet its statutory duty to bargain in good faith and has therefore violated D.C. Code § 1-617.04(a)(5). *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65 (2009) (citing *Psychologists Union, Local 3758 of the D.C. Dep't of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health, supra*, Slip Op. No. 809, PERB Case No. 05-U-41). In addition, "a violation of the employer's statutory duty to bargain [under D.C. Code §1-617.04(a)(5)] also constitutes derivatively a violation of the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" found in D.C. Code §1-617.04(a)(1). *Id.* (quoting *American Federation of State, County and Municipal Employees, Local 2776 v. District of Columbia Department of Finance and Revenue*, 37 DCR 5658, Slip Op. No. 245 at p. 2, PERB Case No. 89-U-02 (1990)).

In this case, the only argument DOH provided to support its affirmative defense and motion to dismiss was that "Complainant [failed, in the Complaint,] to allege any conduct that

constitutes an unfair labor practice under [the CMPA]." AFGE has provided more than enough alleged facts, reasoning, and authority in its Complaint to establish that DOH's failure and refusal to provide the information AFGE requested, should such be proven, would constitute an unfair labor practice in violations of D.C. Code § 1-617.04(a)(1) and (5). Respondent's motion to dismiss AFGE's Complaint is therefore denied.

B. Motion for Decision on the Pleadings

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." The Rule further states that "[t]he parties shall submit to the Board or its designated representative evidence relevant to the complaint", and that such evidence "may include affidavits or other documents, and any other material matter." Pursuant to these rules, all documents and evidence properly and timely filed with the PERB can be considered by the Board in its investigation and, if the Board finds, pursuant to its investigation, that there "is no issue of fact to warrant a hearing", that same evidence can be considered by the Board in its final decision. 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).

In its Answer, DOH generally denied the legal conclusions alleged by AFGE in its Complaint, but did not dispute the underlying facts alleged by AFGE in the Complaint. (Answer 2-4). It its Motion for Decision, AFGE detailed its understanding of the "undisputed facts" in this matter. (Motion for Decision at 2-4). In its Response to AFGE's Motion, the DOH stated that it "[did] not oppose Complainant's [Motion for Decision] pursuant to PERB Rule 520.10." (Response to Motion for Decision at 1). Furthermore, in that Response, DOH requested only that the parties "stipulate to the facts as they are stated in the pleadings" and that the Board "allow the parties to brief and/or give oral argument[s] on the remaining legal issues as allowed within PERB Rule 520.10." *Id.* Hence, based upon DOH's statement that it did not oppose AFGE's Motion for Decision, which contained its characterization of the "undisputed facts," and based upon DOH's request that the parties "stipulate to the facts as they are stated in the pleadings [(including, the Board presumes, AFGE's Motion for Decision),]" and based upon DOH's contention that the only contested matter in the case was a single legal question, the Board finds that the undisputed facts in this matter are these: 1) AFGE's January 6 letter properly requested information from DOH regarding its imminent plans for the CSFP; 2) on that date, DOH had in its possession the RIF order signed by the Mayor on December 28, 2008; 3)

AFGE duly followed up on its information request three (3) times when Mr. Mayfield sent emails to Mr. Jackson on January 14 and 21, 2009, and when Mr. Mayfield verbally asked Mr. Jackson about the status of the request on or about January 22, 2009; 4) CSFP's employees were RIF'd on or about January 30, 2009; 5) by February 23, 2009, the date of AFGE's Complaint, DOH still had not responded to AFGE's request in any way other than to verbally request more time to comply with DOH's information request, with which it never followed through; and 6) by March 16, 2009, the date of DOH's Answer, DOH had "found" by its own analysis that the January 30 RIF was not a "contracting out" of the services provided by the CSFP. Therefore, because all of these facts are undisputed by the parties, the PERB can properly decide this matter based upon the pleadings in the record pursuant to Rule 520.10.

Before moving to its final analysis of this matter, the Board will address the sub-issues presented by the parties in their various pleadings.

1. Request for Additional Briefing on Remaining Legal Issue

The DOH requested that the Board allow additional briefing on the legal question of whether information must be provided to the union if it is found or determined that the requested information "does not exist." (Response to Motion for Decision at 1, and Reply to Reply to Response to Motion for Decision at 1). The Board finds that a discussion on this question is not necessary here because, by DOH's own admission, the requested information *did* exist. AFGE, in its January 6, 2009, letter to the DOH, requested that the DOH disclose and provide to AFGE all of the pertinent information related to the DOH's plans and intentions concerning the contracting out of the CSFP along with any supporting legal documentation, contracts, etc. it had in support of those plans. (Motion for Decision at Exhibit #1). On the date that the request was made, DOH already had in its possession the RIF order that was signed by the Mayor on December 28, 2008. (Answer at 3). Furthermore, even if the DOH narrowly construed AFGE's information request to only require the disclosure of documents that specifically addressed the "contracting out" of the CSFP, then the DOH's admitted "finding" that "the services of the CSFP [had] not been contracted out such that the actions of the Agency fall within the guidelines of the [PPA]" certainly fits that description. (Answer at 3).

The National Labor Relations Board ("NLRB") has articulated that even when a Union's request for information is ambiguous or when it requests information that is not required by the bargaining agreement, such does not excuse an agency's blanket refusal to respond to the request. *Azabu USA (Kona) Co., Ltd. et al*, 298 N.L.R.B. 702 (1990) (citing *A-Plus Roofing*, 295 N.L.R.B. 967, JD fn. 7 (July 11, 1989); *Barnard Engineering Co.*, 282 N.L.R.B. 617, 621

(1987); and *Colgate-Palmolive Co.*, 261 N.L.R.B. 90, 92 fn. 12 (1982). Indeed, "an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." *Id.* Thus, the Board finds that it is likewise reasonable to infer that even if an agency does not have the information union has requested, the agency's duty to respond requires that the agency at least submit a response to the union explaining that such is the case. *Id.*

In this matter, the Board agrees with AFGE that DOH's defense that it (DOH) did not need to respond to the AFGE's request because AFGE's request was too narrow and/or because the information did not exist is "unavailing." (Motion for Decision at 5). Furthermore, the Board finds that both the December 28 RIF order and DOH's reported internal "finding" that the CSFP had not been "contracted out" encompassed information that was necessary and relevant to AFGE's request and should have been disclosed. *Azabu USA (Kona) Co., supra,* 298 N.L.R.B. 702. Therefore, the Board denies DOH's request for additional briefing on whether DOH was obligated to respond to AFGE's request based on the argument that the information sought "did not exist." (Response to Motion for Decision at 1, and Reply to Reply to Response to Motion for Decision at 1).

2. Requests to Stipulate to the Facts and to Authenticate Documents Provided in the Pleadings

In DOH's Response to Motion for Decision, the DOH requested that the parties stipulate to the facts and further that they stipulate to the authenticity of the documents attached to the pleadings. (Response to Motion for Decision at 1). The Board agrees with AFGE that neither is necessary. (Reply to Response to Motion for Decision at 1). First, authenticating the documents attached to the pleadings is not necessary because neither party has raised a question about the authenticity of the attachments. Rule 520.6 states: "[a] respondent shall file ... an answer containing a statement of its position with respect to the allegations set forth in the complaint." The Rule further states that the "answer shall also include a statement of any affirmative defenses...." DOH, in its Answer, did not question the authenticity of any of the documents attached to AFGE's Complaint. As such, the Board finds that the parties have already, in essence, stipulated to the authenticity of the attachments and do not need to do so again.

DOH's request that the parties stipulate to the facts as they are stated in the pleadings is likewise unnecessary. As stated previously, the key facts in this matter are undisputed and therefore already, in essence, stipulated to by the parties. *Id.*

3. Requests to Admit Affidavit and for Additional Briefing / Arguments

In DOH's Response to Motion for Decision, DOH requested that the Board amend the record to "include an affidavit from [Mr. Jackson]..., concerning his conversation with [Mr. Mayfield]... on or around January 22, 2009." (Response to Motion for Decision at 2). The affidavit states that Mr. Jackson verbally expressed to Mr. Mayfield that DOH needed more time to respond to AFGE's request, and that, based on an analysis it [(DOH)] was [then] conducting as to whether or not the CSFP was being contracted out, there may not be any information to provide. (Response to Motion for Decision at Exhibit #1). AFGE did not deny this characterization of the discussion, which DOH presented in part in its Answer, and more fully in the affidavit. (Answer at 2, and Response to Motion for Decision at Exhibit #1). The Board therefore accepts as fact the above characterization of the conversation.

AFGE's argument against the admission of the affidavit, however, is the legal contention that the Affidavit should not be admitted into evidence because it was not offered in DOH's original pleading, i.e. Answer. (Reply to Response to Motion for Decision at 2). AFGE seems to argue that the Board should consider only the original Complaint and Answer when invoking Rule 520.10 and deciding a case on the pleadings. *Id.* at 1-2. AFGE argued that "if the PERB is inclined to take evidence in this case, such as the affidavit submitted by DOH, the matter is obviously no longer one where a decision is being made on the pleadings." *Id.* at 2. In addition, AFGE argued that it was "unaware of any legal issues, presumably raised in the complaint and answer in this case, that cannot be decided on the basis of those pleadings[.]" *Id.* at 1-2. Then, AFGE seemed to contradict itself and argued that "[w]ithin the four [(4)] corners of the four [(4)] pleadings in this case is [*sic*] all of the argument and undisputed facts on every issue pursued by the Union that the PERB needs to make a decision based on the pleadings." *Id.* at 2. AFGE, however, did not indicate which four (4) pleadings it was referring to.

Notwithstanding, Rule 520.10 states that "[t]he parties shall submit to the Board or its designated representative evidence relevant to the complaint[,]" and that such evidence "may include affidavits or other documents, and any other material matter." (Emphasis added). Under the Rule, all documents and evidence properly and timely submitted to the PERB can be considered by the Board when it renders a decision on the pleadings. As such, the Board grants DOH's request and will consider DOH's affidavit in its final decision.

As a consequence of the Board allowing DOH's affidavit, AFGE requested an opportunity to substantively brief or argue a "substantive response to DOH's [Response to

Motion for Decision]." (Reply to Response to Motion for Decision at 2). Such is not necessary, however, because Rule 520.10 expressly allows the Board to consider "affidavits" and "any other material matter" when rendering decisions based on the pleadings. Furthermore, the inclusion of the affidavit does not change or impact the dispositive underlying facts in this case. The affidavit proffered that DOH needed more time to respond to AFGE's request (which acknowledged that DOH at least understood it had an obligation to respond) and warned AFGE that there may not be any documents to present should the DOH determine that the CSFP was not contracted out. (Response to Motion for Decision at Exhibit #1). Such does not change the Board's finding that DOH never complied with its obligation to respond to AFGE's request, including, but not limited to, providing AFGE with copies of the December 28, 2009, RIF order, and its "finding" that the CSFP had not been contracted out, which DOH admitted it completed sometime prior to March 16, 2009. (Answer at 2-3). AFGE's request for additional briefing and/or oral arguments on these questions is therefore denied.

C. Decision

Returning to the original allegations raised by AFGE in the Complaint, and in reliance upon all of the pleadings submitted by the parties, the Board finds that the DOH failed and refused to provide the information requested by AFGE, and therefore engaged in an unfair labor practice in violation of the CMPA.

As previously stated, agencies are obligated to provide documents in response to a request made by a union to the extent said documents encompass necessary and relevant information." *AFGE, Local 631 v. D.C. Water and Sewer Authority*, *supra*, Slip Op. No. 924 at p. 5-6, PERB Case No. 08-U-04, *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 3-4, PERB Case 09-U-65, and *Azabu USA (Kona) Co., supra,* 298 N.L.R.B. 702. When an agency has failed and refused, without a viable defense, to produce information that the union has requested, the agency resultantly fails to meet its statutory duty to bargain in good faith and has therefore violated D.C. Code § 1-617.04(a)(5). *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65. In addition, "a violation of the employer's statutory duty to bargain [under D.C. Code §1-617.04(a)(5)] also constitutes derivatively a violation of the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" found in D.C. Code §1-617.04(a)(1). *Id.*

It is undisputed that AFGE's January 6 letter properly requested information from DOH regarding its imminent plans for the CSFP. It is further undisputed that on that date, DOH had in

its possession the December 28, 2008, RIF order that was signed by the Mayor, but failed to provide AFGE a copy of said order. It is undisputed that CSFP's employees were RIF'd on or about January 30, 2009. It is undisputed that by February 23, 2009, the date of AFGE's Complaint, DOH still had not responded to AFGE's request in any way other than to verbally request more time to comply with the request, with which it never followed through. It is undisputed that DOH failed to provide the information requested by AFGE despite AFGE's three (3) diligent and timely inquiries about the status of the request. Finally, it is undisputed that by March 16, 2009, the date of DOH's Answer, the DOH had "found" that the January 30 RIF was not a "contracting out" of the services provided by the CSFP, and that the DOH had failed to provide AFGE with a copy of said finding.

