VOL. 61 – NO. 15 FRIDAY, APRIL 4, 2014

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes Law 20-79, Campaign Finance Reform and Transparency Amendment Act of 2013
- Board of Elections schedules a public hearing to review initiative measure " Fair Minimum Wage Act of 2014”
- DC Public Charter School Board schedules a public hearing on the 2013-2014 New Charter School Applications
- DC Water and Sewer Authority schedules a public hearing on the proposed water and sewer retail rate & fee increases for Fiscal Year 2015
- DC Taxicab Commission updates existing fees
- Department of Behavioral Health announces funding availability for the Supported Employment program
- Department of Health announces funding availability for the Preventive Health and Health Services Block Grant
- Executive Office of the Mayor publishes Freedom of Information Act Appeals

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

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

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Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-66

"Prescription Drug Monitoring Program Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-127 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-232 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 7). Act 20-232 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-232 is now D.C. Law 20-66, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-67

"YMCA Community Investment Initiative Real Property Tax Exemption Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-280 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-233 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 16). Act 20-233 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-233 is now D.C. Law 20-67, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-68

"Transportation Infrastructure Mitigation Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-430 on first and second readings October 1, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-234 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 19). Act 20-234 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-234 is now D.C. Law 20-68, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-69

"Transportation Infrastructure Improvements GARVEE Bond Financing Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-545 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-235 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 22). Act 20-235 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-235 is now D.C. Law 20-69, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-70

"Department of Health Grant-Making Authority for Clinical Nutritional Home Services Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-554 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-236 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 24). Act 20-236 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-236 is now D.C. Law 20-70, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-71

"Critical Infrastructure Freedom of Information Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-557 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-237 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 27). Act 20-237 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-237 is now D.C. Law 20-71, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-72

"Party Officer Elections Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-561 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 20, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-238 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 30). Act 20-238 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-238 is now D.C. Law 20-72, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-73

"Department of Corrections Central Cellblock Management Clarification Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-542 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 21, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-239 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 32). Act 20-239 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-239 is now D.C. Law 20-73, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-74

"Board of Elections Nominating Petition Circulator Affidavit Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-559 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 21, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-240 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 34). Act 20-240 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-240 is now D.C. Law 20-74, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-75

"Board of Ethics and Government Accountability Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-116 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 23, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-241 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 36). Act 20-241 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-241 is now D.C. Law 20-75, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-76

"Parent and Student Empowerment Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-314 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 16, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-242 and was published in the January 3, 2014 edition of the D.C. Register (Vol. 60, page 39). Act 20-242 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-242 is now D.C. Law 20-76, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-77

"Controlled Substance, Alcohol Testing, Criminal Background Check and Background Investigation Temporary Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-562 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 27, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-247 and was published in the January 10, 2014 edition of the D.C. Register (Vol. 60, page 140). Act 20-247 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-247 is now D.C. Law 20-77, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-78

"Distillery Pub Licensure Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-29 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 27, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-248 and was published in the January 10, 2014 edition of the D.C. Register (Vol. 60, page 151). Act 20-248 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-248 is now D.C. Law 20-78, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-79

"Campaign Finance Reform and Transparency Amendment Act of 2013"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-76 on first and second readings November 5, 2013 and December 3, 2013, respectively. Following the signature of the Mayor on December 27, 2013, pursuant to Section 404(e) of the Charter, the bill became Act 20-249 and was published in the January 10, 2014 edition of the D.C. Register (Vol. 60, page 153). Act 20-249 was transmitted to Congress on January 9, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-249 is now D.C. Law 20-79, effective February 22, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Jan. 9,10,13,14,15,16,17,21,22,23,24,27,28,29,30,31

Feb. 3,4,5,6,7,10,11,12,13,14,18,19,20,21

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-301

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 21, 2014

To approve, on an emergency basis, Modification Nos. 11 and 12 of Contract No. CFOPD-11-C-026 with KPMG LLP to continue to provide single audit services to the Office of the Chief Financial Officer and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. CFOPD-11-C-026 Modifications Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 11 and 12 of Contract No. CFOPD-11-C-026 with KPMG LLP to provide single audit services to the Office of the Chief Financial Officer and authorizes payment in the amount of $1,568,629 for the services received and to be received under the contract from February 4, 2014, through February 5, 2015.

Sec. 3. Fiscal impact statement.

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

Sec. 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
March 21, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-302

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 20, 2014

To amend, on an emergency basis, section 47-4625 of the District of Columbia Official Code to adjust the amount of retail space required for the real property known as Kelsey Gardens to qualify for a real property tax abatement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Kelsey Gardens Redevelopment Emergency Act of 2014".

Sec. 2. Section 47-4625(a)(2) of the District of Columbia Official Code is amended to read as follows:

"(2) Beginning on December 17, 2009, contain approximately 13,363 square feet of ground-level retail space; and".

Sec. 3. Fiscal impact statement.

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

Sec. 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), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
March 20, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-303

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 25, 2014

To amend section 47-863 of the District of Columbia Official Code to provide an exemption from real property taxes for District domiciled residents who have owned a residence in the District for at least 20 consecutive years immediately preceding the effective tax year provided, that the resident is 70 years of age or older, has an annual household adjusted gross income of less than $60,000 and less than $12,500 in household interest and dividend income, and owns the residence receiving the exemption.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Senior Citizen Real Property Tax Relief Act of 2014".

Sec. 2. Section 47-863 of the District of Columbia Official Code is amended as follows:

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

(1) Paragraph (1A) is amended by striking the phrase ", in whole or in part," both times it appears.

(2) A new paragraph (1B) is added to read as follows:

"(1B) "Exempt household" means:

"(A) In the case of a house or condominium, an individual's residence:

"(i) That comprises a dwelling unit;

"(ii) That is Class 1 Property, as defined in § 47-813, and contains not more than 5 dwelling units; and

"(iii) That is owned at least 50% by the individual who:

"(I) Is 70 years of age or older;

"(II) Has a household adjusted gross income of less than $60,000 and less than $12,500 of household interest and dividend income; and

"(III) Has owned a residence in the District for at least 20 consecutive tax years immediately preceding the half tax year for which the exemption shall be in effect; and

"(B) In the case of a cooperative housing association that is Class 1 Property, as defined in § 47-813, a shareholder's or member's residence:

"(i) That comprises a dwelling unit;

"(ii) That is owned at least 50% by the individual who:

"(I) Is 70 years of age or older;

"(II) Has a household adjusted gross income less than $60,000 and less than $12,500 of household interest and dividend income; and

ENROLLED ORIGINAL

"(III) Has owned a residence in the District for at least 20 consecutive tax years immediately preceding the half tax year for which the exemption shall be in effect; and

"(iii) That, by reason of the ownership of stock or membership certificate, a proprietary lease, or other evidence of membership, is occupied by right by the shareholder or member with at least a 50% interest, which permits the occupation of the dwelling unit.".

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

"(2) "Household adjusted gross income" means the adjusted gross income of all persons residing in a household, as determined by each person's federal income tax year ending immediately before the beginning of the real property tax year during which the deduction provided under subsection (b) of this section or the exemption provided under subsection (b-1) of this section shall be applicable, excluding the adjusted gross income of any person who is a tenant by virtue of a written lease for fair market value.".

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

"(2A) "Household interest and dividend income" means the total income amount reported on Schedule B of Treasury Form 1040 of all persons residing in a household, as determined by each person's federal income tax year ending immediately before the beginning of the real property tax year during which the deduction provided under subsection (b) of this section or the exemption provided under subsection (b-1) of this section shall be applicable, excluding the adjusted gross income of any person who is a tenant by virtue of a written lease for fair market value.".

(b) A new subsection (b-1) is added to read as follows:

"(b-1)(1) An exempt household shall be exempt from real property tax for the tax year in which the exempt household qualifies for the real property tax exemption.".

(c) Subsections (c), (d), (e), and (f) are amended to read as follows:

"(c) (1) In the case of a house or condominium, to qualify the eligible household to receive the deduction or exempt household to receive the exemption, the individual shall complete and file with the Chief Financial Officer of the District of Columbia ("CFO") an application in a form prescribed by the CFO requesting the deduction or the exemption. The individual shall certify, under penalty of perjury, the information provided on the application and file the application in the manner prescribed by the CFO. The CFO may require the individual to provide any information that the CFO considers necessary, including all taxpayer identification numbers of the individual, any other owner, any person with legal or equitable title, and any person in the household of the individual. The CFO may also require the individual, any other owner, any person with legal or equitable title, and any person in the household of the individual to submit information after the deduction or exemption has been allowed to determine whether the real property remains an eligible or exempt household and entitled to the deduction or exemption.

"(2)(A) For a cooperative housing association to qualify and receive the deduction or exemption, the shareholder or member shall complete and file with the CFO an application in a form prescribed by the CFO. The shareholder or member shall certify, under penalty of perjury, the information provided on the application and file the application in the manner prescribed by

the CFO. The CFO may require the shareholder or member to provide any information that the CFO considers necessary, including the taxpayer identification numbers of the shareholder or member, any other person with an ownership or membership interest, and any person in the household of the shareholder or member. The CFO may also require the shareholder or member, any other person with an ownership or membership interest, and any person in the household of the shareholder or member to submit information after the deduction or exemption has been granted to determine whether the cooperative housing association remains entitled to the deduction or exemption for the eligible or exempt household, as applicable.

"(B) The CFO may require the officers or managers of the cooperative housing association to distribute the application forms to its shareholders or members and to collect the completed application forms from the shareholders or members for return to the CFO. Officers and managers of a cooperative housing association shall submit such other information as the CFO may require.

"(C) The deduction or exemption shall be passed on to the eligible or exempt household, as applicable, by the cooperative housing association during the corresponding tax year.

"(d) If a properly completed and approved application is filed during the period October 1 through March 31 of the tax year, the real property shall receive the deduction or exemption, as applicable, for the entire tax year. Notwithstanding subsection (b) of this section, if a properly completed and approved application is filed during the period April 1 through September 30, the real property shall receive half of the deduction or shall be exempt for half of the tax year, as applicable, which shall be applied to the second installment only.

"(e) The application filed by the individual, shareholder, or member shall apply to the initial tax year, or applicable installment, and to any succeeding tax year for which the deduction or exemption is allowed.

"(f)(1) If the eligible household no longer qualifies for the deduction or exemption, the applicant (or former owner if there is no applicant) shall notify the CFO of the date of the change in eligibility within 30 days after the change in eligibility. If the applicant (or former owner if there is no applicant) fails to notify the CFO timely, the deduction or exemption shall be rescinded without limitation for each tax year. Penalty and interest shall be added from the day the correct amount of tax was due but not paid.

"(2) Notwithstanding paragraph (1) of this subsection, if the eligible or exempt household, as applicable, is transferred and continued to qualify for the deduction 30 days or less before the date of execution of the deed of transfer, the applicant shall not be required to notify the CFO of the change in eligibility.

"(3) If the tax is paid within 30 days of the corresponding bill, timely notification of the change in eligibility shall preclude assessment of penalty and interest.

"(4) If the change in eligibility occurs during the period October 1 through March 31 of the tax year, the deduction or exemption shall be disallowed for the entire tax year.

"(5) Notwithstanding subsection (a) of this section, if the change in eligibility occurs during the period April 1 through September 30, the real property shall receive half of the deduction or shall be exempt for half of the tax year, as applicable, which shall be applied to the first installment only.

ENROLLED ORIGINAL

"(6)(A) Notwithstanding the rescission of the deduction or exemption pursuant to paragraphs (4) and (5) of this subsection, if the applicant's required ownership interest in the real property is transferred to a new owner, shareholder, or member who does not apply or qualify for the deduction or exemption, as applicable, the real property shall be entitled to the apportioned amount of the deduction or exemption applicable to the installment payable during the half tax year during which the ownership interest was transferred. At the end of the half tax year, the deduction or exemption shall cease.

"(B) If the applicant purchases another real property or interest in a housing cooperative for which he or she shall make application for the deduction or exemption, and the application and purchase occurs during the same half tax year when the transfer occurred, subsections (i) and (j) of this section shall not apply to the extent that both real properties may benefit from the deduction or exemption during that half tax year and, thereafter, only the newly purchased real property or housing cooperative in which the applicant acquired newly an interest shall benefit from the applicant's deduction or exemption.

"(C) Notwithstanding the foregoing, a real property shall not benefit from more than one deduction or exemption in any half tax year; provided, that in the case of a housing cooperative, the real property shall not benefit from more than one deduction or exemption related to an eligible or exempt household, as applicable, in any half tax year.".

(d) Subsection (f-1) is repealed.

(e) A new subsection (f-2) is added to read as follows:

"(f-2) Within 45 days from the date of the notice rescinding or denying the deduction or exemption, the owner may petition for an administrative review of the rescission or denial and appeal from a final determination thereof to the same extent as if the appeal were filed under § 47-825.01a(d)(2).".

(f) Subsections (g), (h), (i), (j), and (k) are amended to read as follows:

"(g) If real property tax is owing as a result of an erroneous or improper deduction or exemption, the following shall apply:

"(1) Except in the case of a cooperative housing association, if the eligible household was transferred, the applicant or former owner, and not the real property shall be personally liable for the amount of the delinquent real property tax that was not paid timely during the period when the applicant or former owner had an ownership interest in the eligible or exempt household, as applicable, together with interest and penalty at the same rate as provided in this chapter for the late payment of real property tax. The tax shall be considered due on the date that the total amount of real property tax was due but unpaid and shall be collected in the manner prescribed under Chapter 44.

"(2) Notwithstanding paragraph (1) of this subsection, if the eligible or exempt household was transferred and the grantee failed to timely record a deed under § 47-1431 (or other evidence of the transfer in the case of a cooperative housing association), the real property shall be liable for the amount of the delinquent real property tax that was not paid timely, together with interest and penalty as provided in this chapter for the late payment of real property tax.

"(3) In all other cases, the real property shall be liable for the amount of the delinquent real property tax that was not paid timely, together with interest and penalty as

provided in this chapter for the late payment of real property tax; provided, that the CFO may establish a payment plan to collect the delinquent taxes.

"(h) The eligibility of an eligible or exempt household for the deduction or exemption, as applicable, shall not be affected by the transfer of the eligible or exempt household into a revocable trust if the transfer is without consideration and the eligible or exempt household remains the residence of the applicant-grantor before and after the transfer.

"(i) No other person in the household of the individual, shareholder, or member shall claim a deduction or exemption for an eligible or exempt household in the District. The cooperative housing association shall not receive a deduction or exemption for an eligible household if the basis of the deduction or exemption is another person in the household of the shareholder or member.

"(j) If an individual, shareholder, or member claims more than one eligible or exempt household in the same tax year, and has not timely notified the CFO of all changes in eligibility, the CFO shall disallow the deduction or exemption for all eligible or exempt households claimed by the individual, shareholder, or member.

"(k)(1) The CFO may contract with a collection agency inside or outside of the District to verify the contents of any application or return for the purposes of determining the eligibility of any eligible or exempt household.

"(2) All funds collected by the collection agency and belonging to the District shall be remitted to the CFO not less than once a month. Forms to be utilized for the remittances may be prescribed by the CFO. The CFO may require that the collection agency furnish a bond securing compliance with the provisions of this subsection and the contract with the District.

"(3) At the discretion of the CFO:

"(A) The collection agency may charge a collection fee not in excess of 25% of the total amount of the delinquent taxes, excluding penalties and interest, that is actually collected; or

"(B) The collection agency may be remunerated by fee, percentage of taxes collected, or both.

"(4)(A) Notwithstanding any other provision contained in this title, confidential information related to the owner of the real property may be provided to a collection agency for purposes of collecting a delinquent tax under this chapter. If the information is provided to a collection agency under this subsection, the collection agency shall not disclose the information to a third party, other than the owner (or his or her representative), unless the CFO would be authorized by law to make the disclosure.

"(B) A collection agency, or employee of a collection agency, violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the amount set forth in § 22-3571.01(b)(4) or imprisoned for not more than 180 days, or both. All prosecutions under this paragraph shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District of Columbia.".

ENROLLED ORIGINAL

Sec. 3. Applicability.

This act shall apply as of October 1 of the fiscal year in which it is funded and included 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 in the District of Columbia Register.

Sec. 4. Fiscal impact statement.

The Council adopts the March 4, 2014, fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This 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
March 25, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-304

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 31, 2014

To designate the public right-of-way adjacent to Lot 197, Square 2526, in Ward 2, as Belmont Park and to establish Belmont Park as a public park.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Belmont Park Designation and Establishment Act of 2014".

Sec. 2. Pursuant to section 401 of the Street and Alley Closing Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-204.01), the Council designates the public right-of-way, west of Connecticut Ave., N.W., at the intersection of Connecticut Ave., N.W., and Belmont Road, N.W., shown on the Surveyor's plat as adjacent to Lot 197, Square 2526, as "Belmont Park".

Sec. 3. The newly designated Belmont Park is established as a public park and shall be maintained under the jurisdiction of the Department of Parks and Recreation.

Sec. 4. Transmittal.

The Chairman of the Council shall transmit a copy of this act, upon its effective date, to the Office of the Surveyor, the Department of Parks and Recreation, the District Department of Transportation, and the Department of General Services.

Sec. 5. 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. 6. 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

ENROLLED ORIGINAL

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
March 31, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-305

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 31, 2014

To make the possession or transfer without remuneration of one ounce or less of marijuana a civil violation subject to a fine, to make the smoking of marijuana in public and marijuana impairment in public or on someone else's property crimes subject to fine or imprisonment, to establish the Substance Abuse Prevention and Treatment Fund, and to make technical and conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Marijuana Possession Decriminalization Amendment Act of 2014".

TITLE I. ONE OUNCE OR LESS OF MARIJUANA.

Sec. 101. Possession or transfer of one ounce or less of marijuana.

(a) Notwithstanding any other District law, the possession or transfer without remuneration of marijuana weighing one ounce or less shall constitute a civil violation.

(b) A violation of subsection (a) of this section shall not constitute a criminal offense or a delinquent act as defined in D.C. Official Code § 16-2301(7).

(c) The possession of paraphernalia associated with a violation of subsection (a) of this section shall not constitute a violation of section 4 of the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code § 48-1103).

Sec. 102. Identification of offenders.

(a) A person who is stopped by a police officer for violating section 101 shall, upon request, inform the officer of his or her name and address for the purpose of including that information on a notice of violation; provided, that no person shall be required to possess or display any documentary proof of his or her name or address in order to comply with the requirements of this section.

(b) A person who refuses to provide his or her name and address, or who knowingly provides an incorrect name or address, to a police officer in violation of subsection (a) of this section shall, upon conviction, be fined $100.

Sec. 103. Penalties.

(a) A person 18 years of age or older who commits a civil violation of section 101 shall be subject to a civil fine of $25 and seizure of any marijuana and paraphernalia visible to the police officer at the time of the civil violation.

(b)(1) A person under the age of 18 years who commits a civil violation of section 101 shall be subject to a civil fine of $25 and seizure of any marijuana and paraphernalia visible to the police officer at the time of the civil violation.

(2) The Office of Administrative Hearings shall mail a copy of the notice of violation to the parent or guardian of the person to whom the notice of violation is issued at the address provided by the person at the time the citation is issued pursuant to section 102.

(3) For the purposes of this subsection, the term "civil violation" shall have the same meaning as a civil Notice of Violation for the purposes of D.C. Official Code § 16-2333(a)(1A).

(c) Except as provided in this section, the District shall not request or impose any other form of penalty, sanction, forfeiture, or disqualification for violations of section 101; provided, that this subsection does not apply to District government employers if drug use is specifically prohibited as a condition of employment, nor shall this subsection apply to the Firearms Control Regulation Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code §7-2501.01 *et seq.*), and An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4501 *et seq.*).

Sec. 104. Substance Abuse Prevention and Treatment Fund.

(a) There is established as a special fund the Substance Abuse Prevention and Treatment Fund ("Fund"), which shall be administered by the Department of Behavioral Health in accordance with subsections (c) and (d) of this section.

(b) The Fund shall consist of revenue from the payment of fines collected pursuant to section 103.

(c) The Fund shall be used for substance abuse prevention and treatment efforts.

(d)(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

TITLE II. CIVIL VIOLATIONS.

Sec. 201. Adjudication.

Civil violations of section 101 shall be adjudicated by the Office of Administrative Hearings in accordance with this title.

Sec. 202. Answer to a notice of violation.

(a) A person shall answer a notice of violation within 14 calendar days of the date the notice of violation was issued.

(b)(1) To answer a notice of violation, a person issued a notice may:

(A) Admit the violation;

TITLE III. CONSUMPTION OF MARIJUANA IN PUBLIC SPACE; IMPAIRMENT

Sec. 301. Consumption of marijuana in public space prohibited; impairment prohibited.