The Board finds that DOH's contention that it failed to respond to AFGE's information request because the requested information did not exist was not a viable defense for said failure. *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65. Indeed, the December 28 RIF order and the DOH's internal "finding" that the CSFP had not been contracted out did exist and were necessary and relevant documents to AFGE's ability to timely "investigate any grievances or competently consult and negotiate with DOH over the closure of the CSFP and the RIF of bargaining unit employees," and therefore should have been provided. *Id. at p. 3-4*; *Azabu USA (Kona) Co., supra,* 298 N.L.R.B. 702; and Motion for Decision at 4. Even if, *arguendo*, the requested information did not exist, or even if AFGE's request was too broad or too specific, DOH had a duty to submit a response to AFGE explaining as much, which it likewise failed to do. *Id.* Furthermore, Mr. Jackson's verbal statements to Mr. Mayfield on January 22, 2009, detailed in DOH's affidavit, cannot be construed as adequate responses to AFGE's request in and of themselves. Rather, the Board finds that Mr. Jackson's statements constituted nothing more than a request for additional time to respond to AFGE's request and a consequential acknowledgment by DOH that it knew it had an obligation to timely respond to said request. *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 3-5, PERB Case 09-U-65 (holding that it is not enough that the agency respond, but it must do so in a timely manner).

Wherefore, because DOH failed and refused, without a viable defense, to produce the information that AFGE requested and, as a result, failed to meet its statutory duty to bargain in good faith, it therefore violated D.C. Code § 1-617.04(a)(5). *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 4, PERB Case 09-U-65. By so doing, DOH further derivatively violated its counterpart duty not to interfere with its employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives

of their own choosing" found in D.C. Code §1-617.04(a)(1). *Id.* The Board therefore finds that DOH's conduct in this matter constituted an unfair labor practice.

D. Remedy

In accordance with the Board's finding that DOH's conduct constituted an unfair labor practice under the CMPA, the Board now turns to the question of what constitutes an appropriate remedy. AFGE asked the Board to order DOH to: 1) cease and desist from violating the CMPA in the manner alleged or in any like or related manner and to immediately provide AFGE with the requested information; 2) pay AFGE's costs; 3) post a notice; and 4) "[d]esist from or take such affirmative action as effectuates the policies and purposes of the [CMPA]." (Complaint at 3).

The Board finds it reasonable to order DOH to cease and desist from violating the CMPA in the manner alleged or in any like or related manner. The Board further finds it reasonable to order DOH to "[d]esist from or take affirmative action as effectuates the policies and purposes of the [CMPA]." *Id.*

The Board finds it reasonable to order DOH to immediately deliver to AFGE any and all information it has related to the January 30, 2009, RIF of the CSFP's bargaining unit employees including, but not limited to, a copy of the December 28, 2008, RIF order signed by the Mayor and a copy of its analysis detailing the reasons why the RIF was not a "contracting out" of the CSFP. *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 5, PERB Case 09-U-65.

In addition, the Board finds it reasonable to order DOH to post a notice acknowledging its violation of the CMPA, as detailed herein. When a violation of the CMPA has been found, the Board's order is intended to have a "therapeutic as well as a remedial effect" and is further to provide for the "protection of rights and obligations." *Id.* (quoting *National Association of Government Employees, Local R3-06 v. District of Columbia Water and Sewer Authority* 47 D.C. Reg. 7551, Slip Op. No. 635 at pgs. 15-16, PERB Case No. 99-U-04 (2000)). It is this end, the protection of employees' rights, that "underlies [the Board's] remedy requiring the posting of a notice to all employees" that details the violations that were committed and the remedies afforded as a result of those violations. *Id.* (quoting *Charles Bagenstose v. District of Columbia Public Schools*, 41 D.C. Reg. 1493, Slip Op. No. 283 at p. 3, PERB Case No. 88-U-33 (1991)). Posting a notice will enable bargaining unit employees to know that their rights under the CMPA are fully protected. *Id.* It will likewise discourage the Agency from committing any future violations. *Id.*

AFGE further requested that DOH be ordered to pay "the Union's costs in this matter." (Complaint at 3). D.C. Code § 1-617.13 authorizes the Board "to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine." This does not, however, include an award of attorneys' fees. *AFGE, Local 2725 v. D.C. DOH, supra*, Slip Op. No. 1003 at p. 6, PERB Case 09-U-65 (citing *International Brotherhood of Police Officers, Local 1445, AFL-CIO/CLC v. District of Columbia General Hospital* 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992) and *University of the District of Columbia Faculty Association NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991). Any portion of AFGE's request involving attorneys' fees is therefore denied.

The circumstances under which the Board warrants an award of costs were articulated in *AFSCME, D.C. Council 20, Local 2776 v. D.C. Department of Finance and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245 at p. 4-5, PERB Case No. 89-U-02 (1990), in which the Board stated:

> [A]ny such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed . . . Last, and this is the [crux] of the matter, we believe such an award must be shown to be in the interest of justice.
>
> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued . . . What we can say here is that among the situations in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonably foreseeable result of the successfully challenged conduct is the undermining of the union among the employees for whom it is the exclusive bargaining representative.

In the instant matter, the Board found that DOH failed and refused, without a viable defense, to produce the information that AFGE requested despite DOH's express acknowledgments that it had the information and that it knew it was required to produce the information, all of which impeded AFGE's ability to timely "investigate any grievances or competently consult and negotiate with DOH over the closure of the CSFP and the RIF of bargaining unit employees," in violation of the CMPA. (Motion for Decision at 4). The Board found that in so doing, DOH failed to meet its statutory duty to bargain in good faith, that its defenses were wholly without merit, and that its actions reasonably and foreseeably undermined AFGE's ability to fulfill its duties on behalf of the bargaining unit employees that were RIF'd.

Id. Wherefore, in light of these findings, the Board further finds that it is reasonable that the awarding of costs in accordance with AFGE's request would serve and meet the "interest-of-justice" test articulated in *AFSCME, supra.*

ORDER

IT IS HEREBY ORDERED THAT:

1. The District of Columbia Department of Health ("DOH") shall cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) ("CMPA") in the manner alleged or in any like or related manner.

2. DOH shall deliver to American Federation of Government Employees, AFL-CIO Local 2978 ("AFGE" or "union"), within fourteen (14) days of the date of this Order, any and all information it has related to the January 30, 2009, Reduction-in-Force ("RIF") of the Community Supplemental Food Program's ("CSFP") bargaining unit employees including, but not limited to, a copy of the December 28, 2008, RIF order signed by the Mayor and a copy of its analysis detailing the reasons why the RIF was not a "contracting out" of the CSFP.

3. DOH shall pay AFGE's costs in this matter.

4. Within fourteen (14) days of the service of this order, AFGE shall submit to the Public Employee Relations Board ("PERB" or "Board") a written statement of actual costs incurred in processing this unfair labor practice complaint. Said statement shall be filed along with any and all supporting documentation. DOH may file with the PERB a response to AFGE's statement of actual costs within fourteen (14) days of the service of said statement.

5. DOH shall conspicuously post, within ten (10) days of the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. Said Notice shall remain posted for thirty (30) consecutive days.

6. DOH shall desist from or take affirmative action as effectuates the policies and purposes of the CMPA.

7. Within fourteen (14) days of the service of this Decision and Order, DOH shall notify the Board, in writing, that the Notice has been posted as ordered. In addition, within fourteen

(14) days from the service of this Decision and Order, DOH shall notify the Board of the steps it has taken to comply with paragraphs 1, 2, and 6 of this Order.

8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-23, Slip Op. No. 1356, was transmitted via U.S. Mail and e-mail to the following parties on this the 1st day of February, 2013.

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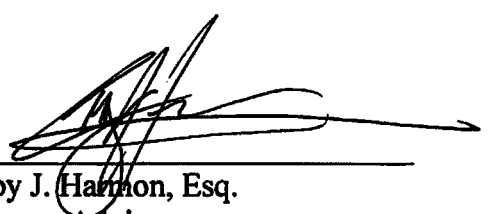

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PERB Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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CORRECTED

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH ("DOH"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1356, PERB CASE NO. 09-U-23 (January 31, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DOH to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 1356.

WE WILL cease and desist from failing and refusing to bargain in good faith with American Federation of Government Employees, AFL-CIO Local 2978 ("AFGE"), by failing, without a viable defense, to produce requested information that is necessary and relevant to AFGE's ability to timely investigate any grievances or competently consult and negotiate with DOH on behalf of bargaining unit employees.

District of Columbia Department of Health

Date:_____By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

January 31, 2012

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 State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO	
Petitioner,	PERB Case No. 04-CU-01
and	Opinion No. 1357
District of Columbia Office of Contracting and Procurement,	
Agency.	

DECISION AND ORDER

I. Statement of the Case

On October 3, 2003, the American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME") and the Office of Labor Relations and Collective Bargaining ("OLRCB") (on behalf of the District of Columbia Office of Contracting and Procurement) filed a Joint Petition for Compensation Unit Determination ("Petition") with the Board. AFSCME and the District of Columbia Office of Contracting and Procurement ("Office of Contracting and Procurement") sought a unit determination of professional and non-professional employees employed by the Office of Contracting and Procurement for the purpose of negotiations for compensation.

On February 13, 2004, Notices regarding the Petition were issued for posting at the Office of Contracting and Procurement. The Notice solicited comments concerning the

appropriate compensation unit placement for this unit of employees.[1] The Notice required that comments be filed in the Board's office no later than March 15, 2004. The Office of Contracting and Procurement confirmed that the Notices had been posted.

The Board issued an Order that granted the Parties' Joint Petition for a Compensation Unit Determination. *American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO and District of Columbia Office of Contracting and Procurement*, Slip Op. No. 746, PERB Case No. 04-CU-01 (April 30, 2004).

II. Discussion

AFSCME and OLRCB sought a determination concerning the appropriate unit for the purpose of negotiations for compensation for all professional and non-professional employees employed by the Office of Contracting and Procurement. Specifically, the Parties sought a determination concerning the appropriate compensation unit for the following group of employees:

> All professional and non-professional employees employed by the District of Columbia Office of Contracting and Procurement; excluding all management officials, supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

In their submission, AFSCME and OLRCB indicated that the appropriate compensation unit placement was in Compensation Unit 1.[2] No other comments were received.

Traditionally, the Board has authorized and established compensation units pursuant to the standard noted under D.C. Code § 1-617.16(b) (2001 ed.), which provides as follows:

> In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

"The Board has departed from strict adherence to this criteria where the employing

[1] Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act (CMPA) to represent units of employees that have been determined to be appropriate for the purpose of non-compensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code § 1-617.09 (2001 ed.), unit placement for purpose of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b) (2001 ed.).

[2] Compensation Unit 1 consists of all District Service career service professional, technical, administrative, and clerical employees.

agency has independent personnel and compensation bargaining authority, e.g. D.C. General Hospital, D.C. Public Schools, the D.C. Water and Sewer Authority, notwithstanding the existence of occupational groups that the agency may have in common with other agencies and personnel authority." *Government of the District of Columbia, et. al. and Unions in Compensation Units 1, 2, 13 and 19*, 458 D.C. Reg. 6725, Slip Op. No. 557, PERB Case No. 97-UM-02 and 98-CU-04 (1998). See also *WASA and AFGE, Local 631, et. al.*, 46 D.C. Reg. 122, Slip Op. 510, PERB Case Nos. 96-UM-07, 97-UM-01, 97-UM-03 and 97-CU-01 (1999). "The Board has also made one other exception where the pay scheme of the occupational groups is so unique as to warrant a separate compensation unit determination." *Id.* (citing *SEIU, Local 722 and DHS/HSB*, 48 D.C. Reg. 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (2001) (Compensation Unit 30 was established for personal care aides employed by the Department of Human Service whose pay schemes resembled independent contractors)). In both instances, the Board authorized compensation units that consisted of a single agency or occupational group.

In the present case, the Office of Contracting and Procurement is an agency under the Mayor's personnel authority. In addition, all of the professional and non-professional employees employed by the Office of Contracting and Procurement were paid in accordance with the District Service (DS) schedule. Furthermore, these employees shared a pay system with other employees who were in Compensation Unit 1. Therefore, consistent with the Board's mandate under D.C. Code § 1-617.16(b) (2001 ed.), the professional and non-professional employees employed by the Office of Contracting and Procurement were determined to be placed in Compensation Unit 1.

Furthermore, the Board observed that D.C. Code 1-617.16(b) (2001 ed.) established the following two part test to determine an appropriate compensation unit:

(1) The employees of the proposed unit comprise broad occupational groups; and
(2) The proposed unit minimizes the number of different pay systems or schemes.

The first prong of the test was met. AFSCME and OLRCB requested that these employees be placed in a compensation unit comprised of a broad group of employees who come within the personnel authority of the Mayor, possess certain general skills, and who had their compensation set in accordance with the DS Schedule.

The second prong of the test was also fulfilled. A smaller number of compensation bargaining units would ultimately result in a smaller number of pay systems.

Consistent with D.C. Code § 1-617.16(b) (2001 ed.), the employees involved in this case were placed in Compensation Unit 1. The placement of these professional and non-professional employees in Compensation Unit 1 effectuates the policies of the CMPA. Therefore, the unit set forth below was appropriately placed in Compensation Unit 1:

> All professional and non-professional employees employed by the District of Columbia Office of Contracting and Procurement; excluding all management officials, supervisors, confidential employees, employees

engaged in personnel work in other than a purely clerical capacity and employees engaged in administering the provisions of Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Law 2-139.

It is based on the above rationale, that the Board issued its Order. Pursuant to Board Rule 559.1, this Decision is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

February 1, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-CU-01 was transmitted via U.S. Mail to the following parties on February 4, 2013.

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Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 07-U-21
	Opinion No. 1358
v.	
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP," "Union," or "Complainant") filed an unfair labor practice complaint ("Complaint") against Respondent District of Columbia Metropolitan Police Department ("MPD" or "Respondent"), alleging violations of D.C. Code § 1-617.04a)(1) and (5) for requiring "individual members of the FOP to forfeit their collectively bargained for seniority rights in order to remain detailed to a specialized unit." (Complaint at 1). In its Answer ("Answer)", MPD denied violating the Comprehensive Merit Personnel Act ("CMPA"), and asked that the Board dismiss the Complaint (Answer at 1-3).

An evidentiary hearing was conducted by Hearing Examiner Andrew M. Strongin. The Hearing Examiner issued a Report and Recommendation ("Report"), finding that MPD's actions did not constitute a violation of D.C. Code § 1-617.04(a)(1) and (5), and recommended that the Complaint be dismissed. (Report at 14). FOP filed exceptions to the Report ("Exceptions"), claiming that the Hearing Examiner "failed to properly apply the relevant standard for determining whether [MPD] engaged in direct dealing with members of the Union, and whether [MPD] retaliated against the Union." (Exceptions at 1). MPD filed an Opposition to FOP's Exceptions ("Opposition"), alleging that the Hearing Examiner correctly found no evidence of

retaliation or direct dealing. (Opposition at 1). The Report, Exceptions, and Opposition are before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

A. Facts

The Complaint arises from the November 2006 "Open Season" process, in which police officers with MPD's First District bid on days off, shift choice, and changes to their patrol service area ("PSA"). (Report at 1). Since at least 1999, the Open Season process has been governed by Special Order 99-20 and the seniority provisions of the parties' collective bargaining agreement ("CBA"). *Id.* Special Order 99-20 requires the First District to hold a separate Open Season for all PSA officers, including officers on special detail.[1] *Id.* Prior to each Open Season, a seniority list is posted for review by the participating officers. (Report at 2).

MPD and FOP discussed the November 2006 Open Season at a regularly-scheduled monthly labor relations meeting. *Id.* MPD was represented by Commander Groomes and First District Manager Zalewski, and FOP was represented by Chief Shop Steward Martin and Shop Steward Steinhilber. *Id.* At this meeting, the parties agreed that the First District would follow the same bidding process used in the November 2005 Open Season, and that detailed officers would not participate in the selection process. *Id.* It is undisputed that detailed officers did not participate in the 2005 Open Season process. *Id.*

In preparation for the November 2006 Open Season, Zalewski drafted preference sheets and a seniority list. *Id.* To permit detailed officers to participate in open season, Zalewski sent Martin a draft of a memorandum ("October 25 Memorandum"), which was intended to inform detailed officers of their right "to remain in your detail or opt out and select from a PSA assignment based upon your seniority in the First District." *Id.* Further, the October 25 Memorandum advised the detailed officers that if they chose to remain in their detailed position and forgo Open Season, they may end up waiving their seniority rights upon their return to a PSA assignment[2]. *Id.*

Martin reviewed the preference sheet and the October 25 Memorandum, initialed each of them, and left them for Zalewski without noting any objections. (Report at 3). Interpreting the

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[1] The relevant portion of Special Order 99-20 states:

> All PSA officers in a district will be assigned to a watch and days off group as a single unit...Officers detailed to the Focus Mission Team will identify a preference with PSA officers. Current members of the Focus Mission Team will work their selected watch and days off after returning to their PSA assignment.

[2] The October 25 Memorandum stated:

> Those members who elect to remain on their detail will do so with the understanding that in the event the detail ends, they will be placed by the Commander of the First District based upon the needs of the First District at the time the detail ends. Consideration for seniority, watch, and days off will be given to members who are returned back to a PSA when a detail ends.

initials and lack of objections as approval of the October 25 Memorandum, Groomes signed the memorandum and distributed it to the membership. *Id.*

At the evidentiary hearing, Martin testified that her initials signified only that she had reviewed the documents, not that she had approved them. *Id.* The Hearing Examiner found that:

> Martin testifies that she called [FOP] Chairman Baumann immediately after initialing the documents to discuss her concern that the proposed process was inconsistent with Special Order 99-20, and that she subsequently – she could not recall specifically when – called Zalewski to voice the Union's objection to the October 25 Memorandum as violative of the seniority rights of the detailed officers, and specifically to advise him that the Union "is not in the business of entering into personal contracts." Martin was unable to testify to Zalewski's response to this concern, if any, except to confirm that the memorandum subsequently was distributed to membership.

Id. Zalewski denied speaking to Martin about her concerns, and testified that he would have immediately raised the issue with Groomes if Martin had raised her objections about the October 25 Memorandum. *Id.*

After receiving the October 25 Memorandum, former Chief Shop Steward Douglas approached Groomes – "apparently on his own initiative" – to state that the October 25 Memorandum was a major rights violation and there was going to be a major grievance. (Report at 4). Douglas encouraged Groomes to rescind the memorandum. *Id.* Believing Douglas to speak for FOP, Groomes directed Zalewski to rescind the October 25 Memorandum and issued a second memorandum ("November 3 Memorandum"):

> Please take notice that the option for Detailed Members to remain in their detail and not select in the Open Season is hereby rescinded based upon issues raised by the Fraternal Order of Police Union.
>
> Therefore, all members of the First District must now select in the open season regardless of their detail.
>
> It was originally intended to allow detailed members to select and remain in their detail with their days off. This would have allowed PSA officers more selection opportunities with part of the weekend off.
>
> The impact of this will not affect officers assigned to the PSA as detailed members with seniority may elect to tie up preferential days off while they are detailed out of the PSA on their details.

Id. After stating his findings of fact, the Hearing Examiner considered FOP's direct dealing and retaliation claims separately. (Report at 4).

B. Direct Dealing

The Hearing Examiner noted that in the Complaint, FOP alleged that the October 25 Memorandum constitutes direct dealing by presenting a choice to individual unit members that affected their rights, thus seeking to alter the terms and conditions of the officers' employment through direct negotiation with the officers and not their exclusive representative. (Report at 5). According to FOP's Complaint, the October 25 Memorandum offered a "false choice" to the detailed PSA officers of either remaining in their detail and losing their seniority rights protected by Special Order 99-20 and the collective bargaining agreement, or ending their detail in order to preserve their seniority rights. *Id.* Further, FOP alleged that MPD's intention in issuing the memorandum is irrelevant because the conduct tends to undermine FOP's status as exclusive bargaining representative. *Id.* Similarly irrelevant is the rescission of the memorandum because FOP had already been harmed. *Id.* In addition, FOP contended that MPD should not have relied on Martin's initials on the seniority sheet and October 25 Memorandum because Martin subsequently spoke with Groomes, and that Groomes admitted she may have misinterpreted the significance of Martin's initials. *Id.* Finally, the Complaint stated that Martin was not sufficiently senior in FOP to agree to the substance of the memorandum. *Id.*

According to the Hearing Examiner's Report, MPD contended that it cannot have engaged in direct dealing because it reasonably believed that Chief Shop Steward Martin approved the October 25 Memorandum. (Report at 6). MPD's belief was reasonable because Martin had agreed at the earlier labor management relations meeting to follow the 2005 Open Season process, which similarly excluded detailed officers. *Id.* Zalewski denied having received a phone call from Martin voicing her objections to the memorandum, and the Hearing Officer credited Zalewski's testimony over Martin's. *Id.* MPD states that Martin could have noted any objections on the face of the memorandum, and that FOP held Martin out as its principal point of contact on First District Issues. *Id.*

In his Report, the Hearing Examiner found that it was undisputed that "the substance of the October 25 Memorandum relates to matters that fall squarely within the province of the Union's role as exclusive bargaining agent, as they affect the process through which the employees will select their assignments and exercise their seniority rights." (Report at 6). The significant issue for the Hearing Examiner was whether FOP authorized the distribution of the October 25 Memorandum. *Id.*

The Hearing examiner concluded that FOP authorized the distribution of the October 25 Memorandum through the actions of Chief Shop Steward Martin, thereby providing a complete defense to the allegation of direct dealing. (Report at 6). The Hearing Examiner found support for this conclusion in MPD's testimony regarding the parties' agreement to follow the procedures used during the 2005 Open Season (in which detailed officers were excluded), as well as in MPD's more specific and definitive testimony regarding that meeting. (Report at 7).

Further, the Hearing Examiner found that it was reasonable for MPD to interpret Martin's initials on the October 25 Memorandum, without any written objections, as evidence of FOP's agreement with the process set forth in the memorandum. *Id.* The Hearing Examiner stated that Martin's "testimony regarding her effort to convey her objections to Zalewski is not compelling, and is overshadowed by Zalewski's emphatic testimony that Martin did not lodge any objection to the October 25 Memorandum prior to its distribution." *Id.* Although FOP claimed that Martin was not authorized to approve the memorandum, the Hearing Examiner determined that the testimony of Martin, Chairman Baumann, and others demonstrated that "it is undisputed that the Union held Martin out as its primary point of contact," and that there was "no evidence that the Union ever gave [MPD] any reason to believe it could not rely on Martin as the Union's agent with respect to First District matters generally, and this issue in particular." (Report at 8).

Therefore, the Hearing Examiner concluded that, consistent with the record, Board precedent, and the law of agency, MPD distributed the October 25 Memorandum only after receiving FOP's approval, and thus did not disregard FOP's status as the exclusive bargaining representative by engaging in direct dealing with the FOP membership. (Report at 8).

C. Retaliation

In addition to the charge of direct dealing, FOP alleged that the November 3 Memorandum rescinding the October 25 Memorandum is retaliatory, undermines FOP's status as an exclusive representative, and chills the exercise of protected rights. (Report at 8). Making out a *prima facie* case of retaliation, FOP contends that its objection to the October 25 Memorandum was a protected activity, MPD knew that FOP was engaged in a protected activity, and that retaliatory intent may be inferred from the totality of the circumstances, specifically the disparaging language of the November 3 Memorandum and that it was issued the same day Groomes agreed to rescind the October 25 Memorandum due to the threat of a major grievance. *Id.* Chairman Baumann testified that FOP received multiple calls from its membership asking why FOP had "ruined their details and why it had limited preferential days off." *Id.*

Citing *AFSCME, Council 20 v. D.C. Board of Trustees of the District of Columbia*, 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1989)[3], MPD contends that the November 3 Memorandum merely communicated information to the membership regarding the reason for and implications of the October 25 Memorandum's rescission. (Report at 9).

The Hearing Examiner agreed with MPD, concluding that the November 3 Memorandum did not violate D.C. Code § 1-617.04. (Report at 12). In reaching this conclusion, the Hearing Examiner relied on Slip Op. No. 200, as well as Board precedent set forth in *AFGE Local 872 v. D.C. Department of Public Works*, 38 D.C. Reg. 1586, Slip Op. No. 264 (1991) and *AFGE Local 631 v. D.C. Water and Sewer Authority*, 52 D.C. Reg. 5248, Slip Op. No. 778 at p. 12, PERB Case No. 04-U-02 (2005). (Report at 11-12). In each of these cases, the Board found that an

[3] The Board concluded that a letter distributed by the Board of Trustees "was nothing more than the employer communicating to its employees on the status of negotiations, which does not, standing alone, constitute a violation of the D.C. Code." (Slip Op. No. 200 at p. 5).

employer's language to its employees may not "have the Local's sensibilities in mind," but such language does not necessarily constitute an unfair labor practice. *AFGE Local 631*, Slip Op. No. 778 at p. 12.