(a) Notwithstanding any other District law, it is unlawful for any person to smoke or otherwise consume marijuana in or upon a public space, or in or upon any of the following places:

(1) A street, alley, park, sidewalk, or parking area;

(2) A vehicle in or upon any street, alley, park, or parking area; or

(3) Any place to which the public is invited.

(b) No person, whether in or on public or someone else's private property, shall be impaired due to smoking or otherwise consuming marijuana and endanger the safety of himself, herself, or any other person or property.

(c) Any person violating the provisions of subsection (a) or (b) of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), or imprisoned for not more than 60 days.

(d) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute violations of this section, in the name of the District of Columbia.

(e) For the purposes of this section, the term "smoke" means to inhale, ingest, or otherwise introduce marijuana into the human body, or to hold or carry a lighted roll of paper or other lighted smoking equipment filled with marijuana.

TITLE IV. CONFORMING AMENDMENTS.

Sec. 401. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding a new subsection (b-7) to read as follows:

"(b-7) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), (b-5), and (b-6) of this section, this act shall apply to all adjudications involving the imposition of a civil fine for violations of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409).".

Sec. 402. Section 501 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.01), is amended as follows:

(a) Designate the existing text as subsection (a).

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

"(b) Notwithstanding any other provision of this title, no person shall be rendered ineligible for public assistance by reason of a civil violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409).

Sec. 403. Section 23-1321(c)(1)(B)(ix) of the District of Columbia Official Code is amended to read as follows:

"(ix) Refrain from excessive use of alcohol or marijuana, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner; provided, that a positive test for use of marijuana or a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), shall not be considered a violation of the conditions of pretrial release, unless the judicial officer expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition of pretrial release; the terms "narcotic drug" and "controlled substance" shall have the same meaning as in § 48-901.02;".

Sec. 404. Section 4 of An Act For the establishment of a probation system for the District of Columbia, approved June 25, 1910 (36 Stat. 865; D.C. Official Code § 24-304), is amended as follows:

(a) Subsection (b) is amended by striking the phrase "If a person violates" and inserting the phrase "Except as provided in subsection (c) of this section, if a person violates" in its place.

(b) A new subsection (c) is added to read as follows:

"(c) A positive test for use of marijuana, or a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), shall not be considered a violation of a condition of probation unless the judicial officer expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition of probation.".

Sec. 405. Section 4(a) of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-903(a)), is amended by adding a new paragraph (2A) to read as follows:

"(2A) A positive test for use of marijuana, or a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), shall not be considered a violation of an order of probation unless the judicial officer expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition of probation.".

Sec. 406. Section 25-1001(d) of the District of Columbia Official Code is amended by striking the phrase "90 days" and inserting the phrase "60 days" in its place.

Sec. 407. An Act To regulate the manufacturing, dispensing, selling, and possession of narcotic drugs in the District of Columbia, approved June 20, 1938 (52 Stat. 785; D.C. Official Code § 48-921.01 *et seq.*), is amended as follows:

(a) Section 14 (D.C. Official Code § 48-921.02) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "A search warrant" and inserting the phrase "Except as provided in subsection (a-1) of this section, a search warrant" in its place.

(2) A new subsection (a-1) is added to read as follows:

"(a-1) A search warrant shall not be issued if the sole basis for its issuance would be the possession or transfer without remuneration of marijuana weighing one ounce or less.".

(b) A new section 14a is added to read as follows:

"ARTICULABLE SUSPICION

"Sec. 14a. (a) Except as provided in subsection (b) of this section, none of the following shall, individually or in combination with each other, constitute reasonable articulable suspicion of a crime:

"(1) The odor of marijuana or of burnt marijuana;

"(2) The possession of or the suspicion of possession of marijuana without evidence of quantity in excess of 1 ounce;

"(3) The possession of multiple containers of marijuana without evidence of quantity in excess of 1 ounce; or

"(4) The possession of marijuana in proximity to any amount of cash or currency without evidence of marijuana quantity in excess of one ounce.".

"(b) Subsection (a) of this section shall not apply when a law enforcement officer is investigating whether a person is operating or in physical control of a vehicle or watercraft while intoxicated, under the influence of, or impaired by alcohol or a drug or any combination thereof in violation of the Anti-Drunk Driving Act of 1982, effective September 14, 1982 (D.C. Law 4-145; D.C. Official Code § 50-2206.01 *et seq.*).".

Sec. 408. Section 401 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), is amended as follows:

(a) Subsection (a) is amended by striking the phrase "Except as authorized by this act or the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; 57 DCR 3360)" and inserting the phrase "Except as authorized by this act or the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*), and provided in section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409)" in its place.

(b) Subsection (d)(1) is amended by striking the phrase "except as otherwise authorized by this act or the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; 57 DCR 3360)" and inserting the phrase "except as otherwise authorized by this act or the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*), and provided in section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409)" in its place.

Sec. 409. Section 4 of the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code § 48-1103), is amended as follows:

(a) Subsection (a) is amended by striking the phrase "Except as authorized by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; 57 DCR 3360)" and inserting the phrase "Except as authorized by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*) and provided in section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409)" in its place.

(b) Subsection (b) is amended by striking the phrase "Except as authorized by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; 57 DCR 3360" and inserting the phrase "Except as authorized by the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective February 25, 2010 (D.C. Law 13-315; D.C. Official Code § 7-1671.01 *et seq.*), and provided in section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409)" in its place.

Sec. 410. Section 13a(a) of the District of Columbia Traffic Act, 1925, effective March 16, 1989 (D.C. Law 7-222; D.C. Official Code § 50-1403.02(a)), is amended by adding a new sentence at the end to read as follows: "For the purposes of this section, notwithstanding any other District law, a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), shall not constitute a drug offense.".

Sec. 411. The Department of Youth Rehabilitation Services Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-335; D.C. Official Code § 2-1515.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 2-1515.01) is amended by adding a new paragraph (2A) to read as follows:

"(2A) "Community placement agreement" means an agreement between the youth and the Department of Youth Rehabilitation Services that the youth and his or her guardian will agree to certain rules in exchange for being released to the community.".

(b) Section 105 (D.C. Official Code § 2-1515.05) is amended by adding a new subsection (h-1) to read as follows:

"(h-1) The Department shall not use a positive test for use of marijuana, or a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), as the basis for a change of placement, a change in treatment, or any sanction unless the Department expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition in the community placement agreement or by otherwise providing written notice to the child. A prohibition on the use or possession of marijuana shall be based upon an individual evaluation conducted pursuant to section 104(7).".

ENROLLED ORIGINAL

Sec. 412. Section 16-2327 of the District of Columbia Official Code is amended by adding a new subsection (e) to read as follows:

"(e) A positive test for use of marijuana, or a violation of section 101 of the Marijuana Possession Decriminalization Amendment Act of 2014, passed on 2nd reading on March 4, 2014 (Enrolled version of Bill 20-409), shall not be considered a violation of an order of probation unless the Division expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition of probation.".

TITLE V. RULES, EFFECTIVE DATE, AND FISCAL IMPACT STATEMENT.

Sec. 501. Rules.

The Mayor, pursuant to Title 1 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 the provisions of this act.

Sec. 502. 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. 503. 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, 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
March 31, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-306

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MARCH 31, 2014

To establish the DC Promise program to provide grants to institutions of higher education on behalf of eligible individuals, to establish a nonlapsing fund to support the program, to establish eligibility criteria and conditions of participation, to establish grant award amounts, to require the Mayor to establish an educational grant program for individuals over 24 years of age, and to require the Mayor to issue rules to implement this act.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "DC Promise Establishment Act of 2014".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Academic year" shall have the same meaning as provided in 34 CFR § 668.3.

(2) "Area Median Income" or "AMI" means the area median income, adjusted for household size, for the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development.

(3) "DC TAG" means the tuition assistance grant program established pursuant to the District of Columbia College Access Act of 1999, approved November 12, 1999 (113 Stat. 1323; D.C. Official Code § 38-2701 *et seq.*), and administered by the Office of the State Superintendent of Education.

(4) "Fund" means the DC Promise Fund established by section 4.

(5) "Home school student" means a student in the District of Columbia who is participating or has participated in a home schooling program that meets the requirements set forth in District law and regulation.

(6) "Institution of higher education" means an educational institution that:

(A) Admits as regular students persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of a secondary school diploma;

(B) Is legally authorized within a state to provide a program of education beyond secondary education;

(C) Provides:

(i) An educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree; or

(ii) Not less than a one-year program of training to prepare students for gainful employment in a recognized occupation;

(D) Is a public or private nonprofit institution; and

(E) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary of Education of the United States Department of Education for the granting of pre-accreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(7) "Non-tuition expenses" means costs associated with attending an institution of higher education, excluding tuition and fees, as determined by the Mayor through rulemaking.

(8) "Recognized equivalent of a secondary school diploma" means a general equivalency degree or other such equivalent as determined by the Mayor through rulemaking.

(9) "Satisfactory academic progress" means maintaining an academic standing consistent with the requirements for graduation, as determined by the institution of higher education; provided, that an institution of higher education may waive this requirement based on undue hardship because a student has:

(A) Experienced the death of a relative;

(B) A personal injury or illness; or

(C) Another special circumstance as determined by the institution of higher education to warrant a waiver.

Sec. 3. DC Promise establishment; administration.

(a) There is established the DC Promise program. The purpose of DC Promise is to assist individuals in obtaining post-secondary education or training by providing grants to institutions of higher education to support the costs associated with tuition and non-tuition expenses not covered by other non-loan assistance.

(b)(1) Except as provided in paragraph (2) of this subsection, the Mayor shall administer DC Promise.

(2) If the Mayor determines that it would result in more efficient administration, the Mayor may enter into a grant, contract, or cooperative agreement with another public entity or with a private entity to administer DC Promise; provided, that the entity selected has a minimum of 5 years of experience in the administration of a college scholarship program.

Sec. 4. DC Promise Fund.

(a)(1) There is established as a special fund the DC Promise Fund, which shall be administered by the Mayor in accordance with subsections (c) and (d) of this section.

(b) The Fund shall consist of revenue from the following sources:

(1) Annual appropriations, if any; and

(2) Grants, gifts, or subsidies from public or private sources.

(c) Except as provided in subsection (d) of this section, the Fund shall be used solely for the purposes of this act.

(d) The Mayor may use not more than 5% of the funds deposited into the Fund to pay the administrative expenses of DC Promise for the fiscal year.

(e)(1) The money deposited in the Fund, and any interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

Sec. 5. Eligibility.

(a) An individual is eligible to participate in DC Promise if the individual:

(1) On or after January 15, 2015:

(A) Has graduated from a District secondary school;

(B) Has obtained a recognized equivalent of a secondary school diploma; or

(C) Is a home school student who has completed a secondary school program;

(2) Except as provided in subsection (c) of this section, has attended a District secondary school for grades 9 through 12;

(3) Has not already completed a bachelor's degree at an institution of higher education;

(4) Has been accepted for enrollment on at least a half-time basis into an institution of higher education;

(5) Was domiciled in the District for not less than the 12 consecutive months preceding the commencement of enrollment at an institution of higher education or the time of application to DC Promise; and

(6) At the time of application to DC Promise is:

(A) Domiciled in the District;

(B) 24 years old or younger; and

(C) From a family with an annual household taxable income of no more than 200% of the AMI.

(b) In addition to the eligibility requirements set forth in subsection (a) of this section, an individual must begin at least half-time study at an institution of higher education within 3 calendar years of graduating from a secondary school in the District, obtaining the recognized equivalent of a secondary school diploma, or, in the case of a home school student, completing a secondary school program, excluding any period of service on active duty in the armed forces or service under the Peace Corps Act, approved September 22, 1961 (75 Stat. 612; 22 U.S.C. § 2501 *et seq.*), or subtitle D of title I of the National and Community Service Act of 1990, approved November 16, 1990 (104 Stat. 3150; 42 U.S.C. § 12501, note).

(c) An individual who receives a recognized equivalent of a secondary school diploma or who is a home school student who has completed a secondary school program shall be exempt from the requirement of subsection (a)(2) of this section; provided, that the Mayor may establish through rulemaking an alternative eligibility requirement for these individuals in lieu of the requirement set forth in subsection (a)(2) of this section.

(d) Notwithstanding the requirements of subsection (a)(1)(A), (2), (5) and (6)(A), an individual in the District's foster care system who was placed outside the District by the foster care system who meets the eligibility requirements of subsection (a)(1)(B), (3), (4) and (6)(B) and (C) of this section shall be deemed eligible to participate in DC Promise.

(e) Subject to the availability of funds, the Mayor may expand by rulemaking eligibility for DC Promise to include individuals not eligible under the terms of this section.

Sec. 6. Conditions of participation.

(a) As a condition of participation, an individual eligible for federal financial aid shall apply for federal financial aid and provide proof to the Mayor of application for and the acceptance or denial of federal financial aid.

(b) To maintain DC Promise eligibility, an individual shall:

(1) Maintain at least half-time-status at an institution of higher education;

(2) Maintain satisfactory academic progress at the institution of higher education;

(3) Continue to be domiciled in the District of Columbia throughout attendance at the institution of higher education; and

(4) Meet any other requirements determined by the Mayor to be necessary or appropriate, as set forth in rulemaking.

Sec. 7. DC Promise grants.

(a) The maximum grant award available through the DC Promise program for an individual from a family that has an annual household taxable income:

(1) Of no more than 80% of the AMI, shall be $7,500 for any academic year with a lifetime total of not more than $37,500;

(2) Greater than 80% but less than or equal to 125% of the AMI, shall be $5,000 for any academic year with a lifetime total of not more than $25,000; and

(3) Greater than 125% but less than or equal to the maximum eligible income as set forth in regulations issued pursuant to this act, shall be $2,500 for any academic year with a lifetime total of not more than $12,500.

(b) In addition to the maximum grant awards set forth in subsection (a) of this section, up to $10,000 per academic year may be made available for a DC Promise participant who has been in the District's foster care system.

(c) No grant award shall be made available to an institution of higher education on behalf of a DC Promise participant more than 6 years from the date the individual was first enrolled in the institution of higher education.

(d) The Mayor shall prorate DC Promise grant awards for students who attend an eligible institution on less than a full-time basis; provided, that no grant award shall be available for a student who attends an eligible institution of higher education on less than a half-time basis.

(e)(1) A DC Promise grant awarded on behalf of a DC Promise participant shall be provided directly to the institution of higher education the DC Promise participant is attending to be used as follows:

(A) If the institution of higher education participates in DC TAG, the DC Promise grant shall be used to pay costs associated with non-tuition expenses that have not been satisfied by any:

(i) Federal grants or other federal non-loan assistance;

(ii) Need-based or merit-based grants from the institution of higher education;

(iii) Payments awarded pursuant to the DC TAG program;

(iv) Scholarships; or

(v) Other non-loan assistance.

(B) If the institution of higher education does not participate in the DC TAG program, the DC Promise grant shall be used to pay costs associated with tuition, fees, and non-tuition expenses that have not been satisfied by any:

(i) Federal grants or other federal non-loan assistance;

(ii) Need-based or merit-based grants from the institution of higher education;

(iii) Payments awarded pursuant to the DC TAG program;

(iv) Scholarships;

(v) Tuition or fee waivers;

(vi)Tuition remission that could only be used for tuition and fees; or

(vii) Other non-loan assistance.

(2) If the participant's eligible costs are satisfied by non-loan assistance, a DC Promise grant shall not be available for the period financed by the non-loan assistance.

(f) A DC Promise grant shall, in all cases, supplement and not supplant non-loan assistance that is provided to a DC Promise participant.

(g) The Mayor, in accordance with regulations issued pursuant to this act, may reduce grant awards if funds available to DC Promise are insufficient to meet the award levels established in this section and to prohibit an institution of higher education from receiving DC Promise grants based on a pattern of academic failure of DC Promise participants.

Sec. 8. Adult education.

(a) In addition to the grant awards available pursuant to section 7, the Mayor shall:

(1) Establish a grant award program within DC Promise to support post-secondary education and training opportunities for individuals who exceed the maximum eligibility age established in section 5(a)(6)(B); and

ENROLLED ORIGINAL

(2) By January 1, 2015, establish eligibility criteria and award levels for this program through rulemaking.

(b) The Mayor may use funds in the Fund to support grants awarded pursuant to this section.

Sec. 9. Rules.

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.*), shall issue rules to implement the provisions of this act.

Sec. 10. 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. 11. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated February 3, 2014, 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, 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
March 31,2014

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

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

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

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COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B20-735 End Youth Homelessness Amendment Act of 2014

Intro. 03-18-14 by Councilmembers Graham, Cheh and McDuffie and referred to the Committee on Human Services

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B20-743 Home Care Agency Licensing Clarification Act of 2014

Intro. 03-27-14 by Councilmember Evans and referred to the Committee on Health

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PROPOSED RESOLUTIONS

PR20-705 Apprenticeship Council Ioannis J. Xanthos Confirmation Resolution of 2014

Intro. 03-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-706 Apprenticeship Council Violet M. Carter Confirmation Resolution of 2014

Intro. 03-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PROPOSED RESOLUTIONS cont.

PR20-707 Sense of the Council on Anti-Homosexuality Laws Resolution of 2014

Intro. 03-20-14 by Councilmember Grosso and retained by the Council

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PR20-709 Public Charter School Board Enrique Cruz Confirmation Resolution of 2014

Intro. 03-24-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

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PR20-710 Trinity College Refunding Revenue Bonds Project Approval Resolution of 2014

Intro. 03-24-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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PR20-711 District of Columbia Boxing and Wrestling Commission Bryan Scott Irving Confirmation Resolution of 2014

Intro. 03-24-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

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

ANNOUNCES A PUBLIC HEARING ON

BILL 20-472 "TEMPORARY PROTECTION ORDER FIREARM RELINQUISHMENT AMENDMENT ACT OF 2013"; BILL 20-529 "DOMESTIC VIOLENCE CRIMINAL JUSTICE RESPONSE IMPROVEMENT AMENDMENT ACT OF 2013"; AND BILL 20-619 "JUSTICE FOR EX-SPOUSES ACT OF 2013"

Thursday, May 29, 2014
11 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Thursday, May 29, 2014, beginning at 11 a.m. in Room 500 of the John A. Wilson Building to receive public comment on Bill 20-472, Bill 20-529, and Bill 20-619.

Bill 20-472 would amend Title 16 of the D.C. Code to require an individual subject to a temporary protection order to relinquish the individual's firearms; and would amend "An Act to control the possession, sale, transfer and use of pistols and other dangerous weapons in the District of Columbia; to provide penalties, to prescribe rules of evidence, and for other purposes" to provide that an individual may not own or keep a firearm in his or her possession or under his or her control if the individual is subject to a court order requiring the individual to relinquish possession of any firearms. Bill 20-472 is available at http://dcclims1.dccouncil.us/lims/legislation.aspx?LegNo=B20-0472.

Bill 20-529 would amend the "Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001" to add representatives from the domestic violence coalition and the Office of Victim Services to the Council; and would amend the "Child Fatality Review Committee Establishment Act of 2001" to add representatives from the domestic violence coalition. Bill 20-529 is available at http://dcclims1.dccouncil.us/lims/legislation.aspx?LegNo=B20-0529.

Bill 20-619 would amend Title 16 of the District of Columbia Official Code to establish a civil cause of action for an individual whose former spouse has maliciously interfered with the individual's ability to remarry and to provide for the recovery of damages, including mental and emotional distress, and reasonable attorney's fees by the prevailing plaintiff. Bill 20-619 is available online at http://dcclims1.dccouncil.us/lims/legislation.aspx?LegNo=B20-0619

The Committee invites the public to testify. Those who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and provide your name, organizational affiliation and title (if any), telephone number, by 5 p.m. on Tuesday, May 27, 2014. Witnesses should bring 15 copies of their testimony. Individuals receive 3 minutes to provide oral testimony in order to provide each witness an opportunity to be heard. Those unable to attend are encouraged to provide written statements for the official record by 5 pm Monday, June 12, 2014. Written statements may be submitted via email to tshuford@dccouncil.us or mailed to Ms. Shuford, Room 109, 1350 Pennsylvania Ave., NW, Washington, DC, 20004.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 20-586, Historic District Neighbor Notification Act of 2013

&

Bill 20-720, Enhanced Notice Requirements for Historic District Development Amendment Act of 2014

on

Thursday, May 29, 2014
10:00 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 Bill 20-586, the "Historic District Neighbor Notification Act of 2013" and Bill 20-720, the "Enhanced Notice Requirements for Historic District Development Amendment Act of 2014." The public hearing will be held Thursday, May 29, 2014, at 10:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of **Bill 20-586** is to amend the Historic Landmark and Historic District Protection Act of 1978 (Act) to require neighbor notification of proposed alterations in a historic district which are referred to the Commission of Fine Arts for review. The stated purpose of **Bill 20-720** is to amend the Act to require stronger notice requirements for projects being undertaken in historic districts.