Specifically, the Hearing Examiner found that the first two paragraphs of the November 3 Memorandum "innocuously impart truthful information to the employees regarding the status of the Open Season, and are not violative of the CMPA." (Report at 12). The third paragraph contains "nothing unlawful, without more, about [MPD] informing its employees of its intention in distributing the October 25 Memorandum that it was rescinding." *Id.* The Hearing Examiner found the fourth paragraph the most problematic, but "not so problematic as to support a finding of a violation of the CMPA." *Id.* The implication that MPD was trying to look out for the interests of the non-detailed officers by providing them with preferential treatment during the open season process, but that FOP's interference prevented this, could cause FOP members to challenge their union officers, much as it did in the *AFSCME Council 20* and *AFGE Local 872* cases. (Report at 13). Nonetheless, the Hearing Examiner found that the statements were "an accurate account of the facts and potential consequences of the Union's intervention as understood by [MPD], which [MPD] is permitted to communicate to membership." *Id.*

Finally, the Hearing Examiner concluded that the law does not require MPD to seek FOP's consent before communicating accurate information to its members, nor must MPD's language be neutral. (Report at 13). Additionally, FOP was free to "counter the Memorandum with statements of its own." *Id.*

III. Exceptions and Opposition

A. Exception 1: The Hearing Examiner Failed to Reasonably Apply the Findings of Fact to the Relevant Law Regarding the Union's Retaliation Claim

FOP's first exception to the Report is that the Hearing Examiner failed to "consider the obvious, yet unwritten intentions and logical implications of [MPD's] November 3 Memorandum that rescinded the Open Season proposal for First District PSA Officers contained in the October 25 Memorandum." (Exceptions at 9). Particularly, FOP takes issue with the Hearing Examiner's statement that:

> ...the basic gist of the [November 3] Memorandum is that the Union intervened in the Open Season process to protect the collectively-bargained seniority rights of its First District members, which arguably would have been undermined had [MPD] held the detailed officers out of the Open Season. What [MPD] did is to highlight the Union's success, albeit without the Union's consent and through language that is not, strictly speaking, neutral.

(Exceptions at 10-11; Report at 13). FOP states that the Hearing Examiner's use of the term "success" is based on a "miracle reading of the Memorandum that defies logic," and that "[i]f [MPD] had truly wanted to 'highlight the Union's success,' it would have written something

similar to the nature of the foregoing: 'The Union leadership, looking out for the best interest of its membership, has requested that [MPD] rescind the plan set forth in the October 25 Memorandum.'" *Id.* FOP takes issue with the Hearing Examiner's characterization of the November 3 Memorandum's language as "not, strictly speaking, neutral," contending that the Memorandum's language had "negative connotation[s]" and rose to the level of retaliation. (Report at 13; Exceptions at 11).

Additionally, FOP alleges that the Hearing Examiner erred when he concluded that MPD was not required to seek FOP's consent "before communicating accurately to its members," and that the law does not require "strict neutrality of such communications." (Report at 13; Exceptions at 12). FOP states that while MPD "is permitted to accurately impart facts to union members, it is not permitted to infuse its union-disparaging opinion into these facts." (Exceptions at 12). FOP alleges that the third and fourth paragraphs of the November 3 Memorandum contains the intent of MPD and MPD's predicted consequences of FOP's actions, which are not facts. *Id.* Further, FOP alleges that the Hearing Examiner incorrectly stated that FOP was free to counter the November 3 Memorandum with its own statement, because such a statement "does not negate the fact that the retaliatory conduct occurred." (Exceptions at 13). Similarly, FOP states that its members were not "fully capable of evaluating the relative merits of [FOP and MPD's] positions for themselves," as the Hearing Examiner found, because that "is true only when the facts of the two positions are represented impartially to the membership." *Id.*

In its Opposition, MPD states that FOP's disagreement with the Hearing Examiner's interpretation of the November 3 Memorandum "is insufficient to invalidate the Hearing Officer's recommendations." (Opposition at 9). MPD cites to *AFGE Local 874 v. D.C. Department of Public Works*, 38 D.C. Reg. 6693, Slip Op. No. 266, PERB Case Nos. 89-U-15, 89-U-18, and 90-U-04 (1991) for this proposition, as well as to *Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451, PERB Case No. 95-U-02 (1995) for the Board's holding that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." (Opposition at 9).

MPD contends that the Hearing Examiner's findings are supported by the record, citing to the testimony of Groomes and Zalewski on the circumstances giving rise to the November 3 Memorandum, the intent behind the October 25 Memorandum, the meaning and rationale of each paragraph of the November 3 Memorandum, the effect of the November 3 Memorandum on the Open Season process, and the consequences of the change on the officers of the First District. (Opposition at 10). Further, MPD points out that the Hearing Examiner relied on Board precedent to determine that MPD had not engaged in retaliatory conduct through the November 3 Memorandum. (Opposition at 11).

The Board will uphold a hearing examiner's findings and conclusions when they are reasonable, supported by the record, and consistent with Board precedent. *See AFGE Local 1403 v. D.C. Office of the Attorney General*, Slip Op. No. 873, PERB Case Nos. 05-U-32 and 05-UC-01 (2011). The Board has held that a mere disagreement with a hearing examiner's findings is not grounds for reversal of those findings where they are fully supported by the record. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip

Op. No. 1302, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (July 26, 2012). Additionally, the Board has rejected challenges to a hearing examiner's findings based on competing evidence, the probative weight accorded to evidence, and credibility resolutions. *Id.*; *see also AFGE Local 2741 v. D.C. Department of Recreation and Parks*, 46 D.C. Reg. 6502, Slip Op. No. 558, PERB Case No. 98-U-16 (1999). Finally, "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the hearing examiner." *Hatton*, Slip Op. No. 451 at p. 4; *see also University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 35 D.C. Reg. 8594, Slip Op. No. 285, PERB Case No. 86-U-16 (1992); *Bagenstose, et al., v. D.C. Public Schools*, 38 D.C. Reg. 4514, Slip Op. No. 270, PERB Case No. 88-U-34 (1991).

In the instant case, FOP disagrees with the Hearing Examiner's interpretation of the November 3 Memorandum's intent, as well as the Hearing Examiner's credibility determinations based on Groomes and Zalewski's testimony. (Exceptions at 10-11). The Hearing Examiner found that the first paragraph of the November 3 Memorandum "merely states that the option for detailed members to remain in their detail and not select in the Open Season was rescinded based upon issues raised by the Union," and credited Groomes' "clear, unequivocal, and uncontested" testimony on this point. (Report at 12). Further, the second paragraph adds the statement that "as a result of the Union's intervention, all members of the First District must select in the Open Season regardless of their detail," which was "precisely what the Union sought in ultimately objecting to the alleged direct dealing." *Id.* The Hearing Examiner concluded that these two paragraphs "innocuously impart truthful information" to the bargaining unit members, which is not a violation of the CMPA. *Id.* In the third paragraph, the Hearing Examiner concluded that MPD was simply informing its employees of the purpose behind the October 25 Memorandum, which it legally permitted to do. *Id.* Finally, the Hearing Examiner concluded that while the wording of the final paragraph of the November 3 Memorandum may not have been chosen "with the Local's sensibilities in mind," it did not rise to the level of retaliation. (Report at 13).

The Board finds that the Hearing Examiner's findings and conclusions on this point are reasonable, supported by the record, and consistent with Board precedent. In arriving at his conclusions, the Hearing Examiner relied on evidence and testimony presented, as well as Board precedent in *AFSCME Council 20*, *AFGE Local 874*, and *AFGE Local 631*. (Report at 9-13). The Board will not overturn the Hearing Examiner's conclusions based on FOP's disagreement with the Hearing Examiner's interpretation of the evidence and caselaw. *See FOP/MPDLC*, Slip Op. No. 1302. Therefore, this conclusion is affirmed.

B. Exception II: The Hearing Examiner Failed to Consider the Record Evidence Regarding Officer Martin's Lack of Authority to Approve the October 25, 2006, Memo on Behalf of the Union.

In its second exception, FOP alleges that the Hearing Examiner erred in determining that Martin was authorized to consent to the distribution of the October 25 Memorandum. (Exceptions at 14). Specifically, FOP contends that while Martin has authority to act on behalf of FOP in some situations, "she certainly does not have the authority to consent to any agreement that would contradict the terms of the parties' collective bargaining agreement," and the fact that

Martin was the primary point of contact on First District Open Season issues "is of no moment." *Id.*

Additionally, FOP alleges that the Hearing Examiner "failed to consider [MPD's] irresponsibility and utter neglect in training its officials in matters related to collective bargaining," which FOP believes is responsible for MPD taking Martin's initials on the draft of the October 25 Memorandum as a sign of her approval. (Report at 15). In support of this contention, FOP points to Groomes' testimony that her knowledge of the parties' collective bargaining agreement process is based on "trial and error" and that she has received "no formal training" on collective bargaining issues. *Id.* Further, FOP states that there is no evidence of Martin's explicit authority, and that the Hearing Examiner erred in finding Martin held implicit authority to approve the October 25 Memorandum. (Report at 15-16).

In its Opposition, MPD alleges that the Hearing Examiner was correct in concluding that regardless of whether Martin had actual authority to consent to the October 25 Memorandum, MPD reasonably relied on Martin's apparent authority to do so. (Opposition at 12). MPD contends that "[a]lthough the Hearing Examiner did not specifically utilize the terms 'actual authority' and 'apparent authority,' it is clear from his analysis that he was proceeding under the theory of apparent authority." *Id.* In support of this contention, MPD points to the D.C. Court of Appeals' acceptance of the Restatement (Second) of Agency, which describes apparent authority as arising "when the principal places the agent in such a position as to mislead third persons into believing that the agent is clothed with the authority which in fact he does not possess." (Opposition at 13; *citing Makins v. District of Columbia*, 861 A.2d 590, 594 (D.C. 2004)). MPD states that the record is "replete with evidence" that FOP placed Martin in the position of Chief Shop Steward for the First District and "clothed her in the apparent authority to handle day-to-day labor relations matters." (Opposition at 13). MPD points to portions of Chairman Baumann and Groomes' testimony regarding the role of the chief shop stewards generally and Martin in particular. (Opposition at 13-15).

Further, MPD denies FOP's allegation that MPD's alleged failure to train its officials in the collective bargaining process contributed to MPD's reliance on Martin's authority to consent to the October 25 Memorandum. (Opposition at 15). MPD states that regardless of training, "[t]he fact remains that Complainant placed Chief Shop Steward Martin in a position which caused Respondents to reasonably believe that Complainant had consented to the October 25, 2006 memorandum." *Id.*

Martin testified that her initials on the October 25 Memorandum meant only that she had reviewed the document, not that she consented to it, and that she conveyed her objections to Zalewski. (Report at 7). Nonetheless, the Hearing Examiner credited Zalewski's "emphatic testimony" that Martin had never objected to the October 25 Memorandum prior to its distribution. *Id.* The Hearing Examiner stated that Zalewski and Groomes "testified very specifically to their intention to avoid disruption to the 2006 Open Season," and the Hearing Examiner found particularly credible Zalewski's testimony that he would have informed Groomes of any FOP objections. *Id.* Further, the Hearing Examiner concluded that the testimony of Martin, Chairman Baumann, and others demonstrated that FOP clearly held Martin

out as is primary point of contact, and that there was no evidence that MPD should have believed otherwise. (Report at 8).

Crediting Zalewski and Groomes' testimony, the Hearing Examiner found that Martin had not objected to the October 25 Memorandum prior to its issuance. (Report at 7). Credibility determinations are the province of the hearing examiner. *See Hatton*, Slip Op. No. 451 at p. 4. Further, the Board will not accept a challenge to a hearing examiner's findings based on the probative weight accorded to evidence. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee*, Slip Op. No. 1302. Therefore, the Board will not overturn the determination to credit Zalewski and Groomes over Martin. After concluding that FOP had not objected to the October 25 Memorandum, the Hearing Examiner relied upon testimony from Chairman Baumann, Martin, and other witnesses to find that FOP held Martin out as its primary point on contact. (Report at 8). Further, the Hearing Examiner found no evidence that FOP ever gave MPD reason to believe that Martin was not FOP's agent with respect to the First District open season issue. *Id.* Thus, the Hearing Examiner's conclusion that MPD reasonably relied on Martin's apparent authority to consent to the October 25 Memorandum was informed by credibility determinations and the probative weight accorded to the testimony and evidence presented. Therefore, the Hearing Examiner's conclusion that Martin had the apparent authority to consent to the October 25 Memorandum will not be disturbed.

III. Conclusion

For the reasons stated above, FOP's Exceptions are dismissed. Pursuant to Board Rule 520.14, the Board finds the Hearing Examiner's conclusions and recommendations to be reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board adopts the Hearing Examiner's Report, and the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police/Metropolitan Police Department Labor Committee's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-21 was transmitted via U.S. Mail and e-mail to the following parties on this the 2nd day of January, 2013.

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Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police / Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 12-U-31
v.	Opinion No. 1360
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant Fraternal Order of Police / Metropolitan Police Department Labor Committee, D.C. Police Union ("Complainant" or "FOP" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Metropolitan Police Department ("Respondent" or "MPD" or "Agency"), alleging MPD violated the Comprehensive Merit Personnel Act ("CMPA"), D.C. Code § 1-617.04(a)(1), by "denying [an officer] the right to have [a specific union representative] serve as his union representative during [an] investigatory interview, and by denying the D.C. Police Union the right to designate [the specific union representative] as [the officer's] representative." (Complaint at 6-7).

In its Answer, MPD denied FOP's allegation, and raised an affirmative defense that the Public Employee Relations Board ("PERB" or "Board") lacks jurisdiction over this matter because MPD's actions were "covered by the parties' collective bargaining agreement ("CBA")", and because the parties' CBA "provides a grievance and arbitration procedure to resolve contractual disputes." (Answer at 5). MPD argued that because "the Board's precedent provides that the Board has no jurisdiction in such circumstances, the Board should dismiss the Complaint." *Id.*

II. Background

On or about July 28, 2009, approximately three (3) years prior to events giving rise to FOP's Complaint, Chairman of the D.C. Police Union, Kristopher Baumann ("Chairman Baumann"), pursuant to Article 9 of the CBA, sent a letter to MPD Chief of Police, Cathy Lanier ("Chief Lanier"), which notified MPD that Sergeant Robert Merrick ("Sgt. Merrick") had been designated to be assigned to the FOP office as the "FOP Representative to the Office of Police Complaints" effective August 2, 2009. *Id.* at Exhibit #3. In the same letter, Chairman Baumann notified MPD that Sgt. Merrick was assigned currently but temporarily to MPD's Internal Affairs Division ("IAD"), and that he (Sgt. Merrick) was requesting the assignment to end effective August 2, 2009, because Sgt. Merrick would be returning to his status as a member of the bargaining unit on that date. *Id.*

Approximately five (5) months later, on or about December 28, 2009, FOP Executive Steward, Delroy Burton ("Mr. Burton"), sent an email to IAD's Commander Christopher LoJacono ("Cmdr. LoJacono"), in which he requested an updated list of IAD agents. *Id.*, Exhibit #4. On or about December 29, 2009, after receiving and reviewing an updated list that was sent to him from Lieutenant Silvia Hamelin ("Lt. Hamelin"), Mr. Burton emailed Lt. Hamelin and informed her that Sgt. Merrick was incorrectly listed as still being assigned to IAD. *Id.* Mr. Burton asked Lt. Hamelin to make the appropriate correction. *Id.* Lt. Hamelin replied that same day to Mr. Burton, stating she was aware that Sgt. Merrick was now with FOP. *Id.* Notwithstanding, she wrote that Sgt. Merrick had not been transferred out of IAD, and that she "should have made a notation that he is detailed out[.]" *Id.* In Mr. Burton's reply, he wrote that Sgt. Merrick "cannot be detailed from a position outside the bargaining unit (IAD) to a position within [the bargaining unit] (FOP)." Mr. Burton wrote further that Sgt. Merrick needed to be "transferred out of IAD, not detailed [out][,]" as "District of Columbia law prohibits IAD agents from being members of the union." *Id.* Lt. Hamelin's email reply to Mr. Burton was simply, "thank you." *Id.*

On April 5, 2012, pursuant to Article 9 of the CBA, Chairman Baumann sent correspondence to Chief Lanier which stated that Sgt. Merrick had again been designated to be assigned to the FOP office. *Id.*, Exhibit #5.

On July 17, 2012, Officer Stephen Ferris ("Officer Ferris"), a member of the bargaining unit as defined by the parties' CBA, reported to IAD to be interviewed pursuant to an administrative investigation. (Complaint at 2-3). Officer Ferris designated Sgt. Merrick to serve as his union representative during the interview. *Id.* at 1-2. After Officer Ferris was given a "Reverse-Garrity" warning by IAD agent, Leon Epps ("Agent Epps"), Sgt. Merrick and Officer Ferris reviewed a videotape relevant to the investigation. *Id.* at 3. After watching the videotape, Sgt. Merrick was informed by IAD Lieutenant, Felica Lucas ("Lt. Lucas"), that Cmdr. LoJacono "was refusing to allow him to represent Officer Ferris during the interview" because he ("Sgt.

Merrick") was "still assigned to Internal Affairs." *Id.* Shortly thereafter, Mr. Burton sent an email to then Acting Director of MPD's Labor and Employee Relations Unit, Mark Viehmeyer ("Mr. Viehmeyer"), to seek a resolution. *Id.*, Exhibit #2. Mr. Viehmeyer's email reply to Mr. Burton stated that Sgt. Merrick "will not be permitted to participate in the interview, or any interviews at internal affairs, since although he currently serves as the FOP's OPC representative, he remains assigned to internal affairs." Further, Mr. Viehmeyer stated that the Agency was "invoking its reserved right under Article 13, Section 3(a) [of the CBA] to refuse [Sgt. Merrick] as a particular representative in this interview," and that Officer Ferris would be "afforded additional time, if needed, to identify a different representative." *Id.*

III. Discussion

FOP contends that MPD violated D.C. Code § 1-617.04(a)(1) when it forbade Sgt. Merrick from representing Officer Ferris during an investigatory interview. (Complaint at 6-7). FOP avers that the CMPA grants District employees the right to be represented by the union during interviews when the employee reasonably fears that discipline may result from the meeting. *Id.* (citing *NLRB v. Weingarten*, 420 U.S. 251 (1975) (which held that an employer's denial of an employee's request for union representation during an interview that the employee reasonably thinks may result in disciplinary action constitutes an unfair labor practice)). Further, FOP cites *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 4548, Slip Op. No. 932, PERB Case No. 07-U-10 (2008) to support its position that any violation of the right to representation constitutes an unfair labor practice. FOP contends that Respondent did not have any legitimate basis to deny Officer Ferris the right to have Sgt. Merrick represent him in the investigatory interview, and asks the Board to order Respondent and its agents to "cease and desist from violating D.C. Code § 1-617.04(a)(1) by denying union members the representation during investigatory interviews in which the union member reasonably believes the interview may result in disciplinary action" and to "cease and desist from disallowing [Sgt.] Merrick from representing bargaining unit members in investigatory interviews conducted by [IAD]." *Id.* at 7.

Complainant cites D.C. Code § 1-617.06(a)(2), which grants all District employees the right to "form, join, or assist any labor organization or to refrain from such activity," but does not allege a violation of that section.

Respondent denies that it violated D.C. Code § 1-617.04(a)(1) and raises the affirmative defense that the Board lacks jurisdiction over this matter because the event giving rise to the alleged violation and the procedure to resolve it are covered by the parties' CBA. (Answer at 4-5). Respondent contends that Section 3(a) of Article 13 in the parties' CBA "provides the basis

for the MPD to refuse a particular union representative to be present during an administrative interview." *Id.* at 5. Respondent's argument relies in part upon *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia, et al*, 59 D.C. Reg. 6039, Slip Op. No. 1007, PERB Case No. 08-U-41 (2009), in which the Board dismissed part of the FOP's Complaint because the allegations raised therein were based on "contractual violations." *Id.* at 8. Respondent contends that this case is similar to that case, in which the Board held, "where the parties have agreed to allow their negotiated agreement to establish the obligations that govern the very acts and conduct alleged in the complaint as statutory violations of the CMPA, the Board lacks jurisdiction over the complaint allegation." (Answer at 6 (quoting *FOP/MPD Labor Committee v. D.C. et al, supra*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41) (Internal citations omitted)). Respondent notes that the Board further held that "if ... an interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed, the Board has deferred the contractual issue to the parties' grievance arbitration procedure." *Id.* Respondent argues that, in this case, MPD's refusal to allow Sgt. Merrick to represent Officer Ferris in the investigatory interview on July 17, 2012, was permitted and covered by Section 3(a) of Article 13 of the parties' CBA, covering "investigatory questioning," which states: "[t]he Department reserves the right to refuse a particular Union representative for good cause, and the member to be interviewed shall then name an alternative representative." (Answer at 6-7 (quoting Complaint, Exhibit 1, p. 14)). Respondent further contends that the question of whether "MPD properly refused to allow [Sgt.] Merrick to represent Officer Ferris at his administrative interview requires an interpretation of the parties' contract," and is therefore "outside of PERB's jurisdiction." (Answer at 7). Respondent asks that the Board dismiss the Complaint and deny Complainant's prayers for relief. *Id.*

Complainant has not filed any additional pleadings responding to Respondent's request for dismissal, and Respondent has likewise not filed any further pleadings in this matter. Therefore, the Complaint and Answer are before the Board for decision.

The Board agrees with the Respondent that it lacks jurisdiction over this matter because the very event giving rise to the complaint was expressly envisioned and authorized by the parties in their CBA, and because, in order to determine if a statutory violation occurred, the Board would need to interpret the parties' CBA, which it does not have the authority to do.

Complainants must assert in the pleadings allegations that, if proven, would demonstrate a statutory violation of the CMPA. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department and Cathy Lanier*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009) (citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local*

R3-06, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *District of Columbia Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994)).

In consideration of a motion to dismiss, the Board views the contested facts in the light most favorable to the Complainant to determine if the allegations may, if proven, constitute a violation of the CMPA, thus giving rise to an unfair labor practice. *Id.* (citing *Doctor's Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 D.C. Reg. 1237, Slip Op. No. 437, PERB Case No. 95-U-10 (1995); and *JoAnne G. Hicks v. District of Columbia Office of the Deputy Mayor for Finance, Office of the Controller and American Federation of State, County and Municipal Employees, District Council 24*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992)). In the process of making this determination, however, the Board distinguishes between obligations that are imposed by the CMPA and those that are imposed by the parties' CBA. The CMPA empowers the Board to resolve statutory violations, but not contractual violations, for which a separate resolution process is set forth in accordance with the terms and provisions of the parties' contract (i.e. the established processes for grievances and/or arbitration). As a result, the Board does not have jurisdiction over matters in which only a contractual violation is alleged. *Id.* (citing *American Federation of State, County and Municipal Employees, D.C. Council 20, Local 2921, AFL-CIO v. District of Columbia Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339 at p. 3, PERB Case No. 92-U-08 (1992)). See also, *Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO v. District of Columbia Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 9, PERB Case No. 92-U-08 (2010); and *Carlton Butler, Iola Slappy, Julian Battle, Lawrence Benning. John Busby, Jr., Dancy Simpson and Andrea Byrd District of Columbia Department of Corrections and Anthony Williams, Mayor*, 49 D.C. Reg. 1152, Slip op. No. 673, PERB Case No. 02-U-02 (2001); and *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 46 D.C. Reg. 6872, Slip Op. No. 488 at p. 2, PERB Case No. 96-U-19 (1996); and *Washington Teachers' Union. Local 6. American Federation of Teachers. AFL-CIO v. District of Columbia Public Schools*, 42 D.C. Reg. 5488, Slip Op. No. 337, PERB Case No. 92-U-18 (1992).

Additionally, the Board lacks jurisdiction over an allegation in which the very act or conduct that gives rise to the allegation, despite being alleged in the Complaint as a violation of statute, was envisioned and expressly authorized by the parties' in the contract. *FOP/MPD Labor Committee v. D.C. et al, supra*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41 (citing *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Recreation and Parks*, 46 D.C. Reg. 6502, Slip Op. No. 588 at p. 4, PERB Case No. 98-U-16 (1999)). Furthermore, the Board lacks the authority to interpret the terms of a contract in order to determine if there has been a violation of a statute. *Council of School Officers v. D.C. Public*

Schools, *supra*, Slip Op. No. 1016 at p. 9, PERB Case No. 92-U-08. In such instances, the Board defers the resolution of the issues and the interpretation of contractual questions to the grievance and arbitration processes established in the parties' contract. *FOP/MPD Labor Committee v. D.C. et al*, *supra*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41 (citing *AFSCME, D.C. Council 20, Local 2921 v. D.C. Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339 at n. 6, PERB Case No. 92-U-08 (1995)).