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 Tuesday, May 27, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Tuesday, May 27, 2014, 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. Copies of Bill 20-586 and Bill 20-720 can be obtained through the Legislative Services Division of the Secretary of the Council's office or at http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, June 12, 2014.

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

DAVID CATANIA
CHAIR, COMMITTEE ON EDUCATION
ANNOUNCES A PUBLIC HEARING

on

B20-723 "Special Education Student Rights Act of 2014", B20-724 "Enhanced Special Education Services Act of 2014", and B20-725 "Special Education Quality Improvement Act of 2014"

on

Thursday, June 19, 2014

10:00 am, in Hearing Room 500, John A. Wilson Building

1350 Pennsylvania Avenue NW

Washington, DC 20004

David Catania, Chair of the Committee on Education, announces a public hearing of the Committee on Education. The public hearing will take place at 10:00 am on Thursday, June 19, 2014, in Room 500 of the John A. Wilson Building.

At this public hearing, the Committee will hear from agency and public witnesses on the proposed legislation designed, among many things, to provide D.C. families with additional procedural safeguards; improve the Individualized Education Program process; expand the eligibility requirements for early intervention services; require schools to begin helping students with special needs transition to adulthood at age 14; eliminate a charter's option to choose DCPS as its LEA for special education purposes; and create a fund that captures savings from non-public tuition to specifically use towards capacity building in schools.

Those who wish to testify are asked to telephone the Committee on Education at 202-724-8061 or e-mail Jamaal Jordan, at jjordan@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business on Tuesday, June 17, 2014. Persons wishing to testify are encouraged, but not required, to submit 10 copies of written testimony. Individuals will have three minutes to present their testimony.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Education, Council of the District of Columbia, 1350 Pennsylvania Avenue, N.W., Suite 119, Washington, DC 20004. The record will close at 5:00 p.m. on Thursday, July 3, 2014.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARINGS
FISCAL YEAR 2015 PROPOSED BUDGET AND FINANCIAL PLAN, FISCAL YEAR 2015 BUDGET SUPPORT ACT OF 2014, FISCAL YEAR 2015 BUDGET REQUEST ACT OF 2014, AND COMMITTEE MARK-UP SCHEDULE

3/31/2014

SUMMARY

April 3, 2014	Mayor Transmits the Fiscal Year 2015 Proposed Budget and Financial
April 7, 2014	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2015 Proposed Budget and Financial Plan
April 9, 2014 to May 9, 2014	Committee Public Hearings on the "Fiscal Year 2015 Budget Request Act of 2014." (The Committees may also simultaneously receive testimony on the sections of the Fiscal Year 2014 Budget Support Acts that affect the agencies under each Committee's purview)
May 9, 2014	Committee of the Whole Public Hearing on the "Fiscal Year 2015 Budget Request Act of 2014" and the "Fiscal Year 2015 Budget Support Act of 2014"
May 13, 14, and May 15, 2014	Committee Mark-ups and Reporting on Agency Budgets for Fiscal Year 2015
May 28, 2014	Committee of the Whole and Council consideration of the "Fiscal Year 2015 Budget Request Act of 2014", and the "Fiscal Year 2015 Budget Support Act of 2014"
June 11, 2014	Council consideration of the "Fiscal Year 2015 Budget Request Act of 2014", and the "Fiscal Year 2015 Budget Support Act of 2014"

The Council of the District of Columbia hereby gives notice of its intention to hold public hearings on the FY 2015 Proposed Budget and Financial Plan, the "Fiscal Year 2015 Budget Request Act of 2014", and the "Fiscal Year 2015 Budget Support Act of 2014". The hearings will begin Wednesday, April 9, 2014 and conclude on Friday, May 9, 2014 and will take place in the Council Chamber (Room 500), Room 412, Room 120, or Room 123 of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

The Committee mark-ups will begin Tuesday, May 13, 2014 and conclude on Thursday, May 15, 2014 and will take place in the Council Chamber (Room 500) of the John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004.

Persons wishing to testify are encouraged, but not required, to submit written testimony in advance of each hearing to Nyasha Smith, Secretary to the Council of the District of Columbia; Suite 5; John A. Wilson Building; 1350 Pennsylvania Avenue, N.W.; Washington, DC 20004. If a written statement cannot be provided prior to the day of the hearing, please have at least 15 copies of your written statement available on the day of the hearing for immediate distribution to the Council. The hearing record will close two business days following the conclusion of each respective hearing. Persons submitting written statements for the record should observe this deadline. For more information about the Council's budget oversight hearing and mark-up schedule please contact the Council's Office of the Budget Director at (202) 724-8544.

ADDENDUM OF CHANGES TO THE PUBLIC HEARING SCHEDULE

New Date	***Original Date***	***Hearing***

PUBLIC HEARING SCHEDULE

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 7, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Subject**
10:00 a.m. - End	Committee of the Whole Public Briefing on the Mayor's Fiscal Year 2015 Proposed Budget and Financial Plan

COMMITTEE ON ECONOMIC DEVELOPMENT **Chairperson Muriel Bowser**

WEDNESDAY, APRIL 9, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Housing and Community Development
	Office of the Deputy Mayor for Planning & Economic Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Judah Gluckman, jgluckman@dccouncil.us or by calling 202-724-8052.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

WEDNESDAY, APRIL 9, 2014; Room 412	
Time	**Agency**
1:00 p.m. - 6:00 p.m.	Metropolitan Washington Council of Governments
	Office of Labor Relations
	Collective Bargaining
	District of Columbia Auditor
	Council of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Renee Johnson, rjohnson@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY **Chairperson Tommy Wells**

THURSDAY, APRIL 10, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Judicial Nomination Commission
	Department of Corrections
	Office of Returning Citizen Affairs
	Justice Grants Administration

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, tshuford@dccouncil.us or by calling 202-724-7808.

COMMITTEE ON HEALTH **Chairperson Yvette Alexander**

THURSDAY, APRIL 10, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Health Benefit Exchange Authority
	Deputy Mayor for Health and Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

FRIDAY, APRIL 11, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m.	District Department of the Environment
1:00 p.m.	Taxicab Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HUMAN SERVICES **Chairperson Jim Graham**

FRIDAY, APRIL 11, 2014; Room 412	
Time	**Agency**
2:00 p.m.	Department on Disability Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-724-8191.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 14, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - 6:00 p.m.	Retirement Board
	Retiree Health Contribution
	Teachers' Retirement System
	Police Officers' and Fire Fighters' Retirement System
	Office of Zoning
	Office on Planning

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jessica Jacobs, jjacobs@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Kenyan McDuffie**

MONDAY, APRIL 14, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Office of the Chief Technology Officer
	Board of Ethics and Government Accountability
	Office of Risk Management
	Disability Compensation Fund

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, rgulstone@dccouncil.us or by calling 202-478-2456.

COMMITTEE ON EDUCATION **Chairperson David Catania**

MONDAY, APRIL 14, 2014; Room 123	
Time	**Agency**
10:00 a.m. - End	State Board of Education
	Public Library System

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, jjordan@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON HUMAN SERVICES **Chairperson Jim Graham**

MONDAY, APRIL 14, 2014; Room 120	
Time	**Agency**
11:00 a.m. - End	Child and Family Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-724-8191.

COMMITTEE ON EDUCATION **Chairperson David Catania**

THURSDAY, APRIL 17, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	District of Columbia Public Schools (Public Witnesses Only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, jjordan@dccouncil.us or by calling 724-8061.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

THURSDAY, APRIL 17, 2014; Room 412	
Time	**Agency**
Noon - 3:00 p.m.	Office of Budget and Planning
	Contract Appeals Board
	Office of Contracting and Procurement
	Innovation Fund

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Evan Cash, ecash@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Kenyan McDuffie**

THURSDAY, APRIL 17, 2014; Room 123	
Time	**Agency**
10:00 a.m. - End	Office of Inspector General
	Public Employee Relations Board
	Department of General Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, rgulstone@dccouncil.us or by calling 202-478-2456.

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY **Chairperson Tommy Wells**

THURSDAY, APRIL 17, 2014; Room 120	
Time	**Agency**
10:00 a.m. - End	Office of Victim Services
	Department of Forensic Sciences
	Office of the Chief Medical Examiner
	Office of the Attorney General
	Corrections Information Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, tshuford@dccouncil.us or by calling 202-724-7808.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

MONDAY, APRIL 28, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
9:30 a.m. - 4:00 p.m.	University of the District of Columbia
	University of the District of Columbia Community College

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Evan Cash, ecash@dccouncil.us or by calling 202-724-8196.

COMMITTEE ON EDUCATION **Chairperson David Catania**

MONDAY, APRIL 28, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	District of Columbia Public Schools (Government Witnesses only)

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, jjordan@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Kenyon McDuffie**

MONDAY, APRIL 28, 2014, Room 123	
Time	**Agency**
10:00 a.m. - End	Advisory Neighborhood Commissions
	Office of City Administrator
	Executive Office of the Mayor
	- Office of Policy and Legislative Affairs
	- Serve DC
	- Office of Community Affairs
	- Advisory Commission on Caribbean Community Affairs
	- Advisory Committee to the Office of GLBT Affairs
	- Commission on African Affairs
	- Commission on African American Affairs
	- Commission on Asian and Pacific Islander Affairs
	- Commission on Women
	- Commission Latino Community Development
	- Interfaith Council
	- Office of Asian and Pacific Islander Affairs
	- Office of Gay, Lesbian, Bisexual, and Transgender Affairs
	- Office of Partnerships and Grants Services
	- Office of Religious Affairs
	- Office of Veteran's Affairs
	- Office on African Affairs
	- Office on Latino Affairs

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, rgulstone@dccouncil.us or by calling 202-478-2456.

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY **Chairperson Tommy Wells**

MONDAY, APRIL 28, 2014, Room 120	
Time	**Agency**
10:00 a.m. - End	Commission on Judicial Disabilities and Tenure
	Office of Human Rights
	Deputy Mayor for Public Safety and Justice
	Office of Administrative Hearings
	Homeland Security and Emergency Management Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, tshuford@dccouncil.us or by calling 202-724-7808.

COMMITTEE ON TRANSPORATION & THE ENVIRONMENT **Chairperson Mary Cheh**

TUESDAY, APRIL 29, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m.	District Department of Transportation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON FINANCE AND REVENUE **Chairperson Jack Evans**

TUESDAY, APRIL 29, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Commission on the Arts and Humanities
	Washington Convention and Sports Authority (Events DC)
	Destination DC

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON HEALTH **Chairperson Yvette Alexander**

TUESDAY, APRIL 29, 2014; Room 123	
Time	**Agency**
10:00 a.m. - End	Department of Healthcare Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON HUMAN SERVICES **Chairperson Jim Graham**

WEDNESDAY, APRIL 30, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
11:00 a.m. - End	Department of Human Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-724-8191.

COMMITTEE ON ECONOMIC DEVELOPMENT **Chairperson Muriel Bowser**

WEDNESDAY, APRIL 30, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Washington Area Metropolitan Transit Authority
	Office of Cable Television
	Housing Authority
	Housing Finance Agency

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Kate Kourtzman, kkourtzman@dccouncil.us or by calling 202-724-8052.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Kenyan McDuffie**

THURSDAY, MAY 1, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Public Service Commission
	Office of People's Counsel
	Office of Employee Appeals
	Secretary of the District of Columbia

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, rgulstone@dccouncil.us or by calling 202-478-2456.

COMMITTEE ON EDUCATION **Chairperson David Catania**

THURSDAY, MAY 1, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Office of State Superintendent of Education
	Non-Public Tuition
	Special Education Transportation
	Public Charter School Payments

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, jjordan@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

THURSDAY, MAY 1, 2014; Room 123	
Time	**Agency**
10:00 a.m.	Department of Motor Vehicles
1:00 p.m.	Department of Public Works

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HEALTH **Chairperson Yvette Alexander**

THURSDAY, MAY 1, 2014; Room 120	
Time	**Agency**
10:00 a.m. - End	Department of Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON HUMAN SERVICES **Chairperson Jim Graham**

FRIDAY, MAY 2, 2014; COUNCIL CHAMBER (Room 500)	
	Agency
11:00 a.m.	Office of Disability Rights **(Tentative)**
Noon - End	Department of Youth Rehabilitation Services

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Malcolm Cameron, mcameron@dccouncil.us or by calling 202-724-8191.

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY **Chairperson Tommy Wells**

FRIDAY, MAY 2, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	District of Columbia National Guard
	Metropolitan Police Department
	Office of Police Complaints
	Office of Unified Communications

Persons wishing to testify about the performance of any of the foregoing agencies may contact Tawanna Shuford, tshuford@dccouncil.us or by calling 202-724-7808.

COMMITTEE ON EDUCATION **Chairperson David Catania**

FRIDAY, MAY 2, 2014; Room 123	
Time	**Agency**
10:00 a.m. - End	Public Charter School Board
	Office of Deputy Mayor for Education

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Jamaal Jordan, jjordan@dccouncil.us or by calling 202-724-8061.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS **Chairperson Vincent Orange**

MONDAY, MAY 5, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Department of Consumer and Regulatory Affairs
	Department of Insurance, Securities and Banking
	Office of Tenant Advocate
	Alcoholic Beverage Regulatory Administration

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Faye Caldwell, fcaldwell@dccouncil.us (please cc: gfisher@dccouncil.us) or by calling 202-727-6683.

COMMITTEE ON HEALTH **Chairperson Yvette Alexander**

MONDAY, MAY 5, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Department of Behavioral Health

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT **Chairperson Mary Cheh**

MONDAY, MAY 5, 2014; Room 123	
Time	**Agency**
11:00 a.m. - End	Department of Parks and Recreation

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Aukima Benjamin, abenjamin@dccouncil.us or by calling 202-724-8062.

COMMITTEE ON HUMAN SERVICES **Chairperson Jim Graham**

MONDAY, MAY 5, 2014; Room 120	
Time	**Agency**
11:00 a.m. - End	Children and Youth Investment Trust Corporation

Persons wishing to testify about the performance of any of the foregoing agencies may contact Malcolm Cameron, mcameron@dccouncil.us or by calling at 724-8191.

COMMITTEE ON FINANCE AND REVENUE **Chairperson Jack Evans**

WEDNESDAY, MAY 7, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Office of Chief Financial Officer
	D.C. Lottery
	Real Property Tax Appeals Commission

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Sarina Loy, sloy@dccouncil.us or by calling 202-724-8058.

COMMITTEE ON GOVERNMENT OPERATIONS **Chairperson Kenyan McDuffie**

WEDNESDAY, MAY 7, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Department of Human Resources
	Board of Elections
	Office of Campaign Finance

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Ronan Gulstone, rgulstone@dccouncil.us or by calling 202-478-2456.

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY **Chairperson Tommy Wells**

THURSDAY, MAY 8, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Agency**
10:00 a.m. - End	Access to Justice
	Sentencing and Criminal Code Revision Commission
	Fire and Emergency Medical Services
	Criminal Justice Coordinating Council

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Tawanna Shuford, tshuford@dccouncil.us or by calling 202-724-7808.

COMMITTEE ON BUSINESS, CONSUMER & REGULATORY AFFAIRS **Chairperson Vincent Orange**

THURSDAY, MAY 8, 2014; Room 412	
Time	**Agency**
10:00 a.m. - End	Department of Small and Local Business Development
	Department of Employment Services
	Workforce Investment Council
	Office of Motion Picture and Television Development

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Faye Caldwell, fcaldwell@dccouncil.us (please cc: gfisher@dccouncil.us) or by calling 202-727-6683.

COMMITTEE ON HEALTH **Chairperson Yvette Alexander**

THURSDAY, MAY 8, 2014; Room 123	
Time	**Agency**
10:00 a.m. - End	Not-for-Profit-Hospital Corporation
	D.C. Office on Aging

Persons wishing to testify about the performance of any of the foregoing agencies may contact: Rayna Smith, rsmith@dccouncil.us or by calling 202-741-2111.

COMMITTEE OF THE WHOLE **Chairman Phil Mendelson**

FRIDAY, MAY 9, 2014; COUNCIL CHAMBER (Room 500)	
Time	**Subject**
10:00 a.m. - End	Committee of the Whole Public Hearing on the "Fiscal Year 2015 Budget Request Act of 2014", and the "Fiscal Year 2014 Budget Support Act of 2013"

COMMITTEE MARK-UP SCHEDULE

TUESDAY, MAY 13, 2014; COUNCIL CHAMBER (Room 500)

Time	Committee
Noon - 2:00 p.m.	Economic Development
2:00 p.m. - 4:00 p.m.	Health

WEDNESDAY, MAY 14, 2014; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Business, Consumer & Regulatory Affairs
12:00 p.m. - 2:00 p.m.	Finance & Revenue
2:00 p.m. - 4:00 p.m.	Judiciary & Public Safety
4:00 p.m. - 6:00 p.m.	Government Operations

THURSDAY, MAY 15, 2014; COUNCIL CHAMBER (Room 500)

Time	Committee
10:00 a.m. - 12:00 p.m.	Human Services
12:00 p.m. - 2:00 p.m.	Transportation and the Environment
2:00 p.m. - 4:00 p.m.	Education
4:00 p.m. - 6:00 p.m.	Committee of the Whole

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004 REVISED

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 20-601 "Sense of the Council for a Hearing on the CSX Virginia Avenue Tunnel Project Resolution of 2013"

on

Wednesday, April 30, 2014
10:00 a.m., Hearing Room 120, 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 20-601**, the "Sense of the Council for a Hearing on the CSX Virginia Avenue Tunnel Project Resolution of 2013." The public hearing will be held Wednesday, April 30, 2014, at 10:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW. **This notice has been revised to reflect a change in the date from March 25, 2014 to April 30, 2014.**

The stated purpose of **PR 20-601** is to the declare the sense of the Council that the Unites States House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit should hold a hearing on the CSX Virginia Avenue Tunnel Project. The project is located in Ward 6. The Committee of the Whole welcomes testimony regarding the proposed project.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Ms. Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Monday, April 28, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on April 28, 2014, the testimony will be distributed to Councilmembers before the hearing. **Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses**. By advance arrangement, a limited number of witnesses will be allowed longer presentations. Copies of PR 20-601, can be obtained through the Legislative Services Division of the Secretary of the Council or on http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, May 14, 2014.

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

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

REVISED

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

ANNOUNCES A PUBLIC ROUNDTABLE ON

PR 20-703, THE "FEMS REDISTRIBUTION RESOLUTION OF 2014"

Friday, April 11, 2014
1 PM
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 roundtable on Proposed Resolution 20-703, the "FEMS Redistribution Resolution of 2014". The hearing will be held on Friday, April 11, 2014, beginning at 1 p.m. in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, DC 20004. *This notice has been revised to correct the room number.*

The purpose of this roundtable is to receive public comment on the Mayor's proposal to amend the current Fire and Emergency Medical Services (FEMS) Ambulance deployment plan to allow for redistribution of equipment and personnel in order to improve capacity for responding to emergency medical service calls. PR 20-703 is available online at http://dcclims1.dccouncil.us/images/00001/20140320162229.pdf.

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 Wednesday, April 9, 2014. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public roundtable, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 pm Monday, April 21, 2014 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.

CORRECTION*

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	March 28, 2014
Petition Date:	May 12, 2014
Hearing Date:	May 27, 2014
Protest Hearing Date:	July 16, 2014

License No.:	ABRA-094712
Licensee:	Ima Pizza Store 9, LLC
Trade Name:	& Pizza
License Class:	Retailer's Class "C" Restaurant
Address:	1005 E Street NW
Contact:	Paul L. Pascal 202-544-2200

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for July 16, 2104 at 1:30 pm.

NATURE OF OPERATION

This is a new Retail Class "C" Restaurant that will prepare and sell pizza and prepared pizzeria food products. They will have recorded music. There are 20 seats, total occupancy 48.

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Thursday 7 am – 2 am, Friday and Saturday 7 am – 3 am

***REMOVAL OF THE REQUEST FOR ENTERTAINMENT**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, APRIL 9, 2014
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members: Nick Alberti, Donald Brooks, Herman Jones
Mike Silverstein, Hector Rodriguez, James Short

Protest Hearing (Status) **9:30 AM**
Case # 14-PRO-00016; Good Essential-U Street, LLC, t/a TICO, 1926 14th Street NW, License #93610, Retailer CR, ANC 2B
New Application

Show Cause Hearing* **10:00 AM**
Case # 13-CMP-00276; CP, Inc., t/a Café Paradiso, 2649 Connecticut Ave NW License #13111, Retailer CR, ANC 3C
Failed to Post Pregnancy Sign, Failed to Post License in a Conspicuous Place

Show Cause Hearing* **11:00 AM**
Case # 13-CMP-00219; Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, 1909 9th Street NW, License #89019, Retailer CR, ANC 1B
Operating After Legal Hours

Fact Finding Hearing* **11:30 AM**
First Street Fields, LLC, t/a First Street Fields, 25 Potomac Ave SE, License #94104, Retailer CX, ANC 6D
New License

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

Protest Hearing* **1:30 PM**
Case # 13-PRO-00165; Clover Capitol Hill, LLC, t/a Tortilla Coast, 400 1st Street SE, License #85922, Retailer CR, ANC 6B
Substantial Change (Entertainment Endorsement/Karaoke)

Fact Finding Hearing* **4:00 PM**
Chloe, LLC, t/a District, 2473 18th Street NW, License #92742, Retailer CR ANC 1C
Request to place License in Safekeeping

Board's Calendar
April 9, 2014

Protest Hearing* **4:30 PM**

Case # 14-PRO-00009; District Falafel I, LLC t/a Amsterdam Falafelshop
1830 14th Street NW, License #93449, Retailer DR, ANC 2B
New Application
***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Offical Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April 4, 2014
Petition Date:	May 19, 2014
Roll Call Hearing Date:	June 2, 2014
Protest Hearing Date:	July 23, 2014

License No.:	ABRA-094621
Licensee:	Bodega Market LLC
Trade Name:	Bodega Market
License Class:	Retailer's Class "B"
Address:	1136 Florida Avenue NE
Contact:	Bitaywork Debebe, 202-905-1802

WARD 5 ANC 5D SMD 5D06

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

NATURE OF OPERATION

New Grocery Store. Twenty-five percent of sales will be beer and wine and seventy-five percent of sales will be grocery items.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7am-12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
4/4/2014

Notice is hereby given that:

License Number: ABRA-086735 **License Class/Type: C Tavern**

Applicant: Fairgrounds, LLC

Trade Name: The Bullpen

ANC: 6D02

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

25 M ST SE, WASHINGTON, DC 20003

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

5/19/2014

HEARING WILL BE HELD ON

6/2/2014

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

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 12:30 am	11 am -12 am	11 am - 12 am
Monday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am
Tuesday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am
Wednesday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am
Thursday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am
Friday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am
Saturday:	8 am - 12:30 am	11 am - 12 am	11 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
4/4/2014

Notice is hereby given that:

License Number: ABRA-081924 **License Class/Type: C Tavern**

Applicant: Fairgrounds, LLC

Trade Name: The Bullpen

ANC: 6D02

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

26 N ST SE, WASHINGTON, DC 20003

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

5/19/2014

HEARING WILL BE HELD ON

6/2/2014

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

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 12:30 am	11 am -12 am	11 am - 12:30 am
Monday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am
Tuesday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am
Wednesday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am
Thursday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am
Friday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am
Saturday:	8 am - 12:30 am	11 am - 12 am	11 am - 12:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April 4, 2014
Petition Date:	May 19, 2014
Roll Call Hearing Date:	June 2, 2014
Protest Hearing Date:	July 23, 2014
License No.:	ABRA-094697
Licensee:	H Street Restaurant LLC
Trade Name:	DBGB Kitchen And Bar
License Class:	Retailer's Class "C" Restaurant
Address:	931 H Street NW
Contact:	Stephen O'Brien, Esq., 202-625-7700

WARD 2 ANC 2C SMD 2C01

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

NATURE OF OPERATION
New upscale fine dining brasserie-style restaurant specializing in French cuisine with Summer Garden seating 78 patrons and Sidewalk Café seating 44 patrons. Background music will be provided. Total occupancy load is 250.

HOURS OF OPERATION
Sunday through Saturday 7am-2am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION
Sunday through Saturday 8am-2am

HOURS OF OPERATION FOR THE SIDEWALK CAFÉ AND SUMMER GARDEN
Sunday through Saturday 7am-11pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR THE SIDEWALK CAFÉ AND SUMMER GARDEN
Sunday through Saturday 8am-11pm

***READVERTISEMENT**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: April 4, 2014
Petition Date: May 19, 2014
Hearing Date: June 2, 2014
Protest Date: July 23, 2014

License No.: ABRA-094510
Licensee: Lost and Found, LLC
Trade Name: Lost and Found
License Class: Retail Class "C" Tavern
Address: 1240 9th Street, N.W.
Contact: Brian Lenard, (301) 467-4284

WARD 2 ANC 2F SMD 2F06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30 pm on July 23, 2014.

NATURE OF OPERATION
New Tavern with heavy snacks recorded music. Occupancy load is 99. Entertainment with live music and small bands

HOURS OF OPERATION
Sunday 10 am – 2 am, Monday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday 10 am – 2 am, Monday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF ENTERTAINMENT
Sunday through Thursday 6 pm – 12 am, Friday and Saturday 6 pm – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: April 4, 2014
Petition Date: May 19, 2014
Hearing Date: June 2, 2014
Protest Date: July 23, 2014

License No.: ABRA-094603
Licensee: M & I, LLC
Trade Name: TBD
License Class: Retail Class "C" Tavern
Address: 637 Florida Avenue, N.W.
Contact: Andrew Kline, (202) 686-7600

WARD 1 ANC 1B SMD 1B01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30 pm on July 23, 2014.

NATURE OF OPERATION
New Tavern with American food specializing in brick over pizza. Live entertainment with DJ, dancing and cover charge. Occupancy load is 450. Summer Garden.

HOURS OF OPERATION
Sunday through Thursday 7 am – 2 am Friday and Saturday 7 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

HOURS OF OPERATION FOR SUMMER GARDEN (15 SEATS)
Sunday through Thursday 7 am – 2 am, Friday & Saturday 7 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION FOR SUMMER GARDEN
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
4/4/2014

Notice is hereby given that:

License Number: ABRA-075377 **License Class/Type: C Tavern**

Applicant: Assefa Kidane

Trade Name: Manchester Bar & Restaurant

ANC: 1B

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

944 FLORIDA AVE NW, Washington, DC 20002

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

5/19/2014

HEARING WILL BE HELD ON

6/2/2014

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

ENDORSEMENTS: Cover Charge, Dancing, Entertainment, Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8 am - 11 pm	10 am -11 pm	3 pm - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm	3 pm - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm	3 pm - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm	3 pm - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm	3 pm - 11 pm
Friday:	8 am - 1 am	10 am - 1 am	3 pm - 1 am
Saturday:	8 am - 1 am	10 am - 1 am	3 pm - 1 am

Days	Hours of Summer Garden Operation	Hours of Sales Summer Garden
Sunday:	8 am - 11 pm	10 am - 11 pm
Monday:	8 am - 11 pm	10 am - 11 pm
Tuesday:	8 am - 11 pm	10 am - 11 pm
Wednesday:	8 am - 11 pm	10 am - 11 pm
Thursday:	8 am - 11 pm	10 am - 11 pm
Friday:	8 am - 12 am	10 am - 12 am
Saturday:	8 am - 12 am	10 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April 4, 2014
Petition Date:	May 19, 2014
Roll Call Hearing Date:	June 2, 2014
Protest Hearing Date:	July 23, 2014
License No.:	ABRA-93610
Licensee:	Good Essen-U Street, LLC
Trade Name:	Tico
License Class:	Retailer's Class "C" Restaurant
Address:	1926 14th Street, NW
Contact:	Andrew Kline: 202-686-7600

WARD 2 ANC 2B SMD 2B09

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Roll Call Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled on July 23, 2014 at 1:30 pm.

NATURE OF OPERATION
Restaurant serving Mexican food. No Nude performances. No Dancing.
No Entertainment. Occupancy Load 250. Seating 150.

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday: 8am-2am, Friday and Saturday: 8am-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April 4, 2014
Petition Date:	May 19, 2014
Hearing Date:	June 2, 2014
Protest Hearing Date:	July 23, 2014

License No.:	ABRA-094764
Licensee:	Tipsy Peacock, LLC
Trade Name:	Tipsy Peacock, LLC
License Class:	Retailer's Class "C" Tavern
Address:	2915 Georgia Avenue NW
Contact:	Donna Colaco, Managing Member 202-556-3115

WARD 1 ANC 1B SMD 1B10

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for July 23, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new Retail Class "C" Tavern. The establishment will serve coffee, tea, small dishes and alcoholic beverages. Maximum number of seats is 50, total load 65, Summer Garden seats 15. Establishment will offer entertainment from DJs and musicians. The estimated dimension of the dance floor will be 14ft x 10 ft on the ground floor.

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Thursday 12 pm -1 am Friday and Saturday 12 pm – 2 am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6 PM

Sunday through Saturday 6 pm – 12 am

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES FOR THE **SUMMER GARDEN**

Sunday through Thursday 12 pm – 1 am Friday and Saturday 12 pm -2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: April 4, 2014
Petition Date: May 19, 2014
Hearing Date: June 2, 2014
Protest Date: July 23, 2014

License No.: ABRA-094602
Licensee: Lemo Group, LLC
Trade Name: Wapa Cafe
License Class: Retail Class "C" Restaurant
Address: 6230 Georgia Avenue, N.W.
Contact: Maria D'Jesus, (202) 291-2224

WARD 4 ANC 4A SMD 4A02

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30pm on July 23, 2014.

NATURE OF OPERATION
New Restaurant with breakfast, lunch, and dinner with brunch on Sunday. Occupancy load is 18.

HOURS OF OPERATON
Sunday 8 am -4 pm, Monday through Saturday 8 am – 12 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday 8 am -4 pm, Monday through Saturday 8 am – 12 am

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES

NOTICE OF PUBLIC HEARING

D.C. Department on Disability Services, Rehabilitation Services Administration to Hold a Public Hearing on the Title I State Plan Vocational Rehabilitation Services and the Title VI-B State Plan Supplement for Supported Employment Services

Monday, May 5, 2014, 12 noon
Rehabilitation Services Administration
1125 15th St., NW
Room 1A
Washington, DC 20005

Pursuant to the Rehabilitation Act of 1973, as amended, and its implementing federal regulations, the D.C. Rehabilitation Services Administration will hold a public hearing on May 5, 2014, at 12 noon to obtain input on RSA's proposed changes to RSA's Order of Selection Policy, Supported Employment Policy, and Postsecondary Education and Training Procedures, as mandated by governing U.S. Department of Education regulations.

The purpose of the hearing is to ensure that recommendations are received from consumers, service providers, advocacy organizations and other interested individuals on how the agency can better achieve its goals in better assisting consumers.

Persons wishing to review the State Plan may access it online by visiting the Agency's website at www.dds.dc.gov or in person at the Martin Luther King, Jr. Memorial Library, 901 G Street, N.W., Washington, DC 20001. A hard copy and CD of the State Plan will be located at the Reference Desk of Adaptive Services, Washingtonian Division at the Martin Luther King, Jr. Memorial Library.

Individuals who wish to testify should contact Ms. Cheryl Bolden, no later than 4:45pm by April 21, 2014, and should provide the following: name(s); address (es); telephone number(s); organizational affiliation(s); accommodation need(s); if any, and two (2) copies of the proposed testimony. Ms. Bolden can be reached via email at cheryl.bolden@dc.gov or via telephone 202-442-8411; 711 Relay; or 202-540-8468 (VP) can be reached Monday through Friday, from 9-3 pm. All testimony will be limited to ten (10) minutes.

Individuals who wish to submit comments can begin doing so starting April 4, 2014. Comments can be submitted two ways: either by email or mail to:

District of Columbia Department on Disability Services
Rehabilitation Services Administration
1125 15th Street, NW, 9th Floor
Washington, DC 20005

BOARD OF ELECTIONS

NOTICE OF PUBLIC HEARING
RECEIPT AND INTENT TO REVIEW INITIATIVE MEASURE

The Board of Elections shall consider whether the proposed measure, "Fair Minimum Wage Act 2014," is a proper subject matter for initiative at a public hearing on Wednesday, May 7, 2014 at 10:30 a.m. in the Board's hearing room, located at One Judiciary Square, 441 4th Street, N.W., Suite 280, Washington, D.C.

The Board requests that written memoranda addressing the issue of whether the proposed measure is a proper subject matter for initiative be submitted for the record no later than 4:00 p.m. on Wednesday, April 30, 2014 to the Board of Elections, Office of the General Counsel, One Judiciary Square, 441 4th Street, N.W., Suite 270, Washington, D.C. 20001.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number, and name of the organization represented, if any, by calling the Office of the General Counsel at 727-2194 no later than Thursday, May 1, 2014 at 4:00 p.m.

The Short Title, Summary Statement, and Legislative Text of the proposed measure read as follows:

SHORT TITLE

"Fair Minimum Wage Act of 2014"

SUMMARY STATEMENT

This initiative would increase the District of Columbia minimum wage to the greater of $12.50 per hour or $2.00 above the federal minimum wage by 2017; and would increase the minimum wage that employers have to pay employees who receive tips to 70% of the full minimum wage by 2021. Starting in 2018, the minimum wage would be adjusted each year to keep pace with any increase in the cost of living. The increased minimum wage levels would not apply to employees of the District of Columbia government or of D.C. government contractors.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA, That this measure may cited as the "Fair Minimum Wage Act of 2014"

--D.C. Code §32-1003--

Section 1. Section 4 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003), as amended by the Minimum Wage Amendment Act of 2013 (D.C. Law 20-459) is further amended as follows:

(a) Subsection (a) is amended by adding a new paragraph (7) and amending paragraphs (3), (4), (5) and (6) thereof to read as follows"

"(3) Except as provided in subsection (j) of this section, as of January 1, 2015, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $10.00 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 *et seq.*) plus $2.00, whichever is greater."

"(4) Except as provided in subsection (j) of this section, as of July 1, 2015, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $10.75 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 *et seq.*) plus $2.00, whichever is greater."

"(5) Except as provided in subsection (j) of this section, as of January 1, 2016, the

minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $11.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 *et seq.*) plus $2.00, whichever is greater."

"(6) Except as provided in subsection (j) of this section, as of January 1, 2017, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $12.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 *et seq.*) plus $2.00, whichever is greater."

"(7) Except as provided in subsection (j) of this section, beginning on January 1, 2018 and no later than January 1 of each successive year, the minimum wage shall be the greater of (i) the minimum wage that was in effect as of January 1of the preceding year, increased in proportion to the twelve-month percentage increase, if any, in the Consumer Price Index for all Urban Consumers (CPI-U) for the Washington-Baltimore Region as published by the Bureau of Labor Statistics of the United States Department of Labor, using the most recent twelve-month period for which data is available at the time that the calculation is made, and rounded to the nearest five cents, or (ii) the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 *et seq.*) plus $2.00. Each such increase in the minimum wage shall be calculated and announced by October 1 of the preceding year."

(b) Subsection (f) is amended by redesignating subsection (f) thereof as subsection (f)(1) and adding to subsection (f) the following new paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) to read as follows:

"(2) Except as provided in subsection (j) of this section, as of January 1, 2015, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than four dollars ($4.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(3) Except as provided in subsection (j) of this section, as of July 1, 2015, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than four dollars and fifty cents ($4.50) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been

paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(4) Except as provided in subsection (j) of this section, as of January 1,2016, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than five dollars ($5.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(5) Except as provided in subsection (j) of this section, as of January 1,2017, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than six dollars ($6.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the

employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(6) Except as provided in subsection (j) of this section, as of January 1,2018, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than seven dollars ($7.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(7) Except as provided in subsection (j) of this section, as of January 1,2019, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than eight dollars ($8.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the

employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(8) Except as provided in subsection (j) of this section, as of January 1,2020, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than nine dollars ($9.00) an hour, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and the amount such employee would have been paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

"(9) Except as provided in subsection (j) of this section, as of January 1,2021, an employer in the District of Columbia may, in lieu of the minimum wage required to be paid under subsection (a) of this section, pay to any employee who customarily and regularly receives more than thirty dollars ($30.00) a month in gratuities a cash wage of no less than 70 percent of the minimum wage established by subsection (a) of this section, provided that the employee actually receives gratuities in an amount at least equal to the difference between the cash wage paid and the minimum wage as set by subsection (a) of this section. This wage rate shall be calculated and announced by October 1 of the preceding year. If, however, such employee during any week actually receives gratuities in an amount less than the difference between the cash wage paid and

the amount such employee would have been paid had the employee been paid the minimum wage established by subsection (a) of this section, the employer shall pay the employee the amount of such difference."

(c) A new subsection (i) is added to read as follows:

"(i) Subsection (c) of this section shall apply with respect to an individual who is employed as a private household worker who lives on the premises of the employer or who is employed as a companion for the aged or infirm."

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

"(j) The provisions of paragraphs (3), (4), (5), (6) and (7) of subsection (a) of this section, of paragraphs (2), (3), (4), (5), (6), (7), (8) and (9) of subsection (f) of this section, of subsection (i) of this section, and of subsection (k) of this section shall not apply to employees of the District of Columbia, or to employees employed to perform services provided under contracts with the District of Columbia. Such employees shall continue to be subject to the minimum wage requirements of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code §§ 32-1003, et. seq.), as they existed prior to the effective date of the Fair Minimum Wage Act of 2014, and to the requirements of all other applicable laws, regulations or policies relating to wages or benefits, including but not limited to, the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 2-220.1, et seq.)."

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

"(k) Notwithstanding any regulation to the contrary, subsections (a) and (c) of this section shall apply with respect to all newly hired persons 18 years of age or older."

--D.C. Code §32-1004--

Section 3. Section 5 of the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1004), is amended by striking out subsection (b)(5).

Section 4. Nothing in this act shall be construed as preventing the Council of the District of Columbia from increasing minimum wages or benefits to levels in excess of those provided for in this Act for any category of employees, including but not limited to those employees described in D.C. Official Code section 32-1003(j) as added by this Act.

Section 5. If any section of this act or its application to any persons or circumstances is held invalid, the remainder of this measure, or the application of its provisions to other persons or circumstances, shall not be affected. To this end, the provisions of this act are severable.

Section 6.This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Government Reorganization Act (Home Rule Act), approved December 24, 1971 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)).

DISTRICT DEPARTMENT OF THE ENVIRONMENT

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

State Implementation Plan

Notice is hereby given that a public hearing will be held on Monday, April 28, 2014, at 5:30 p.m. in Room 555 at 1200 First Street NE, 5th Floor, in Washington, D.C. 20002. This hearing provides interested parties an opportunity to comment on the proposed revision to the District of Columbia's (District) State Implementation Plan (SIP), found at 40 C.F.R. Part 52 Subpart J, regarding certain federal Clean Air Act (CAA) requirements under Sections 110(a)(2)(A) to (M); and a proposed submission of an Air Quality Emergency Episode Plan to the District's SIP for approval to meet the requirements of 40 C.F.R. Part 51, Subpart H for all applicable pollutants. Once the District has completed its procedures, the proposed revisions to the SIP will be submitted to the EPA for approval.

This SIP revision is a compilation of elements that describe how the District is implementing the "infrastructure" elements of the 2008 8-hour ozone national ambient air quality standards (NAAQS). Once approved by EPA, it will provide a federally enforceable written confirmation of how the District will continue to comply with the §110(a)(2) requirements of the CAA for ground-level ozone.

This SIP revision also includes a contingency plan, in case of an air pollution emergency, for pollutants for which the District is classified as a Priority I area at 40 C.F.R. § 52.471, including ground-level ozone. This revision is intended to meet the requirements of 40 C.F.R. Part 51, Subpart H, for all pollutants and will also satisfy the "infrastructure" element of § 110(a)(2)(G) for the 2008 ozone NAAQS.

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

Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers and affiliation, if any, to Mr. William Bolden at the DDOE address above or at william.bolden@dc.gov by 4:00 p.m. on April 28, 2013. Interested parties may also submit written comments to Ms. Jessica Daniels, Monitoring and Assessment Branch, Air Quality Division, DDOE, at the same address or by email at jessica.daniels@dc.gov. Questions about this SIP revision should be directed to Mr. Rama S. Tangirala by phone at 202-535-2989 or email at rama.tangirala@dc.gov, or Ms. Daniels at 202-741-0862 or jessica.daniels@dc.gov. No comments will be accepted after April 28, 2013.

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 landmark in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 14-06: International Telecommunications Satellite Organization Headquarters
3400 International Drive (4000 Connecticut Avenue) NW
Square 2055, Lots 803, 804, 805, 806 and part of 807

Case No. 14-09: Hebrew Home for the Aged/Jewish Social Services Agency
1125-1131 Spring Road NW
Square 2902, Lots 804, 805 and 807

The hearing will take place at **9:00 a.m. on Thursday, May 22, 2014**, 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 (10C 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.