Here, Article 13, Section (a) of the parties' CBA expressly authorizes MPD to refuse any "particular" union representative during an investigative interview insofar as there is "good cause" for the refusal, and MPD then grants the bargaining unit member an opportunity to name an alternate representative. In the Complaint, FOP relies on several cases wherein it was held that not allowing a member to be accompanied by a union representative during an investigative interview constituted an unfair labor practice. (Complaint at 6-7 (citing *Weingarten*, 420 U.S. 251, *supra*; and *FOP v. MPD*, *supra*, Slip Op. No. 932, PERB Case No. 07-U-10)). In the Complaint, FOP asks the Board to order MPD to "cease and desist from violating [the CMPA] by denying union members representation during investigatory interviews in which the union member reasonably believes the interview may result in disciplinary action." (Complaint at 7). That is not what occurred in this instance. Officer Ferris was not denied the right of representation altogether, as was the case in the authority that FOP cites in its Complaint. Rather, MPD expressly invoked Article 13, Section (a) of the parties' CBA when it refused Sgt. Merrick as a "particular" representative in the interview. Then, in accordance with the procedure set forth in the contract, Officer Ferris was told that he would be afforded additional time, if necessary, to identify an alternative representative. (Complaint, Exhibit 1 at p. 14 and Exhibit 2). These facts are undisputed. Whether MPD had "good cause" to refuse Sgt. Merrick, on the other hand, is less clear. Certainly, MPD's complete failure to record Sgt. Merrick's reassignment out of IAD nearly three (3) years after Sgt. Merrick was appointed as a full time union representative, despite numerous opportunities and reminders to do so, borders on gross negligence and/or incompetence. MPD's reliance upon this failure to meet its "good cause" requirement is, in the Board's opinion, flimsy at best. Nevertheless, this lack of clarity only strengthens the Board's finding that it lacks jurisdiction in this matter. The Board does not have the authority to interpret what "good cause" in the parties' contract means in order to determine if there has been a violation of the statute. *Council of School Officers v. D.C Public Schools*, *supra*, Slip Op. No. 1016 at p. 9, PERB Case No. 92-U-08. The Board therefore defers the resolution and interpretation of that contractual question to the grievance and arbitration processes set forth in the parties' contract. *FOP/MPD Labor Committee v. D.C. et al*, *supra*, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41.

Reading the contested facts in the light most favorable to the Complainant does not change the fact that the very act that FOP alleges violated D.C. Code § 1-617.04(a)(1)—MPD's

refusal of Sgt. Merrick to act as Officer Ferris' particular union representative during an investigative interview—was a right that was envisioned, agreed upon, and expressly granted to MPD by the parties in their CBA. *Id.* Therefore, because the parties expressly granted this right to MPD in the contract, and because the allegations in FOP's Complaint turn on contractual issues and questions—namely, an interpretation of the term "good cause"—the Board finds that it lacks jurisdiction over this matter and defers the resolution of FOP's allegations to the grievance and arbitration procedures set forth in the parties' CBA.[1] *Id.* Therefore, the Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police / Metropolitan Police Department Labor Committee, D.C. Police Union's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

January 31, 2013

[1] Despite the Board's finding in this matter that the contested issues are wholly contractual and that it therefore lacks jurisdiction to review them, the Board wishes to note that such should not be considered an endorsement of either MPD's negligence in this matter, or its reliance on that negligence as a way to justify its actions concerning Sgt. Merrick. Indeed, the Board is astonished by MPD's failure to update its records and reassign Sgt. Merrick out of IAD, despite Sgt. Merrick's and FOP's numerous diligent reminders to do so over the course of three (3) years. The Board suspects, if and when this issue is addressed by the parties' grievance and arbitration process, that the decision-makers involved will be as unimpressed as the Board was with MPD's lack of diligence concerning Sgt. Merrick's assignment status. If it has not already done so, the Board urges MPD to update its records and officially reassign Sgt. Merrick out of IAD. The Board further wishes to place the parties on notice that acting or behaving in a way that is grossly negligent or incompetent and then relying on that act or behavior to justify a course of action is not an advisable practice to adopt. Additionally, the Board strongly advises MPD and FOP to be more diligent in their respective record keeping now and in the future so that instances like the one alleged in this matter do not happen again.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-31, Slip Op. No. 1360, was transmitted via U.S. Mail and e-mail to the following parties on this the 4th day of February, 2013.

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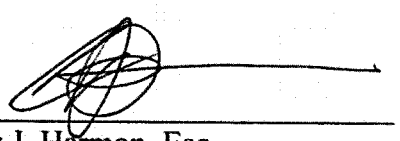

Colby J. Harmon, Esq.
Attorney-Advisor

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

Government of the District of Columbia

Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725 (on behalf of Saundra McNair and Gerald Roper, Grievants),	
Complainant,	PERB Case No. 12-U-30
v.	Opinion No. 1362
District of Columbia Department of Consumer and Regulatory Affairs.	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The American Federation of Government Employees, Local 2725 ("Complainant" or "Union") filed an unfair labor practice complaint ("Complaint") against the Department of Consumer and Regulatory Affairs ("Respondent" or "Department") alleging that the Department through its counsel had failed and refused to comply with a settlement agreement and thereby failed to bargain in good faith and committed an unfair labor practice. The Department filed an answer ("Answer") admitting some allegations, denying others, and asserting that the complaint failed to state a claim upon which relief may be granted. With regard to many of the paragraphs of the Complaint, the Answer admitted parts of the paragraph, denied other parts, and sometimes paraphrased an averment using words that the Respondent was able to admit.

The following undisputed facts are established by administrative notice or by the pleadings, having been alleged by the Complaint and admitted by the Answer. Language drawn from the Answer's paraphrases of the Complaint is enclosed in brackets as are items of administrative notice.

> 1. Complainant, AFGE Local 2725, is a labor organization within the meaning of the CMPA. The Local has a business

address of P.O. Box 75960, Washington, DC 20013. Mr. Eric Bunn is the President of the Local, with a telephone number of 202-842-4540.

2. D.C. Department of Consumer and Regulatory Affairs is an Agency within the meaning of the CMPA. Its business address is 1100 4th St. SW, Washington, DC 20024. The Director of the Agency is Mr. Nicholas Majett. Mr. Majett's telephone number is 202-442-4400. His facsimile number is 202-442-9445. The Agency is represented by Mr. James Langford, Attorney, D.C. Office of Labor Relations and Collective Bargaining. His telephone number is 202-724-4675.

3. The Agency and the Local are parties to a collective bargaining agreement ("Agreement"), signed by all parties on February 24, 1989.

4. Pursuant to the negotiated grievance procedure in the collective bargaining agreement, AFGE filed a grievance on behalf of Grievants Saundra McNair and Gerald Roper. As the matter was not resolved, the parties submitted to arbitration on March 26 and 27, 2008. On July 26, 2008, the Arbitrator issued an award sustaining the grievance nearly *in toto*. The Award is attached as Exhibit A.

[The Board takes administrative notice that its records reflect that the Respondent filed an arbitration review request in the above matter, and that the Board dismissed the request as untimely and sustained the arbitrator's award of back pay and retroactive promotion in *District of Columbia Department of Consumer and Regulatory Affairs v. American Federation of Government Employees, Local 2725*, 59 D.C. Reg. 5392, Slip Op. No. 978, PERB Case No. 09-A-01 (2009).]

5. . . . The Agency did not file a petition to review that decision in D.C. Superior Court.

[The Board takes administrative notice that its records reflect that the Union filed PERB Case No. 09-U-24, alleging that the Department underpaid the Grievants in response to the award in PERB Case No. 09-A-01.]

* * *

8. On December 14, 2011, the parties settled this unfair labor practices complaint for specified sums for the Grievants, interest,

notice from the Agency to appropriate authorities that one of the Grievants, Mr. Roper, had a new high -3 salary amount for purposes of his retirement due to the Award, and a letter to be sent on from DCRA on behalf of the other Grievant, Ms. McNair, to another DC Agency notifying it of the award. Due to the settlement, the Union agreed to withdraw the ULP.

9. On December 15, 2011, Agency attorney James Langford drew up a document for PERB stating that the case had settled, so that PERB would cancel the December 16, 2011 hearing. Mr. Langford signed the document on behalf of the Agency and attorney for AFGE Local 2725, Leisha Self, signed it on behalf of the Union. Mr. Langford filed the document with the PERB on December 15, 2011. See attached Notice of Settlement (the version included herein is unsigned, as Mr. Langford did not provide a signed version to the Union, but the PERB has a signed version in the files for 09-U-24) and related emails as Exhibit B.

10. Agency attorney Langford notified Ms. Self that he wished to draw up the settlement. . . . Mr. Langford [was drafting the settlement agreement].

11. . . . Ms. Self and Mr. Langford also spoke about this matter on the telephone either that day or shortly thereafter. In the telephone call, Mr. Langford agreed that he should have included language about the high-3 salary notification and would take care of that.

* * *

13. On April 16, April 24, and May 1, 2012, Ms. Self again sent emails. . . .

14. On [or about] May 11, 2012, Ms. Self . . . spoke with . . . Mr. Michael Levy. . . . This telephone conversation is confirmed in an email of that same date. See Exhibit B.

* * *

16. On that same date, Ms. Self notified Mr. Langford that the agreement failed to include the high- 3 salary notification for Mr. Roper. See Exhibit B (email on May 11, 2012, 3:19 pm from Leisha Self). . . . [Respondent received a] May 22, 2012, at 10:33 am, [email from] Ms. Self. . . . This email attached a sample letter. . . .

17. On June 5, 2012, [Respondent received an e-mail from the Union].

18. On June 7, 2012, Union Attorney Ms. Self telephoned Agency Attorney Mr. Langford, in another attempt to resolve this matter. In that telephone call, she was able to obtain from Mr. Langford his concerns about the current language of the letter for Ms. McNair, and she revised the letter according to his concerns, attaching it to a June 7, 2012 4:24pm email to Mr. Langford. Mr. Langford and his supervisor Mr. Levy agreed that the revised letter was acceptable, as did Ms. McNair. See Exhibit B, June 7, 2012, 4:32pm email, and June 8, 2012, 8:51am email.

19. Mr. Langford did not provide the settlement on Friday, June 8, 2012 or by June 12, 2012, despite email reminders from Ms. Self regarding the same on those dates.

20. . . . [Attorney Self] obtained signatures from all appropriate parties on the Union's side. [Respondent received a] June 21, 2012 [email attaching] the entire settlement package. . . .

21. . . . [Respondent received from Attorney Self] an email dated July 9, 2012.

II. Discussion

This case involves two agreements made in connection with the settlement of Case Number 09-U-24, a tentative agreement on the terms of the settlement ("Tentative Agreement") and a final agreement ("Agreement") to reduce the Tentative Agreement to writing. Complainant alleges that the Respondent failed to implement the Agreement.

Failure to implement the terms of a negotiated settlement agreement where no genuine dispute exists over its terms constitutes a failure to bargain in good faith and, consequently, an unfair labor practice under the Comprehensive Merit Personnel Act. *AFGE, Local 2725 v. D.C. Dep't of Health*, 59 D.C. Reg. 4628, Slip Op. No. 945 at p. 3, PERB Case No. 08-U-08 (Sept. 1, 2009); *AFGE , Local 872 v. Water & Sewer Auth.*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996).

The pleadings establish the presence of those elements in this case. In settlement of PERB Case No. 09-U-24, the parties on December 14, 2011, reached a Tentative Agreement on the terms of the settlement and an Agreement to reduce the Tentative Agreement to writing. (Complaint and Answer ¶¶ 8 & 9). Despite repeated requests from the Union, as of June 12, 2012, the Department had not taken the steps necessary to implement the Agreement to reduce the Tentative Agreement to writing. (Complaint and Answer ¶¶ 10, 11, 16, 18, & 19). Respondent does not allege that it reduced the Agreement to writing or implemented the Agreement at any time after June 12, 2012.

The Respondent was informed that terms related to a notification for Mr. Roper and a letter for Ms. McNair needed to be written in order for the drafting of the Tentative Agreement to be completed. Complainant drafted and, at the request of Respondent, revised the letter for Ms. McNair. (Complaint and Answer ¶¶ 11, 16, & 18). There is no dispute with respect to the drafting of either of those two terms of the Tentative Agreement. (*Id.* ¶¶ 11 & 18). The Respondent does not allege that any other dispute exists over the terms of the Agreement.

Therefore, the pleadings establish that the Respondent failed to implement a settlement agreement where no dispute exists over its terms. As the elements of an unfair labor practice for failure to implement a settlement agreement are established by the pleadings, the Board determines pursuant to Rule 520.10 that the Department's acts and omissions constitute a violation of its duty to bargain in good faith and therefore constitute and an unfair labor practice in violation of D.C. Code 1-617.04(a)(5).

Having determined that the Respondent committed an unfair labor practice, we now turn to the appropriate remedy in this case. The Complainant requests that the Board direct the Respondent to (1) cease and desist from refusing to bargain in good faith, (2) implement the terms of the Agreement with interest from December 14, 2011, (3) post a notice of the violation, and (4) reimburse the Complainant for its costs.

These requests are unobjectionable with the exception of the requests for interest and costs, which call for some discussion. The Union prays that the Department be ordered to implement the terms of the Agreement with the additional term of "interest added from December 14, 2011." (Complaint ¶ 26). Interest accrues from the date a settlement agreement became final and binding, which is the date of the last of the parties' signatures on the agreement. *Doctors' Council of D.C. v. D.C. Dep't of Youth Rehab. Servs.*, 59 D.C. Reg. 5013, Slip Op. No. 967 at pp. 8-9, PERB Case No. 07-U-19 (2009); *see also AFGE, Local 2725 v. D.C. Dep't of Health*, 59 D.C. Reg. 4628, Slip Op. No. 945 at pp. 3 & 6-7, PERB Case No. 08-U-08 (Sept. 1, 2009). The Tentative Agreement to correct the underpayment alleged in PERB Case No. 09-U-24 has not become final and binding. There is a final Agreement *to prepare* such an agreement. Although the Union requests interest from December 14, 2011, the December 15, 2011, notice requesting the Board to cancel the hearing scheduled for the next day discloses that the Tentative Agreement on the alleged underpayment was *not* final or signed. The December 15, 2011 notice specifically stated: "The formal agreement is in progress. The elements are agreed to. *Pending final resolution and signing the settlement agreement*, the parties urge that PERB cancel the hearing presently scheduled for December 16, 2011." (Complaint Ex. B at p. 7) (emphasis added). Final resolution and signing of the Tentative Agreement did not occur subsequent to that notice; indeed, that is the essence of the Union's Complaint. As the Tentative Agreement on the alleged underpayment is not final and binding, interest on the amount agreed to will not be assessed as result of the unfair labor practice but will be due under the terms of the Tentative Agreement. (*See* Complaint and Answer ¶ 8).[1] There can be no interest on the

[1] The case cited by the Union, *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 39 D.C. Reg. 8594, Slip Op. No. 285, PERB Case No. 86-U-16 (1992), does not involve a settlement agreement. Rather, it is an adjudicated case in which a hearing examiner issued a report and recommendation. The Board adopted the recommendation that interest be assessed consistent with the Board's

Agreement to prepare the Tentative Agreement because no principal upon which to calculate interest is involved in an agreement to draft a document.

In addition, the Union requests the Board to "direct the Agency to reimburse AFGE for all costs incurred in filing and prosecuting this Complaint because such order is in the interest of justice, due to the Agency's bad faith and meritless actions. See *AFGE Local2725 v. DCRA*, PERB Case No. 06-U-43, Op No. 930 (Feb. 19, 2008) (costs awarded for same)." (Complaint ¶ 28). An award of costs is in the interest of justice in a case of a failure to implement a settlement agreement or arbitration where the respondent has shown a pattern and practice of failure to implement arbitration awards or settlement agreements in previous cases. *DiAngelo v. D.C. Gov't Office of the Chief Med. Examiner*, 59 D.C. Reg. 6399, Slip Op. No 1006 at p. 2, PERB Case Nos. 05-U-47 & 07-U-22 (2009). The Department has demonstrated such a pattern and practice. The Department was found to have committed an unfair labor practice by failing to implement a settlement agreement in *AFGE Local 2725 v. District of Columbia Department of Consumer and Regulatory Affairs*, 59 D.C. Reg. 5347, Slip Op No. 930, PERB Case No. 06-U-43 (2008), and by failing to implement an arbitration award in *AFGE Local 2725 v. District of Columbia Department of Consumer and Regulatory Affairs*, Slip Op. No. 1335, PERB Case No. 10-U-18 (Oct. 19, 2012). In both cases, costs were awarded. Therefore, the Board finds that in this case an award of costs pursuant to D.C. Code 1-617.13(d) is in the interests of justice.

Accordingly, Complainant's unfair labor practice complaint is granted, and Respondent is directed to fully comply with the terms of the December 14, 2011, Agreement. Additionally, Respondent will post a notice and pay Complainant's reasonable costs.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant AFGE Local 2725's unfair labor practice complaint is granted.

2. Within ten (10) days of the service of this order, Respondent shall submit to Complainant a proposed, complete settlement package, which shall include terms related to the agreed-upon notification for Mr. Roper and letter for Ms. McNair.

3. Within fifteen (15) days of the service of this order, Respondent shall sign a complete settlement package and otherwise fully implement the terms of the December 14, 2011, Agreement.

4. Respondent shall pay reasonable costs to the Complainant.

5. Respondent shall conspicuously post within ten (10) days from the service of this Decision and Order the attached Notice where notices to bargaining unit members are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

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authority to make whole those whom the Board finds have suffered adverse economic effects from the violation of the Comprehensive Merit Personnel Act. *Id.* at p. 15. There has been no such finding in PERB Case No. 09-U-24.

6. Respondent shall notify the Public Employee Relations Board, in writing, within fourteen (14) days from the service of this Decision and Order that the Notice has been posted accordingly.

7. Respondent shall notify the Public Employee Relations Board, in writing, within twenty (20) days from the service of this Decision and Order that it has complied with the terms of the December 14, 2011, Agreement.

8. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

January 31, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 12-U-30 is being transmitted to the following parties on this the 19th day of February, 2013.

David McFadden
Attorney-Advisor

Leisha A. Self
American Federation of Government Employees
Office of the General Counsel
80 F Street NW
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

James T. Langford
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Washington, D.C. 20001

VIA FILE & SERVEXPRESS

NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS ("DCRA"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1362, PERB CASE NO. 12-U-30 (January 31, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DCRA to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(5) by the actions and conduct set forth in Slip Opinion No.1362.

WE WILL cease and desist from refusing to bargain in good faith with AFGE Local 2725, by failing to fully implement the terms of the December 14, 2011, settlement agreement.

District of Columbia Department of Consumer
and Regulatory Affairs

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

January 31, 2012

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 State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO	
Complainant,	PERB Case No. 10-U-49(a)
v.	Opinion No. 1363
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On August 10, 2010, the American Federation of State, County and Municipal Employees, District Council 20, Local 2921 ("Complainant" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Public Schools ("Respondent," "DCPS," or "Agency"). The Complainant alleges that the Respondent violated D.C. Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA") by: (1) failing and refusing to provide relevant information to the Union; (2) unilaterally implementing a new evaluation system; and (3) rating bargaining unit members under the new evaluation system as "ineffective" and terminating those employees. (Complaint at 2-3).

Respondent filed an Answer to the Unfair Labor Practice Complaint ("Answer"), denying the allegations set forth in the Complaint and any violation of the CMPA. (Answer at 2-3). Additionally, Respondent asserted affirmative defenses that DCPS had no duty to bargain with the Union over the evaluation system. (Answer at 3-4). Respondent requested that the Board dismiss the Complaint. (Answer at 4).

On January 28, 2011, DCPS filed Respondent's Motion to Dismiss Unfair Labor Practice Complaint ("Motion" or "Motion to Dismiss"). Subsequently, on February 8, 2011, Complainant responded to the Motion with Union's Opposition to Motion to Dismiss and Cross-Motion for Decision on the Pleadings ("Opposition and Cross-Motion"). Thereafter, DCPS

responded to the Opposition and Cross-Motion with Respondent's Reply Motion to Union's Opposition to Motion to Dismiss and Cross-Motion for Decision on the Pleadings ("Reply Motion").

On August 12, 2011, the Board denied the Agency's Motion to Dismiss and denied the Union's Motion for Preliminary Relief. See *American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO v. District of Columbia Public Schools*, 59 D.C. Reg. 6526, Slip Op. No. 1111, PERB Case No. 10-U-49 (2012). The Board referred the Complaint to the Hearing Examiner for an expedited hearing. *Id.*

Prior to the hearing, AFSCME's and DCPS's (collectively the "Parties") requested a pre-hearing conference with Hearing Examiner Sean J. Rodgers to discuss stipulations of fact. (Report at 2). On February 1, 2012, the Parties met with the Hearing Examiner. *Id.* The Parties did not believe that there was a dispute over facts, and they agreed to jointly prepare a Stipulation of Fact ("Stipulation") to eliminate a hearing. *Id.* Based on the discussions during the February 2, 2012, pre-hearing conference, the Hearing Examiner directed the Parties by written order ("H.E. Order") to jointly prepare the Stipulations and then, subject to the Hearing Examiner's review of the Stipulations and approval, submit briefs in the nature of closing arguments to the Hearing Examiner. (H.E. Order at 1-2). In addition, absent an agreement on the Stipulation, the Hearing Examiner ordered a hearing to be held on March 21, 2012. (H.E. at 2).

The Parties did not come to an agreement on the Stipulation, and subsequently, a hearing was held on March 21, 2012. The Parties filed post-hearing briefs. At the close of the hearing, the Hearing Examiner issued a Report and Recommendation ("Report") to the Board on August 3, 2012, in which he found that the Union did not meet its burden to prove the Complaint's allegations that the Agency violated D.C. Code § 1-616(a)(1) and (5). (Report at 16). The Hearing Examiner recommended that the Union's Unfair Labor Practice Complaint be dismissed with prejudice. (Report at 24).

On August 14, 2012, the Union filed Exceptions with the Board ("Exceptions"). In response to the Union's Exceptions, on August 29, 2012 ("Opposition"), the Agency filed an Opposition to the Exceptions.

The Union's Exceptions allege that the Hearing Examiner incorrectly dismissed the Complaint because, "(1) the complaint over information was untimely[,] and (2) the Union never demanded bargaining." (Exceptions at 2). Additionally, the Union's Exceptions assert that the Hearing Examiner failed to address the Union's argument "that IMPACT was already a *fait accompli* when the Union learned about it, thereby rendering a demand to bargain unnecessary." *Id.* The Hearing Examiner's Report is before the Board for disposition.

II. Background

At the beginning of the hearing, AFSCME's union representative read into the record the joint stipulations of fact. (Report at 3-4). The Report contained the following joint stipulations:

1. AFSCME is the exclusive bargaining agent of employees of DCPS in a unit described in the collective bargaining agreement consistent with certifications in accordance with DCPS's *Answer* to the *Complaint.*

2. The collective bargaining agreement expired on September 30, 2007, but has been continued in full force and effect at all times material to this proceeding.

3. On or about a date in late October or early November 2009, DCPS officials, including Peter Weber and Jason Kamras, on behalf of DCPS, met with representatives of AFSCME at DCPS's headquarters to brief AFSCME on a new evaluation system to be used by DCPS, namely IMPACT.

4. Kamras provided an overview of the IMPACT process and solicited feedback from AFSCME regarding IMPACT.

5. DCPS informed AFSCME that the new evaluation system would be used for evaluating and possibly separating DCPS employees.

6. Weber told AFSCME's representatives that DCPS had implemented the IMPACT evaluation system.

7. On or about June 11, 2010, Reichert sent an agenda to Sandra Walker-McLean, the point of contact for then DCPS Deputy-Chancellor Kaya Henderson, in advance of a scheduled June 22, 2010 monthly labor management meeting.

8. Among the items listed on Reichert's agenda was "evaluations at DCPS."

9. DCPS began using the IMPACT evaluation system to evaluate employees beginning on or about September 4, 2009 and each semester since then to the present.

10. DCPS sent notices of termination to certain employees prior to the 2010-2011 and 2011-2012 school years informing them that they had been rated as "ineffective" under the IMPACT evaluation system and that they would be terminated on dates specified in the notices.

(Report at 3-4).

Additionally, the Hearing Examiner found the following relevant facts:

On May 22, 2010, Simon Rodberg, DCPS Manager, IMPACT Design, Office of Human Capital, sent an e-mail to Michael Flood, AFSCME, Local 2921 President, "notifying him that

DCPS had revised IMPACT for the 2010-2011 school year." (Report at 21). The IMPACT evaluation process was referred by DCPS representatives as "IMPACT 2.0." *Id.* Further, based on the record, the Hearing Examiner found that "Rodberg advised Flood that DCPS wanted 'to make sure that you or other AFSCME leadership see drafts of the assessment rubrics for your members before we finalize them;'" and that "Rodberg said he wanted, 'to set up a meeting in the next couple of week to discuss these drafts.'" *Id.* (citing Ux 1). The Hearing Examiner found that AFSCME did not respond to Mr. Rodberg's e-mail. *Id.*

Subsequently, a labor management meeting was held between AFSCME and DCPS representatives on June 22, 2010. (Report at 17). "At this meeting, DCPS representatives described the revised IMPACT evaluation process, known as IMPACT 2.0, for school year 2010-2011." (Report at 17). AFSCME's representatives included Michael Reichert, Natambu Elshabazz and Michael Flood; and DCPS's representatives included Peter Weber, Dan McCray, and Simon Rodberg. (Report at 21).