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

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

NOTICE OF PUBLIC HEARING

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 hearing will be held at the Office of Planning, 1100 4th Street SW, Suite E650.

Hearing Date:	**Monday, May 12, 2014 at 1:30 p.m.**
Case Numbers:	H.P.A. 14-221 and 14-222
Address:	2234 and 2238 Martin Luther King Jr. Avenue (and 1328 W Street) SE
Squares/Lots:	Square 5802, Lots 811 and 978 (and Square 5781, Lot 847)
Applicants:	Chapman Development and the District of Columbia Department of Housing and Community Development
Type of Work:	Raze/move – Relocation of two contributing buildings to another lot in order to construct a new building on their sites

Affected Historic Property: Anacostia Historic District
Affected ANC: 8A

The Applicant's claim is that the "issuance of the permit to relocate the buildings is 'necessary in the public interest because it is necessary to construct a project of special merit' and '[t]hat the issuance of the permit or admission of the subdivision to record is necessary in the public interest because it is consistent with the purposes of the Act as set forth in D.C. Official Code § 6-1101(b).'"

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapters 4 and 30), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations."

Interested persons or parties are invited to participate in and offer testimony at this hearing. Any person wishing to testify in support of or opposition to the application may appear at the hearing and give evidence without filing in advance. However, any affected person who wishes to be recognized as a party to the case is required to file a request with the Mayor's Agent at least ten working days prior to the hearing. This request shall include the following information: 1) his or her name and address; 2) whether he or she will appear as a proponent or opponent of the application; 3) if he or she will appear through legal counsel, and if so, the name and address of legal counsel; and 4) a written statement setting forth the manner in which he or she may be affected or aggrieved by action upon the application and the grounds upon which he or she supports or opposes the application. Any requests for party status should be sent to the Mayor's Agent at 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at (202) 442-8800.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTICE OF NEW CHARTER SCHOOL APPLICATIONS

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice of eight New Charter School Applications submitted to PCSB on March 3, 2014 to establish new public charter schools in the District of Columbia, detailed on the following page. PCSB will hold public hearings on April 22 and 23, 2014 at Carlos Rosario International Public Charter School located at 1100 Harvard Street NW. The schedule of these hearings is below. To read the full charter applications, visit www.dcpcsb.org. To submit public comment on the applications, email applications@dcpcsb.org or mail written comment to 3333 14th Street NW, Suite 210, Washington DC 20010. For more information, please contact Charlie Sellew at 202-328-2660.

Public Hearing: Tuesday, April 22, 2014
Panel 1 – Alternative and Adult Education Programs
Date and Time: Tuesday, April 22 6:30-8:30pm
Proposed Public Charter Schools: Xcelerate Institute, Children's Guild DC, Monument Academy

Panel 2 – Middle and High School Programs
Date and Time: Tuesday, April 22 8:30-10:30pm
Proposed Public Charter Schools: Washington Global, One World, Washington Leadership

Public Hearing: Wednesday, April 23, 2014
Panel 3 – Early Childhood and Elementary School Programs
Date and Time: Wednesday, April 23 6:30-8:00pm
Proposed Public Charter Schools: Educare, SPACE

Proposed Public Charter School	Proposed Grades | Ages Served	Educational Program	Proposed Ward	1st Year Grades (No. Students)	Grades at Capacity (No. Students)
Children's Guild DC	Grades K-8	Special needs focused elementary and middle school	7	K-8 (450)	K-8 (450)
Educare	PK3 - PK4	Early childhood	7	PK3-PK4 (119)	PK3-PK4 (119)
Monument Academy	Grades 5-12	Weekday residential middle and high school program, especially for students with the foster care system	To be determined (TBD)	5 (40)	5-12 (317)
One World	Grades 5-8	Middle school with focus on global, social, economic and environmental issues through artistic expression and academics	TBD	5-8 (100)	5-8 (300)
SPACE (Student Parent Achievement Center of Excellency)	Grades PK3-8	Arabic immersion early childhood and elementary school	3	PK3-5 (180)	PK3-8 (440)
Washington Global	Grades 6-8	Middle school with focus on developing critical and creative students	4, 5, 7, or 8	6-7 (100)	6-8 (240)
Washington Leadership	Grades 9-12	Hands-on public service learning academy, with digital learning component	6 or 7,8	11 (100)	9-12 (400)
Xcelerate Institute	Ages 18 & up	Adult Education	1, 4	160	400 students

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF PUBLIC HEARING

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice that the Board will hold a public hearing to discuss the charter amendment request of Democracy Prep Congress Heights Public Charter School to increase its enrollment ceiling and modify its educational program in accordance with its potential acquisition of Imagine Southeast Public Charter School. The public hearing will be held on Wednesday, April 23, 2014 at 6:00 PM at Carlos Rosario International Public Charter School located at 1100 Harvard Street, NW. For further information, please contact Ms. Monique Miller, New School Development Manager, at 202-328-2660.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF PUBLIC HEARING

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Wednesday, March 27, 2014, of a public hearing regarding the future operations of Options Public Charter School. The hearing will be held on Wednesday, April 23, 2014 at 6:00 PM at Carlos Rosario International Public Charter School, located at 1100 Harvard Street, NW. For further information, or to sign up to testify at this hearing, please 202-328-2660, or sign up via email at public.comment@dcpcsb.org. Written testimony will be accepted up to five business days after the hearing, and can be submitted to public.comment@dcpcsb.org as well.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PUBLIC HEARING

Wednesday, May 14, 2014

6:30 p.m.

Department of Employment Services
4058 Minnesota Avenue, NE, Suite 1300 (Community Room)
Washington, D.C. 20019

The Board of Directors of the District of Columbia Water and Sewer Authority (the Board), in accordance with 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; D.C. Official Code § 34-2202.16) (2001 Ed.) will conduct a public hearing at the above stated date, time, and place, to receive comments on proposed rules, which, if adopted, would 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 District of Columbia Municipal Regulations (DCMR). The proposed rules were published in the January 17, 2014 edition of the *D.C. Register*, at 61 DCR 438-441.

Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

Each individual or representative of an organization who wishes to present testimony at the public hearing is requested to furnish his or her name, address, telephone number and name of the organization (if any) by calling (202) 787-2330 or emailing the request to Lmanley@dcwater.com no later than 5:00 p.m., Monday May 12, 2014. Other persons wishing to present testimony may testify after those on the witness list. Persons making presentations are urged to address their statements to relevant issues.

Oral presentations by individuals will be limited to five (5) minutes. Oral presentations made by representatives of an organization will not be longer than ten (10) minutes. Statements should summarize extensive written materials so there will be time for all interested persons to be heard. Oral presentations will be heard and considered, but for accuracy of the record, all statements should be submitted in writing. The hearing will end when all persons wishing to make comments have been heard.

Written testimony may be submitted by mail to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, or by email to Lmanley@dcwater.com. Such written testimony is to be clearly marked "Written Testimony for Public Hearing, May 14, 2014" and received by 5:00 p.m. Monday, May 12, 2014.

PUBLIC HEARING ON
Proposed Retail Rate & Fee Increases
for Fiscal Year 2015

Wednesday, May 14, 2014

6:30 p.m.

AGENDA

1. Call to Order.....Chairman

2. Opening Statement .....Chairman

3. DC Water Management Presentation.....George Hawkins, General Manager
   On Proposed FY 2015 Retail Rate & Fee Increases Mark Kim, Chief Financial Officer

4. Presentation by Independent Consultant..... Amawalk Consulting
   On Proposed FY 2015 Retail Rate & Fee Increases

5. Public Witnesses
   - Pre-registered Speakers
   - Other comments (time permitting)

6. Closing Statement .....Chairman

7. Adjournment .....Chairman

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JUNE 3, 2014
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

A.M.

WARD TWO

18763 ANC-2B — **Application of Charles N. Cononi and Jannelle J. Jones,** pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 403, and a variance from the court requirements under section 406, for a rear deck addition serving a one-family row dwelling in the DC/R-5-B District at premises 1512 P Street, N.W. (Square 195, Lot 99).

WARD SIX

18762 ANC-6E — **Application of William Seven Street LLC,** pursuant to 11 DCMR §§ 3104.1, and 3103.2, for variances from the lot occupancy requirements under section 772, the rear yard requirements under section 774, the court requirements under subsection 776.4, and the nonconforming structure provisions under subsection 2001.3, and a special exception from the roof structure requirements under subsection 411.1, to allow the addition to and renovation of an existing building for commercial and residential use in the C-2-A District at premises 1547 7th Street, N.W. (Square 445, Lot 197).

WARD TWO

18764 ANC-2A — **Application of Hillel at the George Washington University**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for variances from the floor area ratio (section 402), Lot occupancy (section 403), rear yard (section 404) and parking (subsection 2101.1) requirements, and a special exception from the roof structure setback requirements (section 411), to permit the construction of a new four (4) story Hillel building in the R-5-D District at premises 2300 H Street, N.W. (Square 42, Lots 820 and 840).

WARD THREE

18765 ANC-3B **Application of Fulton Land Trust**, pursuant to 11 DCMR § 3104.1, for a special exception under section 353, and a variance from the lot occupancy requirements under section 403, to construct a new six (6) unit apartment house in the R-5-A District at premises 3919 Fulton Street, N.W. (Square 1806, Lot 32).

WARD FOUR

18766 ANC-4C **Application of New Southern Rock Baptist Church,** pursuant to 11 DCMR §§ 3104.1, and 3103.2, for a special exception from section 216, and a variance from subsection 216.3, to allow a church outreach ministry program in the R-3 District at premises 4510 8th Street, N.W. (Square 3017, Lot 33).

WARD SIX

THIS APPLICATION WAS RE-SCHEDULED FROM THE MAY 20, 2014, PUBLIC HEARING SESSION:

18757 ANC-6B **Application of Tahmina Proulx**, pursuant to 11 DCMR § 3104.1, for a special exception for a fast food (pizza) establishment under section 733, in the C-2-A District at premises 1400 Pennsylvania Avenue, S.E. (Square 1065NE, Lot 19).

PLEASE NOTE:

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

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

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**. This form may be obtained from the Office of Zoning at the address stated below

or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, VICE CHAIRPERSON, MARNIQUE Y. HEATH, 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.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Behavioral Health (Department), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the "Fiscal Year 2014 Budget Support Act of 2013", effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12472 (September 6, 2013)), hereby gives notice of the adoption of a new Chapter 62, "Reimbursement Rates for Services Provided by the Department of Behavioral Health- Certified Substance Abuse Providers" to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The purpose of these rules is to set forth the reimbursement rates for services provided to eligible District residents by Department-certified substance abuse treatment facilities and programs which have an active Human Care Agreement with the Department to provide such services. The Department was created effective October 1, 2013 by a merger between the Department of Mental Health and the Addiction, Prevention and Recovery Administration of the Department of Health in order to allow for better integrated services for individuals with mental health and substance abuse issues. The merger required changes in provider Human Care Agreements and the development of uniform rates to avoid disparate rates across the provider network.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 18, 2013, at 60 DCR 14839, and a Notice of Second Emergency and Proposed Rulemaking was published February 28, 2014 at 61 DCR 1773. No comments were received and no changes have been made to the proposed rules. The Director adopted these rules as final on March 31, 2014, and they shall become effective on the date of publication in the *D.C. Register*.

Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations is amended by adding a new Chapter 62 to read as follows:

CHAPTER 62 REIMBURSEMENT RATES FOR SERVICES PROVIDED BY THE DEPARTMENT OF BEHAVIORAL HEALTH CERTIFIED SUBSTANCE ABUSE PROVIDERS

6200 PURPOSE

6200.1 This chapter establishes the reimbursement rate for services provided to eligible District residents by Department of Behavioral Health (Department) certified substance abuse providers, as this term is defined in Chapter 23 (Certification Standards for Substance Abuse Treatment Facilities and Programs) of Title 29 (Public Health) of the District of Columbia Municipal Regulations (DCMR).

6200.2 Nothing in this chapter grants to a certified substance abuse provider the right to reimbursement for costs of substance abuse services and supports. Eligibility for reimbursement is determined solely by the Human Care Agreement between the Department and the certified substance abuse provider, and reimbursement is

subject to the availability of appropriated funds.

6201 REIMBURSEMENT RATE

6201.1 Reimbursement for substance abuse services shall be as follows:

SERVICE	CODE	RATE per UNIT
Breathalyzer Urinalysis	**H0003**	**15.00**
Breathalyzer Specimen Collection	**H0048**	**8.80**
Case Management	**H0006**	**20.02**
Case Management (HIV)	**H0006V8**	**20.02**
Treatment Planning	**T1007**	**22.00**
Treatment Planning - Complex IP	**T1007TG**	**24.00**
Counseling Group	**H0005**	**10.45**
Counseling Group - Psycho-educational	**H2027**	**3.51**
Counseling Group - Psycho-educational (HIV)	**H2027V8**	**3.51**
Counseling On-site - Behavioral Health Therapy	**H0004**	**20.31**
Counseling, Family with Client	**H0004HR**	**20.31**
Counseling, Family without Client	**H0004HS**	**20.31**
Crisis Intervention	**H0007HF**	**33.57**
CS Peer Support Group - Substance Abuse	**H0038HFHQ**	**8.67**
CS Peer Support - Substance Abuse	**H0038HF**	**19.19**

SERVICE	CODE	RATE per UNIT
Detoxification - Outpatient - Ambulatory	H0014	24.53
Detoxification - Residential - Acute care	H0010	605.00
Behavioral Health Screening - Determine eligibility	H0002HF	85.00
Behavioral Health Screening - Evaluate Risk Rating	H0002TG	140.00
Diagnostic Assessment - Community-Based	H0001HF	425.00
Diagnostic Assessment - Ongoing - Modify Tx Plan	H0001TS	385.00
Diagnostic Assessment - In-depth Exam - Youth	H0001HA	240.00
Diagnostic Assessment - Ongoing Follow-up - Youth	H0001HATS	85.00
Intensive Outpatient - All Inclusive	H0015	74.25
Intervention - Substance Abuse Recognition	H0022	27.17
Dose - Methadone - Clinic or Take-Home	H0020	8.58
Medication Assisted Therapy	H0020HF	8.58
Medication Management - Adult	H0016HF	35.72
Medication Management - Youth	H0016HAHF	38.96
Outpatient Therapy -	H0015HA	164.61

SERVICE	CODE	RATE per UNIT
Intensive		
Prenatal Care, at-risk Assessment	**H1000**	**142.56**
Prenatal Care, at-risk enhanced service - Ante-partum Management	**H1001**	**80.08**
Prenatal Care, at-risk enhanced service - Care Coordination	**H1002**	**80.08**
Prenatal Care, at-risk enhanced service - Education	**H1003**	**80.08**
Prenatal Care, at-risk enhanced service - follow-up Home Visit	**H1004**	**100.76**
Residential - Long term Therapeutic	**H0019**	**132.55**
Residential - Long term Room & Board	**H0043**	**72.90**
Residential Treatment - Inclusive	**H0018**	**136.84**
Residential Treatment - Women w/1 child	**H0019UN**	**210.00**
Residential Treatment - Women w/2 children	**H0019UP**	**215.00**
Residential Treatment - Women w/3 children	**H0019UQ**	**220.00**
Residential Treatment - Women w/4 or more children	**H0019UR**	**225.00**

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; D.C. Official Code § 2-559 (2012 Repl.)), hereby gives notice of a correction to a Notice of Final Rulemaking issued by the Department of Health Care Finance (DHCF) and published in the *D.C. Register* on March 28, 2014 at 61 DCR 2605.

The rulemaking amends Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), to add a new Section 1929, Residential Habilitation Services, to establish standards governing reimbursement of residential habilitation services.

The text of the Notice of Second Emergency and Proposed Rulemaking, previously published on February 14, 2014 at 61 DCR 1331, was published in place of the Final Rulemaking in error. The correct version, a Notice of Final Rulemaking, is published in this week's *D.C. Register*. The rules are effective upon publication.

Any questions or comments regarding this notice shall be addressed by mail to Victor L. Reid, Esq., Administrator, Office of Documents and Administrative Issuances, 441 4th Street, N.W., Suite 520 South, Washington, D.C. 20001, email at victor.reid@dc.gov, or via telephone at (202) 727-5090.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of a new Section 1929, entitled "Residential Habilitation Services", of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

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

The ID/DD Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, for a five-year period beginning November 20, 2012. Residential habilitation services provide essential supports whereby groups of individuals share a home managed by a provider agency. These rules amend the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that the quarterly reports shall be submitted to the Department on Disability Services (DDS) Service Coordinator within seven (7) business days after the end of each quarter, instead of thirty (30) business days; (3) establishing that providers are only required to maintain and not submit daily progress notes to the DDS Service Coordinator; (4) mandating that residential habilitation providers shall submit verification of passing the DDS Provider Certification Review (PCR) for In-Home Supports or Respite for the past three (3) most recent years, and requiring providers with less than three (3) years of PCR certification to provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD Waiver population and evidence of PCR certification for each year that the provider was enrolled as an Waiver provider in the District of Columbia; (5) deleting the requirement that providers are required to maintain a daily log of a person's scheduled community activities for monitoring and audit reviews; and (6) updating definitions for terms and phrases used in this chapter.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on September 20, 2013 at 60 DCR 13216, and a Notice of Second Emergency and Proposed Rulemaking was published February 14, 2014 at 61 DCR 001331. No comments were received and no changes have been made. The Director adopted these rules as final on March 21, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 946 (RESIDENTIAL HABILITATION) of Chapter 9 (MEDICAID PROGRAM) of Title 29 (PUBLIC WELFARE) of the DCMR is repealed.

A new Section 1929 (RESIDENTIAL HABILITATION) is added to Chapter 19 (HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES) of Title 29 (PUBLIC WELFARE) of the DCMR to read as follows:

1929 RESIDENTIAL HABILITATION SERVICES

1929.1 The purpose of this section is to establish standards governing Medicaid eligibility for residential habilitation services under the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of residential habilitation services.

1929.2 Residential habilitation services are supports provided in a home shared by at least four (4), but no more than six (6) persons, to assist each person in acquiring, retaining, and improving self-care, daily living, adaptive and other skills needed to reside successfully in a shared home within the community.

1929.3 In order to be eligible for Medicaid reimbursement, residential habilitation services shall be:

(a) Provided to a person with a demonstrated need for continuous training, assistance, and supervision; and

(b) Authorized in accordance with each person's Individual Support Plan (ISP) and Plan of Care.

1929.4 In order to be eligible for Medicaid reimbursement, the Waiver provider shall:

(a) Use observation, conversation, and other interactions, guided by the person-centered thinking process, to develop a functional assessment of the person's capabilities within the first month of the person residing in the home;

(b) Participate in the development of the ISP and Plan of Care to ensure that the ISP goals are clearly defined;

(c) Assist in the coordination of all services that a person may receive by ensuring that all recommended and accepted modifications to the ISP are included in the current ISP;

(d) Develop a support plan with measurable outcomes using the functional analysis, the ISP, Plan of Care, and other information as appropriate, to

enable the person to safely reside in the community and maintain their health;

(e) Propose modifications to the ISP and Plan of Care, as appropriate;

(f) Review the person's ISP and Plan of Care goals, objectives, and activities at least quarterly and more often, as necessary, and submit the results of these reviews to the DDS Service Coordinator within seven (7) business days of the end of each quarter; and

(g) Keep daily progress notes as described under Subsection 1929.15(h).

1929.5 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives hands-on support, habilitation, and other supports, when appropriate, which shall include, but not be limited to, the following categories of support:

(a) Eating and food preparation;

(b) Personal hygiene;

(c) Dressing;

(d) Monitoring health and physical conditions;

(e) Assistance with the administration of medication;

(f) Communications;

(g) Interpersonal and social skills;

(h) Household chores;

(i) Mobility;

(j) Financial management;

(k) Motor and perceptual skills;

(l) Problem-solving and decision-making;

(m) Human sexuality;

(n) Opportunities for social, recreational, and religious activities utilizing community resources; and

(o) Appropriate and functioning adaptive equipment.

1929.6 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall ensure that each person receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care. Professional services may include, but are not limited to, the following disciplines:

(a) Medicine;

(b) Dentistry;

(c) Education;

(d) Nutrition;

(e) Nursing;

(f) Occupational therapy;

(g) Physical therapy;

(h) Psychology;

(i) Social work;

(j) Speech, hearing and language therapy; and

(k) Recreation.

1929.7 In order to be eligible for Medicaid reimbursement, each Waiver provider shall ensure that transportation services are provided in accordance with Section 1904 (Provider Qualifications) of Chapter 19 of Title 29 DCMR.