In addition, the Hearing Examiner found that the Parties agreed that, at the June 22, 2010 meeting, "DCPS's position was that the IMPACT evaluation process and instrument were non-negotiable." (Report at 21 citing Tr at 30 and at 43-45). "In his testimony, [Mr.] Weber speculated the AFSCME was 'frustrated' over the implementation of IMPACT without negotiating." (Report at 22).

After the June 22, 2010 meeting, communications regarding IMPACT 2.0 continued between the Parties. (Report at 22). "On July 3, 2010, [Mr.] McCray sent [Mr.] Reichert [Mr.] Rodberg's e-mail notifying [Mr.] Flood of DCPS implementation of IMPACT 2.0." (Report at 22.) "Reichert responded by referring [Mr.] McCray to [Mr.] Johnson's appointments scheduler [Ms.] MacIntosh to schedule a meeting with [Mr.] Johnson." (Report at 22). The Hearing Examiner noted that the record had established that "Johnson" was Geo T. Johnson, AFSCME's chief negotiator. (Report at 22). Mr. McCray's responded by e-mail that the Parties could "agree to disagree," and that DCPS would "meet to discuss" the IMPACT 2.0 implementation and to "let me know available dates." (Report at 22 citing Ux 1).

On August 10, 2010, AFSCME filed the instant Complaint.

At the close of the hearing, the Hearing Examiner requested and later received IMPACT Guidebooks, which were accepted into the record. (Report at 2-3). On May 2, 2012, except for the submission of post-hearing briefs, the record closed. (Report at 3). The Parties filed post-hearing briefs, which were received by the Hearing Examiner. *Id.* On June 27, 2012, the Hearing Examiner closed the record. *Id.*

III. Discussion

A. Timeliness of the Complaint's allegations

The Hearing Examiner found that the Complaint contained unfair labor practice allegations that resulted from a November 2009 meeting between the Parties. (Report at 17). Based on the Complaint, the Stipulation, and testimony during the hearing, the Hearing

Examiner found that the meeting "probably occurred on November 4, 2009." *Id.* The Complaint's allegations against DCPS, arising from the November 2009 meeting, were "failing and refusing to provide AFSCME with relevant information, unilaterally implementing IMPACT and terminating employees under IMPACT." (Report at 16).

Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." Additionally, in previous cases, the Board held that PERB's Rule establishing the time allowed to initiate a complaint is jurisdictional and mandatory. *Hoggard v. District of Columbia Public Schools*, 43 D.C. Reg. 1297, Slip Op. 352, PERB Case No. 93-U-10 (1996); *see also Public Employee Relations Board v. D.C. Metropolitan Police Department*, 593 A.2d 641 (D.C.C. 1991). Hence, PERB's Rule 520.4 does not provide the Board with discretion to make exceptions for extending the deadline for initiating an action. *Id.*

Based on the Board's requisite filing deadline, the Hearing Examiner concluded that PERB did not have jurisdiction to consider unfair labor practice complaints based on facts or circumstances prior to April 14, 2011.[1] (Report at 16-17). Consequently, the Hearing Examiner found that the August 10, 2011, Complaint was untimely filed for the allegations relating to the November 2009 meeting where "DCPS allegedly failed to provide information on" the IMPACT evaluation process; "the alleged implementation of the IMPACT evaluation process;" and "DCPS's alleged refusal to bargain over IMPACT for the 2009-2010 school year." (Report at17).

In AFSCME's Exceptions regarding its information request, the Union argues that the Hearing Examiner improperly found that the statute of limitations began to run in November 2009. The Exceptions challenge the Hearing Examiner's recommendation, because "[t]he Hearing Examiner did not make a finding on whether DCPS provided any of the requested IMPACT information, or that DCPS denied the information request, or that there was a certain date by which the Union knew or should have known that DCPS would not provide it." (Exceptions at 11). As stated above, however, the Hearing Examiner found that the Complaint asserted that DCPS committed an unfair labor practice by "failing and refusing to provide AFSCME with relevant information". (Report at 16). The Hearing Examiner made a factual determination that AFSCME alleged DCPS had refused to provide information to it, and that DCPS's refusal to provide information occurred during the November 2009 meeting. The complaint by AFSCME of an unfair labor practice concerning the information request became ripe at the time of DCPS's refusal. Therefore, the statute of limitations began to run when DCPS refused to provide information on AFSCME's information request at the November 2009 meeting. AFSCME's Exceptions to the Hearing Examiner's conclusion is a disagreement of fact.

The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Moreover, a hearing examiner has the authority to determine the probative value of evidence and draw reasonable inferences from that evidence. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496, PERB Case No. 95-U-20 (1999).

[1] April 12, 2011, is the correct calculation of the 120-day deadline.

Therefore, as the Hearing Examiner's findings are reasonable, the Union's Exceptions to the Hearing Examiner's determination that the Complaint's allegations arising from the November 2009 meeting were untimely filed are denied.

B. Agency's alleged refusal to engage in impact and effects bargaining

Management violates its statutory duty to bargain when it implements a management decision in the face of a timely union request to bargain over impact and effects. See *American Federation of Government Employees, Local 383 v. D.C. Department of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002); *International Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994). Further, the Board has determined that the duty to bargain "extends to matters addressing the impact and effect of management actions on bargaining unit employees as well as procedures concerning how these rights are exercised." *Teamsters, Local 639 and District of Columbia Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case No. 90-N-02 (1991); *AFSCME, Council 20 v. District of Columbia General Hospital and Office of Labor Relations and Collective Bargaining*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989). In prior cases the Board held that "although the implementation of a performance evaluation system is a non-negotiable subject of collective bargaining, an agency is obligated to bargain in good faith over the adverse impact a performance evaluation may have on the terms and conditions of an employee's employment." *See American Federation of Government Employees, Local 631, and Department of Public Works*, Slip Op. No. 1334, PERB Case No. 09-U-18 (October 19, 2012) (citations omitted).

Notwithstanding, "Unions enjoy the right to impact and effects bargaining concerning a management rights decision only if they make a timely request to bargain." *D.C. Nurses Association v. Department of Mental Health,* 59 D.C. Reg. 9763, Slip Op. No. 1259, PERB Case No. 12-U-14 (2012); *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 29 D.C. Reg. 2975, Slip Op. No. 43, PERB Case No. 82-N-01 (1982). "Absent a request to bargain concerning the impact and effect of the exercise of a management right, an employer does not violate D.C. Code § 1-61[7].[0] 4(a)(5) and (1) by unilaterally implementing a management right under [the CMPA]." *Fraternal Order of Police v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 5427, Slip Op. No. 984, PERB Case No. 08-U-09 (2012) (quoting *American Federation of Government Employees, Local Union No. 383, AFL-CIO v. District of Columbia Department of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002)). Furthermore, an unfair labor practice has *not* been committed until there has been a general request to bargain and a "blanket" refusal to bargain. *FOP v. Department of Corrections*, 49 D.C. Reg. 8937, Slip Op. No. 679, PERB Case Nos. 00-U-36 and 00-U-40 (2002); *International Brotherhood of Police Officers v. D.C. General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).

The Hearing Examiner found that "[t]he gravamen of AFSCME's Complaint is that DCPS unilaterally implemented the IMPACT evaluation process without I[mpact] & E[effects] bargaining in violation of D.C. Code § 1-617.04(a)(1) and (5) despite AFSCME's demand to bargain the I[mpact] & E[effects] issues arising from DCPS's exercise of its management rights regarding the IMPACT 2.0 evaluation processes and instruments." (Report at 20).

Based on testimony and the record, the Hearing Examiner found that "AFSCME was notified on May 11, 2010 of DCPS's intention to implement IMPACT 2.0 for school year 2010-2011;" and that "AFSCME failed to respond to the notification and only raised IMPACT 2.0 for the first time at the June 22, 2010 meeting." (Report at 21). Additionally, the Hearing Examiner concluded: "the record reveals that, other than telling the DCPS representatives to set up an appointment with Mr. Johnson, Mr. Reichert did not demand to bargain I[mpact] & E[effects] issues resulting from the changes reflected in IMPACT 2.0." (Report at 22 citing Tr at 43-45).

The Hearing Examiner determined that "[n]o clear demand to bargain I&E issues arising from the implementation of IMPACT 2.0 is discernable in the UX 1 e-mail thread." (Report at 22). The Hearing Examiner stated: "Moreover, when asked by DCPS counsel at hearing, 'Is there anywhere in this e-mail that you specifically asked to bargain?' Reichert responded, 'I don't use the term, "we shall bargain," no.'" *Id.*

The Report states, "To prove a violation of D.C. Code § 1-617.04(a)(1) and (5), the PERB's precedent requires a clear and timely demand to bargain I[mpact] [and] E[ffects] issues from the union followed by a refusal to bargain from the agency." (Report at 22). The Hearing Examiner found that "the record does not establish that AFSCME made a clear and timely demand to bargain I[mpact] & E[ffects] issues arising from DCPS's implementation of the IMPACT or IMPACT 2.0 evaluation procedures." (Report at 23). In addition, "[i]n the absence of a clear and time[ly] demand to bargain I[mpact] & E[ffects] issues, the Hearing Examiner further finds that DCPS did not violate D.C. Code § 1-617.04(a)(1) and (5) when it implemented IMPACT 2.0." (Report at 23).

In its Exceptions, the Union disagrees over the "clarity" requirement for an impact and effects demand to bargain. (Exceptions at 12). Pursuant to PERB precedent, regarding its demand to bargain, the Union contends that a demand for impact and effects bargaining does not require the use of the specific term "impact and effects." *Id.* Further, the Union argues that the "demand for bargaining information sufficiently informed DCPS that the Union wanted to bargain." *Id.* The Agency argues that the Union's Exceptions are merely a disagreement with the Hearing Examiner's finding that the Union did not demand to bargain impact and effects issues. (Opposition at 3).

The question of whether there has been a timely request for impact and effect bargaining is often an issue of fact. *National Association of Government Employees, Local R3-06 v. D.C. Water and Sewer Authority*, 47 D.C. Reg. 7551, Slip. Op. No. 635, PERB Case No. 99-U-04 (2000). In *NAGE, Local R3-06 v. D.C. WASA*, the Board upheld a Hearing Examiner's findings that "[n]otwithstanding the lack of clarity in NAGE's demands for negotiations over the reorganization . . . that, under Board precedent, even a broad, general request for bargaining 'implicitly encompasses all aspects of that matter, including the impact and effect of a management decision that is otherwise not bargainable.'" *Id.* (quoting *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992) ("Any general request to bargain over a matter implicitly encompasses all aspects of that matter, including the impact and effects of a management decision that is otherwise not bargainable.")).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Hearing Examiner's conclusion that "PERB precedent requires a clear and timely demand to bargain impact and effects issues" is incorrect. See *International Brotherhood of Police Officers, Local 446 v. District of Columbia General Hospital, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992).* The Hearing Examiner's additional element that a timely request for impact and effects bargaining must be "clear" is not established in Board precedent. Consequently, as the Hearing Examiner relied upon an incorrect standard in determining whether the Union made a timely request to bargain, the Board finds that there is insufficient information upon which to make a determination as to whether the Hearing Examiner's findings are supported by the record.

Therefore, with the Board's direction to apply the correct standard when reviewing the impact and effects allegation in this case, the Board remands the matter to the Hearing Examiner on the issue of whether a proper and timely request to bargain was made by the Union. The Board adopts in part the Hearing Examiner's Report and Recommendation to dismiss the Complaint's allegations regarding AFSCME's information request and demand to bargain at a November 2009 meeting between the Parties.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint is dismissed in part with prejudice, concerning the Union's allegations pertaining to an information request and demand for bargaining at a November 2009 meeting.
2. The Hearing Examiner shall make factual findings and conclusions as to whether the Complainant requested bargaining and whether the Respondents refused to bargain under the circumstances of this case. The Hearing Examiner may conduct further proceedings, if necessary.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEES RELATIONS BOARD

February 15, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-49(a) was transmitted via U.S. Mail to the following parties on February 15, 2013.

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