1929.8 In order to be eligible for Medicaid reimbursement, each Waiver provider of residential habilitation services shall:

(a) Comply with Sections 1904 (Provider Qualifications) and 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR;

(b) Provide verification of passing the Department on Disability Services (DDS), Provider Certification Review (PCR) for In-Home Supports or Respite for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of one (1) year of experience providing residential or respite services to the ID/DD

population and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia;

(c) Ensure that each residence is accessible to public transportation and emergency vehicles;

(d) Have an executed, signed, current Human Care Agreement with DDS, if required by DDS; and

(e) Be licensed as a Group Home for a Person with an Intellectual Disability (Group Home for Mentally Retarded Persons [GHMRP]) in the District of Columbia or a similarly licensed group home in other states.

1929.9 In order to be eligible for Medicaid reimbursement, the Waiver provider shall demonstrate that a satisfactory rating was received pursuant to the DDS PCR process described under § 1929.8, unless waived by the Director or Deputy Director of DDS.

1929.10 In order to be eligible for Medicaid reimbursement, each GHMRP located in the District of Columbia shall provide services to at least four (4), but no more than six (6) persons and shall meet the following requirements:

(a) Be licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq*.), no later than sixty (60) days after approval as a Medicaid provider; and

(b) Comply with the requirements set forth in Chapter 35 of Title 22B of the District of Columbia Municipal Regulations (DCMR).

1929.11 In order to be eligible for Medicaid reimbursement, each out-of-state group home shall serve at least four (4), but no more than six (6) persons. Each group home located out-of-state shall be licensed or certified in accordance with the host state's laws and regulations, consistent with the terms and conditions set forth in an agreement between the District of Columbia and the host state. Each out-of-state provider shall comply with the following additional requirements:

(a) Submit to DDS a certificate of registration to transact business within the District of Columbia issued pursuant to D.C. Official Code § 29-105.3 *et seq*.;

(b) Remain in good standing in the jurisdiction where the program is located;

(c) Submit to DDS a copy of the annual certification or survey performed by the host state and provider's corrective action plan, if applicable; and

(d) Allow authorized agents of the District of Columbia government, federal government, and governmental officials of the host state, full access to all sites and records for audits and other reviews.

1929.12 In order to be eligible for Medicaid reimbursement, each Direct Support Professional (DSP) providing residential habilitation services as an agent or employee of a provider shall meet all of the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the DCMR.

1929.13 An acuity evaluation to set support levels shall be recommended by the Support Team and approved by the DDS Waiver Unit. DDS shall review current staffing levels, available health and behavioral records, and any available standardized acuity instrument results to determine if a person has a health or behavioral acuity that requires increased supports. A person may be assessed at a support level that is consistent with their current staffing level, if other acuity indicators are not in place.

1929.14 The minimum daily ratio of on-duty direct care staff to persons enrolled in the Waiver and present in each GHMRP that serves persons who are not determined by DDS to require a higher acuity level, shall not be less than the following:

(a) 1:6 during the waking hours of the day, approximately 6:00 a.m. to 2:00 p.m., when persons remain in the GHMRP during the day;

(b) 1:4 during the period of approximately 2:00 p.m. to 10:00 p.m.; and

(c) 1:6 during the sleeping hours of the night, approximately 10:00 p.m. to 6:00 a.m.

1929.15 In order to be eligible for Medicaid reimbursement, each provider of residential habilitation services shall maintain the following documents for monitoring and audit reviews:

(a) A current written staffing plan;

(b) A written explanation of staffing responsibilities when back-up staff is unavailable and the lack of immediate care poses a serious threat to the person's health and welfare;

(c) Daily attendance rosters;

(d) The financial documents required pursuant to the DDS Personal Funds policy available at http://dds.dc.gov;

(e) The records of any nursing care provided pursuant to physician ordered protocols and procedures, charting, and other supports indicated in the physician's orders relating to development and management of the Health Management Care Plan;

(f) Any documents required to be maintained pursuant to the DDS Health and Wellness Standard Policy available at http:// dds.dc.gov;

(g) The daily progress notes, containing the following information:

(1) A written record of visitors and the person's participation in the visit;

(2) A list of all community activities attended by the person and the response to those activities;

(3) A list of the start and end time of any services received by the person residing in the residential habilitation facility including the DSP's signature; and

(4) A list of any matter requiring follow-up on the part of the service provider or DDS.

(h) Any documents required to be maintained under Section 1909 (Records and Confidentiality of Information) of Chapter 19 of Title 29 of the DCMR.

1929.16 Each provider shall comply with the requirements described under Section 1908 (Reporting Requirements) and Section 1911 (Individual Rights) of Chapter 19 of Title 29 of the DCMR.

1929.17 Residential habilitation services shall not be billed concurrently with the following Waiver services:

(a) Environmental Accessibility Adaptation;

(b) Vehicle Modifications;

(c) Supported Living;

(d) Respite;

(e) Host Home;

(f) Shared Living;

(c) In-Home Supports;

(h) Personal Emergency Response System; and

(i) Skilled Nursing.

1929.18 Residential habilitation services shall not be reimbursed when provided by a member of the person's family.

1929.19 Reimbursement for residential habilitation services shall not include:

(a) Cost of room and board;

(b) Cost of facility maintenance, upkeep, and improvement;

(c) Activities for which payment is made by a source other than Medicaid;

(d) Time when the person is in school or employed; and

(e) Time when the person is hospitalized, on vacation, and not in the care of the residential habilitation provider, or any period when the person is not residing at the GHMRP, and not in the care of the residential habilitation provider, except during an emergency situation when the person is temporarily residing in a hotel or other facility.

1929.20 The reimbursement rate for residential habilitation services shall only include time when staff is awake and on duty and shall include:

(a) All supervision provided by the direct support staff;

(b) All nursing provided in the residence for medication administration, physician ordered protocols and procedures, charting, other supports as per physician's orders, and maintenance of Health Management Care Plan;

(c) Transportation;

(d) Programmatic supplies and fees;

(e) Quality assurance costs, such as Incident Management Systems and staff development; and

(f) General administrative fees for Waiver services.

1929.21 The reimbursement rate for residential habilitation services shall be a daily rate.

1929.22 The reimbursement rate for residential habilitation services for a GHMRP with four (4) persons shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred and twenty eight dollars ($228.00) for a direct care staff support ratio of 1:4 for all awake and overnight hours;

(b) The Moderate Support Level 2 daily rate shall be three hundred sixty dollars ($360.00) for a direct care staff support ratio of 1:4 for awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(c) The Enhanced Moderate Support Level 3 daily rate shall be four hundred and two dollars ($402.00) for a direct care staff support ratio of 2:4 staff awake overnight and 2:4 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(d) The Intensive Support daily rate shall be five hundred and twenty dollars ($520.00) for a direct care staff support ratio of 2:4 staff awake overnight and 3:4 during all awake hours when persons are in the home and adjusted for increased absenteeism; and

(e) The Intensive Support daily rate shall be five hundred and sixty-nine dollars and forty three cents ($569.43) for twenty-four (24) hour licensed practical nursing services.

1929.23 The reimbursement rate for residential habilitation services for a GHMRP with five (5) to six (6) persons shall be as follows:

(a) The Basic Support Level 1 daily rate shall be two hundred eighty-one dollars ($281.00) for a direct care staff support ratio of 1:5 or 1:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home;

(b) The Moderate Support Level 2 daily rate shall be three hundred twenty-two dollars ($322.00) for a direct care staff support ratio of 2:5 or 2:6 staff awake overnight and 2:5 or 2:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(c) The Enhanced Moderate Support Level 3 daily rate shall be three hundred eighty dollars ($380.00) for a staff support ratio of 2:5 or 2:6 staff awake overnight and 3:5 or 3:6 during all awake hours when persons are in the home and adjusted for increased absenteeism;

(d) The Intensive Support daily rate shall be four hundred eighty-one dollars ($481.00) for increased direct care staff support for sleep hours to 2:5 or

2:6 for staff awake overnight support and 4:5 or 4:6 during all awake hours when persons are in the home and adjusted for increased absenteeism; and

(e) The Intensive Support daily rate shall be five hundred and thirty-one dollars and four cents ($531.04) for twenty-four (24) hour licensed practical nursing services.

1929.24 The reimbursement rates assume a ninety-three (93) percent annual occupancy, and unanticipated absence from day/vocational services or employment due to illness, and planned absence for holidays.

1929.25 Daily activities may include but are not limited to day habilitation, employment readiness, individualized day supports, supported employment or employment.

Section 1999 (DEFINITIONS) is amended by adding the following:

Group Home for a Person with an Intellectual Disability (GHMRP) - A community residence facility, other than an intermediate care facility for persons with intellectual or developmental disabilities, that provides a homelike environment for at least four (4) but no more than six (6) related or unrelated persons with intellectual disabilities who require specialized living arrangements and maintains necessary staff, programs, support services, and equipment for their care and habilitation.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.), hereby gives notice of the repeal of Section 929 and adoption of a new Section 1933 (Supported Employment Services - Individual And Small Group Services) of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish standards governing the participation requirements for providers who provide supported employment services to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) and to establish conditions of participation for providers.

The Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services', Centers for Medicare and Medicaid Services for a five-year period beginning November 20th, 2012. These rules amend the previously published final rules by: (1) clarifying words and/or phrases to reflect more person-centered language and simplify interpretation of the rule; (2) establishing that a small group supported employment setting is one that consists of two (2) to eight (8) workers instead of a group solely consisting of workers with disabilities to promote interaction with individuals without disabilities; and (3) amending the definition of group supported employment.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on February 21st, 2014 at 61 DCR 001476. No comments were received and no changes have been made.

The Director adopted these rules as final on March 26, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Section 929 (Supported Employment) of Chapter 9 (Medicaid Program), Title 29 (Public Welfare)of the DCMR is repealed and a new Section 1933 of Chapter 19 (Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities), Title 29, is added to read as follows:

1933 SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES

1933.1 This section shall establish standards governing Medicaid eligibility for supported employment services for persons enrolled in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and shall establish conditions of participation for providers of supported employment services.

1933.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks.

1933.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group.

1933.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to eight (8) workers.

1933.5 In order to receive Medicaid reimbursement for supported employment services, the person receiving services shall:

(a) Be interested in obtaining full-time or part-time employment in an integrated work setting; and

(b) Demonstrate that a previous application for the District of Columbia Rehabilitation Services Administration (RSA) funded supported employment services was made, by the submission of a letter documenting either ineligibility for RSA services or the completion of RSA services with the recommendation for long-term employment support.

1933.6 Medicaid reimbursable supported employment services shall:

(a) Provide opportunities for persons with disabilities to achieve successful integrated employment consistent with the person's goals;

(b) Be recommended by the person's Support Team; and

(c) Be identified in the person's Individual Support Plan (ISP), Plan of Care, and Summary of Supports.

1933.7 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

(a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;

(b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to eight (8) workers with disabilities to place persons in an integrated community based work setting; and

(c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

1933.8 Medicaid reimbursable supported employment services for the entrepreneurial model shall include the following activities:

(a) Assisting the person to identify potential business opportunities;

(b) Assisting the person in the development of a business and launching a business;

(c) Identification of the supports that are necessary in order for the person to operate the business; and

(d) Ongoing assistance, counseling and guidance once the business has been launched.

1933.9 Medicaid reimbursable supported employment services shall consist of the following activities:

(a) Intake and assessment;

(b) Job placement and development;

(c) Job training and support; and

(d) Long-term follow-along services.

1933.10 Intake and assessment services determine the interests, strengths, preferences, and skills of the person in order to ultimately obtain competitive employment and to further identify the necessary conditions for the person's successful participation in employment. The purpose of the intake and assessment is to facilitate and ensure a person's success in integrated competitive employment.

1933.11 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:

(a) Conducting a person-centered vocational and situational assessment;

(b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a positive personnel profile;

(c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;

(d) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations, such as the Senior Core of Retired Executives, that provide information specific to owning and operating a business; and

(e) Providing individual or group employment counseling.

1933.12 After intake and completion of the assessments, each provider of Medicaid reimbursable supported employment services shall complete and deliver a comprehensive vocational assessment report to the Department on Disability Services (DDS) Service Coordinator that includes the following information:

(a) Employment-related strengths and weaknesses of the person;

(b) Availability of family and community supports for the person;

(c) The assessor's concerns about the health, safety, and wellbeing of the person;

(d) Accommodations and supports that may be required for the person on the job; and

(e) If a specific job or entrepreneurial effort has been targeted:

(1) Individualized training needed by the person to acquire and maintain skills that are commensurate with the skills of other employees;

(2) Anticipated level of interventions that will be required for the person by the job coach;

(3) Type of integrated work environment in which the person can potentially succeed; and

(4) Activities and supports that are needed to improve the person's potential for employment.

1933.13 Medicaid reimbursable job placement and development includes activities to facilitate the person's ability to work in a setting that is consistent with their strengths, abilities, priorities, and interests, as well as the identification of potential employment options.

1933.14 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

(a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;

(b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;

(c) Assisting the person with the completion of job applications;

(d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth;

(e) Visiting employment sites and attending employment networking events;

(f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, utilizing the internet, magazines, newspapers, and other publications as prospective employment leads;

(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;

(h) Negotiating employment terms with or on behalf of the person;

(i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business; and

(j) Working with the person and employer to develop group placements.

1933.15 Job training and support activities are those activities designed to assist and support the person after he or she has obtained employment. The expectation is that the person's reliance upon job training and support activities will decline as a result of job skills training and support from supervisors and co-workers in the existing work setting to maintain employment.

1933.16 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

(a) On-the-job training in work and work-related skills required to perform the job;

(b) Work site support that is intervention-oriented and designed to enhance work performance and modify inappropriate behaviors;

(c) Supervision and monitoring of the person in the workplace;

(d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs;

(e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;

(f) Ongoing benefits counseling;

(g) Consulting with other professionals and the person's family, as necessary; and

(h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary.

1933.17 Medicaid reimbursable long-term follow-along activities are stabilization services needed to support and maintain a person in an integrated competitive employment site or in their own business.

1933.18 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

(a) Periodic monitoring of job stability;

(b) Intervening to address issues that threaten job stability;

(c) Providing re-training, cross-training, and additional supports as needed, when job duties change;

(d) Facilitating integration and natural supports at the job site;

(e) Benefits counseling prior to and after the person reaches Substantial Gainful Activity (SGA) to ensure a person maintains eligibility for benefits and that earnings are being properly reported; and

(f) Facilitating job advancement, professional growth, and job mobility.

1933.19 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed. Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.

1933.20 Medicaid reimbursable small group supported employment intake and assessment, and job placement services shall be billed for each person in the group on an individual basis. Small group supported employment services shall enable the person enrolled into the workforce to become part of an integrated work setting. Services eligible for Medicaid reimbursement shall include the following:

(a) Job training and support in an integrated setting; and

(b) Long-term follow-along services.

1933.21 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with DDS and the employer to provide functional adaptive modifications for each person to accomplish basic work related tasks at the work site.

1933.22 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with the employer to ensure that each person has an emergency back-up plan for job training and support.

1933.23 Each provider of Medicaid reimbursable supported employment services shall be a Waiver provider agency and shall comply with the following requirements:

(a) Be a member of the person's Support team;

(b) Be certified by the U.S. Department of Labor, if applicable; and

(c) Comply with the requirements described under Section 1904 (Provider Qualifications) and Section 1905 (Provider Enrollment Process) of Chapter 19 of Title 29 of the DCMR.

1933.24 Each professional or paraprofessional providing Medicaid reimbursable supported employment services for a Waiver provider shall meet the requirements in Section 1906 (Requirements for Direct Support Professionals) of Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR).

1933.25 Professionals authorized to provide Medicaid reimubursable supported employment activities without supervision shall include the following:

(a) A Vocational Rehabilitation Counselor;

(b) An individual with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities in supported employment;

(c) An individual with a bachelor's degree and two years of experience working with persons with intellectual and developmental disabilities in supported employment; or

(d) A Rehabilitation Specialist.

1933.26 Paraprofessionals shall be authorized to perform Medicaid reimbursable supported employment activities under the supervision of a professional. Supervision is not intended to mean that the paraprofessional performs supported employment activities in the presence of the professional, but rather that the paraprofessional has a supervisor who meets the qualifications of a professional as set forth in Section 1933.25.

1933.27 Paraprofessionals authorized to perform Medicaid reimbursable supported employment activities are as follows:

(a) A Job Coach; or

(b) An Employment Specialist.

1933.28 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:

(a) DDS provides a written service authorization before the commencement of services;

(b) The provider conducts a comprehensive vocational assessment and develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;

(c) The service name and provider delivering services are identified in the ISP and Plan of Care;

(d) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received;

(e) Services shall not conflict with the service limitations described under Sections 1933.29-1933.38; and

(f) If extended services are required, the provider shall submit a supported employment extension request. The request is a written justification that

must be submitted to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of Supported Employment hours.

1933.29 Supported employment services shall not qualify for Medicaid reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973, enacted September 26, 1973, Section 110 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq*.), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, enacted October 30, 1990, 20 U.S.C. 1401 (16) and (71) (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq*.), hereinafter referred to as the "Acts".

1933.30 Court-ordered vocational assessments authorizing intake and assessment services qualify for Medicaid reimbursement under the Waiver if services provided through programs funded under the Acts referenced in Section 1933.29 cannot be provided in the timeframe set forth in the Court's Order.

1933.31 Medicaid reimbursement is available for supported employment services that are provided either exclusively as a vocational service or in combination with individualized day supports, employment readiness, or day habilitation services if provided during different periods of time, including during the same day.

1933.32 Medicaid reimbursement is not available if supported employment services are provided in specialized facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.

1933.33 Medicaid reimbursable supported employment services shall not include payment for supervision, training, support, adaptations, or equipment typically available to other workers without disabilities in similar positions.

1933.34 Medicaid reimbursable supported employment services shall be provided for a maximum of eight (8) hours per day, five (5) days per week. The provider shall submit a supportive employment extension request to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of supported employment hours. Failure to submit the request within the allotted time period may result in a denial of the request for services. Any denial of the request for services shall be accompanied by a written notice which meets the requirements set forth in 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55. A copy of the notice shall be maintained in the person's records.

1933.35 Medicaid reimbursement is not available for incentive payments, subsidies, or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;

(b) Payments that are processed and paid to users of supported employment service programs;

(c) Payment for vocational training that is not directly related to the person's success in the supported employment services program; and

(d) Payments to persons employed by the Waiver provider.

1933.36 In accordance with the provisions described under Section 1933.35(d), if a person receiving supported employment services secures employment with the Waiver provider, the employment shall not substitute for that person’s full-time or part-time supported employment service in an integrated work setting.

1933.37 Medicaid reimbursement is not available for time spent in transportation to and from the employment program and shall not be included in the total amount of services provided per day. Time spent in transportation to and from the program for the purpose of training the person on the use of transportation services is Medicaid reimbursable and may be included in the number of hours of services provided per day for a period of time specified in the person's ISP and Plan of Care.

1933.38 Medicaid reimbursement shall only be available for adaptations, supervision and training for supported employment services provided at the work site in which persons without disabilities are employed. Medicaid reimbursement shall not be available for supervisory activities, which are rendered as a normal part of the business setting.

1933.39 Medicaid reimbursable intake and assessment activities shall be billed at the unit rate. This service shall not exceed three-hundred and twenty (320) units or eighty (80) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate shall be forty-two dollars and sixty-eight cents ($42.68) per hour if performed by a professional listed in Section 1933.25 of this rule. The Medicaid reimbursement rate shall be twenty-five dollars and thirty-two cents ($25.32) per hour if performed by a paraprofessional listed in Section 1933.26 under the supervision of a professional.

1933.40 Medicaid reimbursable job placement activities shall be billed at the unit rate. This service shall not exceed nine-hundred and sixty (960) units or two-hundred and forty (240) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The Medicaid reimbursement rate shall be forty-two dollars and sixty-eight cents ($42.68) per hour when performed by a professional listed in Section 1933.25 of this rule. The Medicaid reimbursement rate shall be twenty-five dollars and thirty-two cents ($25.32) per hour if performed by a paraprofessional listed in Section 1933.26 under the supervision of a professional.

1933.41 Medicaid reimbursable job training and support activities shall not exceed one thousand, two- hundred and eighty (1280) units per ISP year.

1933.42 Medicaid reimbursable follow-along activities shall not exceed one-thousand four hundred and eight (1408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals shall be five dollars and twenty-two cents ($5.22) per unit and twenty dollars and eighty eight cents ($20.88) per hour.

1933.43 If extended job placement services, job training, support activities, and follow-along activities are required, the provider shall submit a written justification in support of the extended services to the DDS Service Coordinator and the DDA waiver office a minimum of fifteen (15) business days before the exhaustion of the approved services. Failure to submit the request within the allotted time period may result in a denial of the approval of services. Any denial of the request for services shall be accompanied by a written notice which meets the requirements set forth in 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55. A copy of the notice shall be maintained in the person's records. Services shall continue if DDS does not respond to the written request within ten (10) business days of receipt.

1933.44 Medicaid reimbursable small group supported employment services related job training and support activities shall not exceed one-thousand, two-hundred and eighty (1280) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate shall be three dollars and eighty one cents ($3.81) per billable unit or fifteen dollars and twenty four cents ($15.24) per hour, when performed by a professional or paraprofessional listed in Sections 1933.25 and 1933.26.

1933.45 Medicaid reimbursable small group supported employment related long–term follow-along activities shall not exceed one-thousand four-hundred and eight (1408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The Medicaid reimbursement rate for both professionals and paraprofessionals shall be five dollars and twenty-two cents ($5.22) per unit and twenty dollars and eighty-eight cents ($20.88) per hour. Job coach services may be billed while supporting a group of two (2) to eight (8) people enrolled in the Waiver.

Section 1999 (DEFINITIONS) is amended by adding the following:

Employment Specialist - An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a four-year college degree and certification from the Commission on Rehabilitation

Counselor Certification or a similar national organization; or a high school graduate with three (3) years of experience in a supported employment program or equivalent.

Group Supported Employment - An integrated setting in competitive employment in which a group of two to four individuals or four to eight individuals are working at a particular work setting. The individuals may be disbursed throughout the company or among workers without disabilities.

Individual Supported Employment - A supported employment strategy in which a job coach places a person into competitive or customized employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

Integrated Work Setting - A work setting that provides a person enrolled in the Waiver with daily interactions with other employees without disabilities and/or the general public.

Job Coach – An individual with a four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent; an individual with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or an individual with a high school degree and three (3) years of experience in a supported employment program, or equivalent.

Long-term follow along activities - Ongoing support services considered necessary to assure job retention.

Person centered – An approach that focuses on what is important to the individual based on his or her needs, goals, and abilities rather than using a general standard applicable to all people.

Rehabilitation Specialist - An individual with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Situational Assessment - A type of assessment that provides the person an opportunity to explore job tasks in work environments in the

community to identify the type of employment that may be beneficial to the person and the support required by each person to succeed in his/her work environment. This assessment shall include observation of the person at the work site, identification of work site characteristics, training procedures, identification of supports needed for the person, and recommendations and plans for future services, including the appropriateness of continuing supported employment.

Substantial Gainful Activity (SGA) - Activities that the person is engaged in that result in a sum earnings greater than a fixed monthly amount, set by federal standards and determined by the nature of one's disability and the national wage index.

Vocational Assessment - An assessment designed to assist a person, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment should address the person's life, relationships, challenges, and perceptions as they relate to potential sources of community support and mentorship.

Vocational Rehabilitation Counselor - An individual with a Master's degree in Vocational Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(2), 11 and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2); 50-310(a); 50-320 (2012 Repl. & 2013 Supp.)), hereby gives notice of the adoption of amendments to Chapters 1 (District of Columbia Taxicab Commission: Rules of Organization), 8 (Operation of Taxicabs), 11 (Public Vehicles for Hire Consumer Service Fund) and 12 (Luxury Services – Owners, Operators and Vehicles) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The amendments: (1) clarify that the Chairman shall designate in an administrative order the employee who shall serve as Secretary to the Commission; (2) update existing fees authorized by the Commission; (3) implement new fees that may be charged by the Office; and (4) correct inconsistencies in this title as it relates to the application and amount of the passenger surcharge.

These rules were originally adopted on September 11, 2013 as an Emergency and Proposed Rulemaking, became effective on Friday, September 13, 2013, and were published in the *D.C. Register* on September 27, 2013 at 60 DCR 13446. No comments were received on, and no modifications have been made to, the amendments which are adopted in this final rulemaking. However, other portions of the emergency and proposed rulemaking have been modified and are the subject of a separate second notice of emergency and proposed rulemaking adopted by the Commission that will be published separately in the *D.C. Register*.

This rulemaking was adopted as final on March 12, 2014, and will take effect upon publication in the *D.C. Register*.

Chapter 1, DISTRICT OF COLUMBIA TAXICAB COMMISSION: RULES OF ORGANIZATION, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, is amended as follows:

Subsection 101.2 is amended to read as follows:

101.2 The Secretary to the Commission shall be an employee of the Office of Taxicabs, designated by his or her position title in an administrative order issued by the Chairman. Contact information for the Secretary shall be posted on the Commission's website.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

Subsection 827.1, Annual Operator ID License, is amended to add the following category:

New Face Card with security features (D.C. OneCard): $12.50 per card

Chapter 11, PUBLIC VEHICLES FOR HIRE CONSUMER SERVICE FUND, is amended as follows:

Subsection 1103.1, PASSENGER SURCHARGE, is amended to read as follows:

1103.1 Each trip provided in a public vehicle for hire licensed by the Office, other than a limousine, shall be assessed a twenty-five cent ($0.25) per trip passenger surcharge.

A new Section 1104 is added to read as follows:

1104 FEES

1104.1 The following fees, in addition to any other fees prescribed by this title, and in accordance with applicable law, shall be paid to the Commission and deposited into the Public Vehicle for Hire Consumer Service Fund:

Proposed MTS Application Fee (§ 403.3):	$1000
Per Vehicle Registration Fee -- Initial and Renewal Applications (§§ 501 or 1202)	$50
Late Renewal Application Fee – Taxicab Company, Association or Fleet; LCS Organization (§ 501.9 or 1202.9)	$250
Late Renewal Application Fee – Public Vehicle for Hire Owner/Operator (§ 1014.3)	$25 (1 – 15 days late) $50 (16 – 30 days late) $100 (31 – 45 days late) $150 (45 – 90 days late)
Late Renewal Application Fee – PSP or DDS (§§ 406 or 1604.6)	$500
Transfer of Ownership – Taxicab Company, Association, or Fleet (§ 507.2)	$500
Digital Dispatch Service Amend Fee (§§ 1604.3(c) and 1604.5)	$300
Digital Dispatch Service Application Fee – (§ 1604.3(c))	$500

Pair of vehicle registration stickers	$1.00
Taximeter cable seals (§ 1323)	$0.50

Chapter 12, LUXURY CLASS SERVICES, is amended as follows:

Subsection 1202.1 is amended to read as follows:

1202.1 No LCS organization, or owner of an independently operated LCS vehicle, shall operate in the District without first paying the applicable fee and obtaining a certificate of authority to operate. Applicable fees are as follows:

(a) LCS organizations: four hundred seventy five dollars ($475), and;

(b) Owners of independently operated vehicles: two hundred fifty dollars ($250).

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective November 1, 1975 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a) and 38-1202.06(3), (13) (2012 Repl.)), hereby gives notice of its intent to amend Chapter 8 (Information, Records, and Publications) of Subtitle B (University of the District of Columbia), Title 8 (Higher Education), of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rule is to update University Freedom of Information Act regulations to be consistent with current law.

The substance of the rules adopted herein was published in the *D.C. Register* on September 27, 2013, at 60 DCR 13404, for a period of public comment of not less than thirty (30) days, in accordance with D.C. Official Code § 2-505(a) (2012 Repl.). No public comment was received by the Board within the public comment period and no substantive changes have been made.

The Board of Trustees adopted this rulemaking as final on March 27, 2014, and the rules will be effective upon publication in the *D.C. Register*.

Chapter 8, INFORMATION, RECORDS, and PUBLICATIONS, of Subtitle B, UNIVERSITY OF THE DISTRICT OF COLUMBIA, of Title 8, HIGHER EDUCATION, is amended as follows:

Section 804, FREEDOM OF INFORMATION ACT PROCEDURES, is amended as follows:

804 FREEDOM OF INFORMATION ACT

804.1 This chapter contains the rules and procedures to be followed by the University in implementing the Freedom of Information Act, D.C. Official Code §§ 2-531 - 539 (hereinafter FOIA") and all persons (hereinafter "requesters") requesting records pursuant to the Act.

804.2 Employees may continue to furnish to the public, informally and without compliance with these procedures, information and records, which they customarily furnish in the regular performance of their duties.

804.3 The public policy of the District of Columbia Government is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees consistent with the provisions of the D.C. FOIA Act. All records not exempt from disclosure shall be made available. Moreover, records exempt from mandatory

disclosure shall be made available as a matter of discretion when disclosure is not prohibited by law or is not against the public interest.

Section 805, UNIVERSITY RESPONSIBILITIES, is amended as follows:

805 UNIVERSITY RESPONSIBILITY

805.1 The ultimate responsibility for responding to requests for records is vested in the Board of Trustees.

805.2 The Board of Trustees shall designate an individual as the Freedom of Information Officer and may delegate to that individual the authority to grant and deny requests and to respond to appeals pursuant to FOIA law.

805.3 The University shall post the name, title, address, telephone number, fax number, and e-mail address of its designated Freedom of Information Officer on its web page.

805.4 The Freedom of Information Officer shall attend meetings and training sessions, as required by law.

805.5 All agency employees who maintain records shall assist the designated Freedom of Information Officer, as appropriate, with the identification and search of responsive records.

Sections 806-811 are added as follows:

806 REQUESTS FOR RECORDS

806.1 A FOIA request may be submitted orally or in writing.

806.2 Although oral requests may be honored, a requester may be asked to submit in writing a request for records.

806.3 A written request may be mailed, faxed or e-mailed to the University Freedom of Information Officer or Board of Trustees in the absence of a designated Freedom of Information Officer. The outside of the envelope or the subject line of the fax or e-mail shall state: "Freedom of Information Act Request" or "FOIA Request". In addition, a request shall include a daytime telephone number, e-mail address or mailing address for the requester.

806.4 A request shall reasonably describe the desired record(s). Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied.

806.5 Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

807 TIME LIMITATIONS

807.1 Within the time prescribed by applicable law following the receipt of a request, the University shall determine whether to grant or to deny the request and shall dispatch its determination to the requester, unless an extension is made.

807.2 In unusual circumstances, the University may extend the time for initial determination on a request up to the time prescribed by applicable law.

807.3 An extension shall be made by written notice to the requester, which shall set forth the reason or reasons for the extension. As used in this section "unusual circumstances" means, but only to the extent necessary to the proper processing of the request, either of the following:

(a) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(b) The need for consultation with another agency having a substantial interest in the determination of the request or among two (2) or more components of the agency having substantial subject matter interest therein.

807.4 If no determination has been dispatched at the end of the period prescribed by law or the extension thereof, the requester may deem his or her request denied, and exercise a right of appeal in accordance with § 811.

807.5 When no determination can be dispatched within the applicable time limit, the University shall nevertheless continue to process the request. On expiration of the time limit, the University shall inform the requester of the following:

(a) The reason for the delay;

(b) The date on which a determination may be expected; and

(c) The right to treat the delay as a denial and of the appeal rights provided by the Act and this chapter.

The University may ask the requester to forego appeal until a determination is made.

807.6 For purposes of this chapter, a request is deemed received when the designated Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer, receives the request submitted in compliance with the Act and this chapter. When the Freedom of Information Officer, pursuant to § 806.5, contacts the requester for additional information, then the request is deemed received when the Freedom of Information Officer receives the additional information.

808 EXEMPTIONS

808.1 No requested record shall be withheld from inspection or copying unless both of the following criteria apply:

(a) It comes within one of the classes of records exempted by the D.C. Law 1-96; and

(b) There is need in the public interest to withhold it.

809 RESPONSES TO REQUESTS

809.1 When a requested record has been identified and is available, the University shall notify the requester where and when the record will be made available for inspection or copies will be made available. The notification shall also advise the requester of any applicable fees.

809.2 A response denying a written request for a record shall be in writing and shall include the following information:

(a) The identity of each person responsible for the denial, if different from that of the person signing the letter of denial;

(b) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation how each exemption applies to the record withheld. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record or portion of a record withheld; and

(c) A statement of the appeal rights provided by the Act and this chapter.

809.3 If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

810 FEES

810.1 Charges for services rendered in response to information requests shall be as follows (not to exceed a maximum search fee per request as may be imposed by applicable law):

(a) Searching for records, $4.00 per quarter hour, after 1st hour, by clerical personnel as determined by UDC;

(b) Searching for records, $7.00 per quarter hour after the 1st hour, by professional personnel as determined by UDC;

(c) Searching for records, $10.00 per quarter hour after the 1st hour, by supervisory personnel as determined by UDC;

(d) Copies made by photocopy machines... $ .25 per page;

(e) Charges for the initial review of documents, as permitted by applicable law, shall be assessed at the rate provided in Subsections (a), (b), and (c) above.

810.2 When a response to a request requires services or materials for which no fee has been established, the direct cost of the services or materials to the government may be charged, but only if the requester has been notified of the cost before it is incurred.

810.3 Where an extensive number of documents is identified and collected in response to a request and the requester has not indicated in advance his or her willingness to pay fees as high as are anticipated for copies of the documents, the University shall inform the requester that the documents are available for inspection and for subsequent copying at the established rate.

810.4 A charge of one dollar ($ 1) shall be made for each certification of true copies of University records.

810.5 Search costs, not to exceed any dollar limitation prescribed by the Act for each request, may be imposed even if the requested record cannot be located. No fees shall be charged for examination and review by the University to determine whether a record is subject to disclosure.

810.6 To the extent permitted by applicable law, the University shall require that fees as prescribed by these rules shall be paid in full prior to issuance of requested copies.

810.7 Remittances shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to the order of the University of the District of Columbia and mailed or otherwise delivered to the Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer.

810.8 A receipt for fees paid shall be given only upon request. No refund shall be made for services rendered.

810.9 The University may waive all or part of any fee when it is deemed to be either in the Universities interest or in the interest of the public.

810.10 A requester seeking a waiver or reduction of fees shall provide a statement in his or her request letter explaining how the requested records will be used to benefit the general public.

811 APPEALS

811.1 A requestor may appeal a denial of a request to the Mayor. All appeals shall be in writing and shall include:

(a) Statement of the circumstances, reasons or arguments advanced in support of disclosure;

(b) Copy of the original request, if any;

(c) Copy of any written denial issued under § 809.2; and

(d) Daytime telephone number, email address or mailing address for the requester.

811.2 The appeal letter shall include “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter as well as marked on the outside of the envelope. The appeal shall be mailed to:

Mayor's Correspondence Unit
FOIA Appeal
1350 Pennsylvania Ave, NW
Suite 316
Washington, D.C. 20004

811.3 The requester shall forward a copy of the appeal to the Freedom of Information Officer, or the Board of Trustees in the absence of a designated Freedom of Information Officer.

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 (2012 Repl.)), Regulation No. 74-16, effective June 29, 1974 (21 DCR 101) and Mayor's Order 1975-54, dated March 7, 1975, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapter 1 (Issuance of Driver's Licenses) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR").

The proposed rules will exempt individuals without a fixed, regular District residence from paying for a special identification card.

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

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

Chapter 1, ISSUANCE OF DRIVER'S LICENSES, is amended as follows:

Section 112, SPECIAL IDENTIFICATION CARDS, is amended as follows:

Subsection 112.8 is amended to read as follows:

112.8 Residents of the District of Columbia who are sixty-five (65) years of age or older, residents of the District of Columbia released from a federal, District, or state correctional or detention facility within the previous six (6) months, and residents of the District of Columbia without a fixed, regular District residence as determined by the Department of Human Services shall be exempt from paying a fee for a special identification card.

Subsection 112.12 is amended to read as follows:

112.12 The fee for a special identification card shall be as follows:

(a)	Each original or renewal card	$20;
(b)	Each duplicate card	$20;
(c)	For residents sixty-five (65) years of age or older	No charge;
(d)	Residents released from a federal or state correctional or detention facility within the	No charge;

	previous six (6) months	
(e)	Residents without a fixed, regular District residence as determined by the Department of Human Services	No charge

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024 or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

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 (2012 Repl.)); Sections 6 and 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03 and 50-1401.01 (2012 Repl.)); and the "Autonomous Vehicle Act of 2012", effective April 23, 2013 (D.C. Law 19-278; D.C. Official Code § 50-2351 *et seq.*), hereby gives notice of the intent to adopt the following rulemaking that will amend Chapters 1 (Issuance of Driver's Licenses), 4 (Motor Vehicle Title and Registration), and 20 (Traffic Regulations: Applicability and Enforcement) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The proposed rule will establish a class of autonomous vehicles and procedures and fees for the registration, titling, and issuance of permits to operate autonomous vehicles.

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

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

Chapter 1, ISSUANCE OF DRIVER'S LICENSES, is amended as follows:

A new Section 114, AUTONOMOUS VEHICLE ENDORSEMENT, is added to read as follows:

114 AUTONOMOUS VEHICLE ENDORSEMENT

114.1 A person must obtain an "A" endorsement on his or her driver license from the Director before the person may operate an autonomous vehicle in the District, even if the person intends to operate an autonomous vehicle only in the non-autonomous mode.

114.2 A person may apply for an "A" endorsement by submitting an application on a form provided by the Director.

114.3 An applicant for an "A" endorsement shall as part of the application:

(a) Acknowledge that the he or she is subject at all times to the traffic laws and other laws applicable to drivers and motor vehicles operated in the District and that, for the purpose of enforcing the traffic laws and other laws applicable to drivers and motor vehicles operated in the District, he or she will be deemed the driver of an autonomous vehicle that he or she is operating in autonomous mode;

(b) Certify that he or she was trained by a vehicle manufacturer or a vehicle dealer in the operation of an autonomous vehicle and has received instruction concerning the capabilities and limitations of an autonomous vehicle; and

(c) Provide such additional information as the Director deems necessary to determine the competency and eligibility of the applicant to operate an autonomous vehicle in autonomous mode.

114.5 The application for an "A" endorsement shall be accompanied by a fee of twenty dollars ($20).

Chapter 4, MOTOR VEHICLE TITLE AND REGISTRATION, is amended as follows

Section 401, APPLICATION FOR A CERTIFICATE OF TITLE, is amended by adding new Subsections 401.19, 401.20, and 401.21 to read as follows:

401.19 Before an autonomous vehicle, as defined in Section (1) of the Autonomous Vehicle Act of 2012, effective April 23, 2013 (D.C. Law 19-278; D.C. Official Code § 50-2351(1) (2012 Repl.)), may be titled in the District, a certificate of compliance issued by vehicle manufacturer or an autonomous technology certification facility, as defined in Section 401.22, must be issued for the autonomous technology installed on the autonomous vehicle by the manufacturer of the autonomous vehicle.

401.20 A certificate of compliance issued pursuant to § 401.19 must certify that the autonomous technology installed on the autonomous vehicle:

(a) Is safe to operate in the District;

(b) Has a separate mechanism in addition to, and separate from, any other mechanism required by law, to capture and store the autonomous technology sensor data for at least thirty (30) seconds before a collision occurs between the autonomous vehicle and another vehicle, object or person while the vehicle is operating in autonomous mode; captures autonomous technology sensor data and stores it in a read-only format so that the data is retained until extracted from the mechanism by an external device capable of downloading and storing the data; and will preserve the autonomous technology sensor data for at least three (3) years after the date of a collision. The provisions of this paragraph do not authorize or require the modification of any other mechanism to record data that is installed on the autonomous vehicle in compliance with federal law;

(c) Has a switch to engage and disengage the autonomous vehicle that is easily accessible to the operator of the autonomous vehicle and is not

likely to distract the operator from focusing on the road while engaging or disengaging the autonomous vehicle;

(d) Has a visual indicator inside the autonomous vehicle which indicates when the autonomous vehicle is engaged in autonomous mode;

(e) Has a system to alert the operator of the autonomous vehicle if a technology failure is detected while the autonomous vehicle is engaged in autonomous mode, and when such an alert is given, either:

(1) Requires the operator to take control of the autonomous vehicle; or

(2) Causes the autonomous vehicle to safely move out of traffic and come to a stop if the operator is unable to take control of the autonomous vehicle.

(f) Does not adversely affect any other safety features of the autonomous vehicle which are subject to federal regulation;

(g) Is capable of being operated in compliance with the applicable traffic laws of the District; and

(h) Allows the operator to take control of the autonomous vehicle in multiple manners, including, without limitation, through the use of the brake, the accelerator pedal, and the steering wheel and when such an action is taken alerts the operator that the autonomous mode has been disengaged.

401.21 In addition to the requirements set forth in § 401.20, the certificate of compliance must certify that an owner's manual has been prepared for the autonomous vehicle which describes any limitations and capabilities of the autonomous vehicle. A licensed vehicle dealer shall ensure that a copy of the manual is provided to the original purchaser of an autonomous vehicle.

401.22 An autonomous technology certification facility is an entity licensed by the District or any other U.S. jurisdiction, which has the necessary knowledge and expertise to certify the safety of autonomous vehicles, including, without limitation, whether the autonomous vehicle meets the requirements for the issuance of a certificate of compliance.

A new Section 436, AUTONOMOUS VEHICLE TAGS, is added to read as follows

436 AUTONOMOUS VEHICLE TAGS

436.1 The Director shall design a tag to be used solely on vehicles titled as autonomous.

436.2 A person shall apply for such an autonomous vehicle tag by submitting an application on a form provided by the Director.

Chapter 20, TRAFFIC REGULATIONS: APPLICABILITY AND ENFORCEMENT, is amended as follows:

A new Section 2003, AUTONOMOUS VEHICLES AND AUTOMATED TECHNOLOGIES, is added to read as follows:

2003 AUTONOMOUS VEHICLES AND AUTOMATED TECHNOLOGIES

2003.1 For the purpose of enforcing the traffic laws and other laws applicable to drivers and motor vehicles operated in the District, the operator of a vehicle using automated technologies, including the operator or an autonomous vehicle as defined in Section 2(1) of the Autonomous Vehicle Act of 2012, effective April 23, 2013 (D.C. Law 19-278; D.C. Official Code § 50-2351(1)), that is operated in autonomous mode, shall be deemed the driver of the vehicle.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024 or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, APRIL 9, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On April 9, 2014 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#14-251-00058 The Park Place at 14th, 920 14TH ST NW Retailer C Nightclub, License#: ABRA-075548

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2. Case#14-251-00054 Midtown, 1219 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-072087

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3. Case#14-251-00053 LUX, 649 NEW YORK AVE NW Retailer C Nightclub, License#: ABRA-071743

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4. Case#14-CMP-00090 Tian Tian Fang, 5540 CONNECTICUT AVE NW Retailer C Restaurant, License#:ABRA-012671

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5. Case#14-CMP-00088 Ming's, 617 H ST NW Retailer C Restaurant, License#: ABRA-083415

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6. Case#14-251-00048 NY NY Diva, 2406 - 2408 18th ST NW Retailer C Restaurant, License#: ABRA-092380

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7. Case#14-CMP-00103 NY NY Diva, 2406 - 2408 18th ST NW Retailer C Restaurant, License#: ABRA-092380

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8. Case#14-CMP-00110 NY NY Diva, 2406 - 2408 18th ST NW Retailer C Restaurant, License#: ABRA-092380

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9. Case#14-CMP-00111 NY NY Diva, 2406 - 2408 18th ST NW Retailer C Restaurant, License#: ABRA-092380

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10. Case#14-251-00094 NY NY Diva, 2406 - 2408 18th ST NW Retailer C Restaurant, License#: ABRA-092380

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, APRIL 9, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Motion to Re-Open Protest Period dated March 28, 2014 from Roderic L. Woodson, Counsel for Celia Limited Partnership, LLC. ***DC Eagle,*** 3701 Benning Road NE, Retailer CT, Lic#: 93984

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2. Review of Public Safety Warning Notice dated March 20, 2014 from Cathy L. Lanier, Chief of Police. ***Lotus Lounge,*** 1420 K Street NW, Retailer CN, Lic#: 75162.

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3. Review of letter dated March 29, 2014 from Gary Thomas ANC 3/4G Commissioner. ***Macon,*** 5520 Connecticut Avenue NW, Retailer CR, Lic#: 93939.

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4. Review of Response to the letter from Gary Thomas ANC3/4G Commissioner dated March 31, 2014 from Mara Verheyden-Hilliard, Representative for Protestants. ***Macon,*** 5520 Connecticut Avenue NW, Retailer CR, Lic#: 93939.

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5. Review of Settlement Agreement dated March 24, 2014 between ANC 3/4G and Macon DC, LLC. ***Macon,*** 5520 Connecticut Avenue NW, Retailer CR, Lic#: 93939.

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6. Review of Settlement Agreement dated March 4, 2014 between ANC 5C and Taste International Inc. ***Taste,*** 1812 Hamlin Street NE, Retailer CT, Lic#: 86011.

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7. Review of five (5) requests from E & J Gallo to provide retailers with products valued at more than $50 and less than $500.

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, 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**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, APRIL 9, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for extension of license in Safekeeping. ANC 5D. SMD 5D01. ***D&M LLC (formerly Northeast Liquors)*** 1305 5th Street, NE, Retailer A, License No. 092694 (transferred from License No. 024726).

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2. Review request from Attorney Lyle M. Blanchard for extension of licenses in Safekeeping. ANC 2A. SMD 2A01. ***George Washington University (the University) and George Washington University Club.*** 2102 18th Street, NW, Retailers CX, License Nos. 026668 and 060219.

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3. Review Manufacturer's application for Change of Hours of Alcoholic Beverage Sales, Delivery and Tasting Permit hours. ***Approved Hours of Operation***: Sunday 9am to 6pm. Monday-Friday 6am to 9pm. Saturday 9am to 9pm. ***Approved Hours of Alcoholic Beverage Tasting and Consumption***: Thursday-Saturday 1pm to 9pm. ***Proposed Hours of Alcoholic Beverage Tasting and Consumption:*** Sunday-Saturday 1pm to 9pm. No Outstanding Fines/Citations. No pending enforcement matters. No Settlement Agreement. ANC 4B. SMD 4B08. ***Hellbender Brewing Company***, 5788 2nd Street, NE, Manufacturer B, License No. 093500.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, 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.**

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF LIMITED CERTIFICATION OPPORTUNITY

The Director of the D.C. Department of Behavioral Health (DMH), pursuant to the authority set forth in sections 5113, 5115, 5117 and 5118 of the "Department of Behavioral Health Establishment Act of 2013," effective December 24, 2013, D.C. Law 20-0061, 60 DCR 12523, hereby gives notice that effective April 7, 2014, DMH will accept new applications for Supported Employment providers in accordance with Title 22-A, D.C. Municipal Regulation Chapter 37. Applicants must be a current mental health provider with an existing contract or grant with DBH. DBH will accept certification applications for these specific services until May 1, 2014. Applications submitted after May 1, 2014 will be returned to the applicant and will not be reviewed or processed by DBH.

The moratorium on processing applications for other types of certification services which was imposed effective August 18, 2012 remains in effect. Applications for other MHRS services will be returned to the applicant and will not be reviewed or processed by DBH.

The Act authorizes DBH to "plan, develop, coordinate, and monitor comprehensive and integrated behavioral health systems of care for adults and for children, youth, and their families in the District, so as to maximize utilization of behavioral health services and behavioral health supports." DBH has identified a need for additional Supported Employment providers in order to ensure increased capacity and access for this service.

All questions regarding this Notice should be directed to Atiya Frame-Shamblee, Deputy Director of Accountability, DBH, at 64 New York Ave. NE, 3rd floor, Washington D.C. 20002; or Atiya.Frame@dc.gov; or (202) 671-2245.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FUNDING AVAILABILITY FOR PHASE II SUPPORTED EMPLOYMENT EXPANSION INITIATIVE

The District of Columbia Department of Behavioral Health (DBH) hereby announces the availability of Supported Employment grants to mental health providers. To be eligible for the grant, a mental health provider must: (1) be currently certified by DBH as a Supported Employment Program provider with present staff operating at capacity, or (2) have an existing contract or grant with DBH and apply for and successfully complete the Supported Employment certification process under Title 22-A D.C. Municipal Regulation Chapter 37 on or before June 30, 2014.

Total funds available for this grant opportunity shall not exceed one hundred and seventy-five thousand dollars ($175,000.00). DBH is offering up to seven (7) grants to qualified providers. The amount of funding for the award period shall not exceed twenty-five thousand dollars ($25,000.00) for each Employment Specialist to be hired with matching grant funds.

The NOFA and Request for Applications (RFA) will be published on the D.C. Office of Partnerships and Grants Services (OPGS) website, including notice in the Funding Alert on April 7, 2014 and publication of the RFA in the Grants Clearinghouse by on or about April 7, 2014. The NOFA and RFA will also be published on the DBH website on or before April 4, 2014.

The deadline to apply for a grant under this notice is May 1, 2014.

The funding is intended to support the initial expense of hiring and training new Supported Employment Specialists (ES). The successful Grantee agency will be expected to hire one net new staff person per individual grant within 30 days after signing a grant agreement with DBH, to contribute at least 50% to the salary costs for the new employee, and to maintain the new SEP staff levels for three (3) years. The new staff will provide all aspects of supported employment services in accordance with DBH rules and policies and carry a caseload of 20 consumers.

This is a non-competitive grant, since all DBH-certified Supported Employment Program providers and those providers that are newly certified by June 30, 2014, are eligible to apply and receive grant funds. DBH reserves the right to apportion the number of grants awarded among the successful grantees based upon the needs of the system, and the evaluation of the provider's capacity and fidelity to the supported employment model.

Inquiries regarding this NOFA/RFA should be directed to Melody Crutchfield, DBH Supported Employment Program Manager, 64 New York Avenue, Northeast, 3rd Floor, Washington D.C. 20002. Ms. Crutchfield may be contacted at (202) 673-7011 or via e-mail address at Melody.Crutchfield@dc.gov.

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

PROTEST OF:

SYSTEMS ASSESSMENT & RESEARCH, INC.	)	
	)	CAB No. P-0738
Under Solicitation No. GAGA-2006-R-0176	)	

For the Protester: Julian H. Spirer, Esq., and Brian M. Lowinger, Esq., Spirer & Goldberg, P.C. For the District of Columbia Public Schools: Aaron E. Price, Sr., Esq., Attorney-Advisor, District of Columbia Public Schools.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

OPINION DENYING MOTION FOR RECONSIDERATION

Filing ID 15179746

Systems Assessment & Research, Inc. ("SAR"), now represented by counsel, moves for reconsideration of the Board's decision of September 21, 2006, 54 D.C. Reg. 2033, dismissing SAR's *pro se* protest of the award of a contract to Columbus Educational Services, LLC, as a special education services provider to assist the District of Columbia Public Schools ("DCPS") in the implementation of a consent decree entered in the federal class action lawsuit, *Blackman v. District of Columbia, et al.*, 97-CV-1629 (D.D.C.) ("*Blackman* consent decree"). In our decision, we held that the protest should be dismissed because the federal court in *Blackman* exempted DCPS from the Procurement Practices Act ("PPA") for procurements implementing the *Blackman* consent decree, and the solicitation at issue clearly implemented the consent decree and the PPA exemption. As discussed below, we see no legal error in our holding that the solicitation is not subject to the PPA, and that the Board has no protest jurisdiction over an award challenge. Accordingly, we deny the motion for reconsideration.

DISCUSSION

SAR does not contend that we erred in finding that the solicitation implemented the *Blackman* consent decree. We stated in our decision that DCPS "issued Solicitation No. GAGA-2006-R-0176 for the procurement of special education instructional and related services to assist in the implementation of the *Blackman* consent decree." 54 D.C. Reg. at 2033. SAR contends rather that DCPS did not elect to waive the procurement laws in the solicitation as authorized in the *Blackman* consent decree. Further, SAR argues that the exemption provided in the *Blackman* consent decree applies "only to the procurement laws treating the contracting process" but is "not intended to wrest authority from the Board to review the contracts from the perspective minimally of due process and fundamental fairness." (Motion for Reconsideration, at 1-2). The *Blackman* court entered an interim order providing in pertinent part:

> Ordered that pending final approval of the Consent Decree, in order to implement the preliminary approved Consent Decree, the [District of Columbia Government is] not bound by the D.C. Procurement Practices Act or any other District or federal law relating to procurement, or any regulations thereunder.

54 D.C. Reg. at 2033. The final consent decree contains identical language. Although SAR focuses on the "not bound by" language in the consent decree as meaning something less than a complete exemption from the PPA, we cannot agree with its analysis. The language of the clause unambiguously provides a complete exemption from the PPA, and, therefore, from our jurisdiction pursuant to the PPA, if DCPS chose to elect the exemption. We concluded that the terms of the solicitation clearly showed that DCPS elected the exemption provided by the *Blackman* consent decree. There are at least 8 references in the solicitation to the *Blackman* litigation or the consent decree: Solicitation Synopsis and Section B.1 ("[DCPS] is seeking a qualified provider of Special Education Services to provide a variety of Special Education Personnel to assist in the implementation of the Blackman-Jones Consent Decree"); Section C.1.1 ("On December 19, 2005, the [District Government] and [DCPS], and the Plaintiffs in the Blackman-Jones class action lawsuit entered into a new consent Decree . . . ."); Section C.1.2 (referring to the filing of the Blackman-Jones lawsuits in 1997); Section C.1.3 (indicating that as a result of the Blackman-Jones lawsuits, DCPS seeks a qualified contractor to recruit and hire 46 special education professionals); Section C.2.8.1 ("The Contractor shall ensure [that] assessments and IEP's meet the Blackman-Jones Consent Decree performance measures. To view the Consent Decree and the performance measures visit the DCPS website…."); Section C.4.4 ("The standards for performance are based on the performance measures for assessments outlined in the DCPS Blackman-Jones Action Plan."); and Section C.4.7.1 ("Responsibilities shall include … collection and evaluation of data for performance measures required by the Consent Decree . . . .).

Section L of the solicitation, entitled "Instructions, Conditions and Notices to Offerors," contains Sections L.6 and L.8 but significantly omits Section L.7. As noted in our decision in *Banks, et al.*, CAB Nos. P-0743, P-0744, Jan. 9, 2007, 54 D.C. Reg. 2060, the missing DCPS standard solicitation provision in Section L.7 is entitled "Proposal Protests" and provides:

> Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of the protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial protests shall be filed with the Board prior to bid opening or the time set for receipt of final proposals. . . .

54 D.C. Reg. at 2062. The incorporation of L.7 in *Banks* confirmed that DCPS did not invoke the *Blackman* consent decree waiver of the PPA and thus we had jurisdiction in that case to consider protests of the awards. *Id.* In the present case, however, the omission of the protest provision, coupled with the repeated references in the solicitation to implementing the *Blackman* consent decree, demonstrate the intent of DCPS to be exempt from the PPA and thus from the Board's protest jurisdiction. We recommend for future procurements, where DCPS intends to invoke the *Blackman* consent decree's procurement law waiver, that the contracting officer expressly invoke the procurement law waiver in the solicitation.

SAR also contends that DCPS "explicitly subjected the solicitation to the PPA" by including Solicitation Section I.1. (Supplement to Motion for Reconsideration, at 2), which provides:

> The Standard Contract Provisions for use with District of Columbia Government Supply and Services Contracts dated November 2004, (Attachment J.1) the District of Columbia Procurement Practices Act of 1985, as amended, and Title 27 of the District of Columbia Municipal Regulations as amended are incorporated as part of the contract resulting from this solicitation.

This provision states that the PPA is applicable to the contract resulting from the solicitation. It does not make the PPA applicable to the solicitation itself.

Finally, SAR argues that the contracting officer effectively amended the solicitation to incorporate Board protest jurisdiction through an email sent to SAR's representative. Attached to the Motion for Reconsideration is an exhibit containing two emails. The first email, dated June 23, 2006, was sent from Mr. Don Early of SAR to the contracting officer, Ms. Glorious Bazemore, and contains the following: "[SAR] is formally submitting an official protest to subject contract. Please review the attached documents and contact me if there are any questions. . . ." (Motion for Reconsideration, Ex. 1). Ms. Bazemore responded by email later on the evening of June 23, stating:

> Any actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than 10 business days after the basis of the protest is known . . . . The protest shall be filed in writing, with the Contract Appeals Board . . . . The aggrieved person shall also mail a copy of the protest to the Contracting Officer for the solicitation. DCPS will not take any action on this informal notification.

(*Id.*). SAR contends that this communication "invoked the jurisdiction of the Board and bound both the Board and SAR to the use of the Board to resolve any dispute." We believe that the contracting officer made an inadvertent error in suggesting that SAR should follow the protest procedures found in the standard solicitation protest provision (Section L.7) because, as we have discussed above, DCPS intentionally omitted Section L.7 as part of invoking the *Blackman* consent decree's procurement law waiver. Although the contracting officer's informal email responded to SAR's equally informal email "protest", there is no evidence that the contracting officer intended her email to constitute an amendment of the solicitation and a repudiation of DCPS's earlier election of the *Blackman* consent decree's procurement law exemption. DCPS subsequently confirmed its intent to rely on the *Blackman* exemption in its Agency Report by stating as a defense to the protest that "the United States District Court in [*Blackman*] waived the procurement laws of the District of Columbia as they apply to implementation of the Blackman/Jones Consent Decree."

For the reasons discussed above, we deny SAR's motion for reconsideration.

SO ORDERED.

DATED: June 11, 2007

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 5A04 and 7F07

Petition Circulation Period: **Monday, April 7, 2014 thru Monday, April 28, 2014**
Petition Challenge Period: **Thursday**, **May 1, 2014 thru Wednesday, May 7, 2014**

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**.

BOARD OF ELECTIONS

NOTICE OF PUBLICATION

The Board of Elections, at a special Board meeting on Tuesday, March 25, 2014, formulated the short title, summary statement, and legislative text of the "Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014." Pursuant to D.C. Code § 1-1001.16 (2001 ed.), the Board hereby publishes the aforementioned formulations as follows:

INITIATIVE MEASURE

NO. 71

SHORT TITLE

"Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014"

SUMMARY STATEMENT

This initiative, if passed, will make it lawful under District of Columbia law for a person 21 years of age or older to:

- possess up to two ounces of marijuana for personal use;
- grow no more than six cannabis plants with 3 or fewer being mature, flowering plants, within the person's principal residence;
- transfer without payment (but not sell) up to one ounce of marijuana to another person 21 years of age or older; and
- use or sell drug paraphernalia for the use, growing, or processing of marijuana or cannabis.

LEGISLATIVE TEXT

BE IT ENACTED BY THE ELECTORS OF THE DISTRICT OF COLUMBIA,

THAT this act may be cited as the "Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Act of 2014."

Sec. 2. Section 401 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), is amended as follows:

(a) Subsection (a)(1) is amended to read as follows: "(a)(1) Except as authorized by this chapter or Chapter 16B or Title 7, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance. Notwithstanding any provision of this chapter to the contrary, it shall be lawful, and shall not be an offense under District of Columbia law, for any person twenty-one (21) years of age or older to :

"(A) Possess, use, purchase or transport marijuana weighing two ounces or less;

"(B) Transfer to another person twenty-one years of age or older, without remuneration, marijuana weighing one ounce or less;

"(C) Possess, grow, harvest or process, within the interior of a house or rental unit that constitutes such person's principal residence, no more than six cannabis plants, with three or fewer being mature, flowering plants, provided that all persons residing within a single house or single rental unit may not possess, grow, harvest or process, in the aggregate, more than twelve cannabis plants, with six or fewer being mature, flowering plants;

"(D) possess within such house or rental unit the marijuana produced by such plants;

Provided that, nothing in this subsection shall make it lawful to sell, offer for sale or make available for sale any marijuana or cannabis plants."

(b) The following new paragraphs are added to subsection (a) after paragraph (1), and the remaining paragraphs are renumbered accordingly:

"(2) The terms 'controlled substance' and 'controlled substances,' as used in this Code, shall not include:

"(A) Marijuana that is or was in the personal possession of a person twenty-one years of age or older at any specific time if the total amount of marijuana that is or was in the possession of that person at that time weighs or weighed two ounces or less;

"(B) Cannabis plants that are or were grown, possessed, harvested, or processed by a person twenty one years of age or older within the interior of a house or rental unit that constitutes or at the time constituted, such person's principal residence, if such person at that time was growing no more than six cannabis plants with three or fewer being mature flowering plants and if all persons residing within that single house or single rental unit at that time did not possess, grow, harvest or process, in the aggregate, more than twelve cannabis plants, with six or fewer being mature, flowering plants; or

"(C) The marijuana produced by the plants which were grown, possessed, harvested or processed by a person who was, pursuant to subparagraph (B) of this paragraph, permitted to grow, possess, harvest and process such plants, if such marijuana is or was in the personal possession of that person who is growing or grew such plants, within the house or rental unit in which the plants are or were grown.

Notwithstanding the provisions of this paragraph, the terms 'controlled substance' and 'controlled substances' as used in this Code shall include any marijuana or cannabis plant sold or offered for sale or made available for sale.

"(3) Notwithstanding any other provision of this Code, no district government agency or office shall limit or refuse to provide any facility service, program or benefit to any person based upon or by reason of conduct that is made lawful by this subsection.

"(4) Nothing in this subsection shall be construed to require any district government agency or office, or any employer, to permit or accommodate the use, consumption, possession,

transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of any such agency, office or employer to establish and enforce policies restricting the use of marijuana by employees.

"(5) Nothing in this subsection shall be construed to permit driving under the influence of marijuana or driving while impaired by use or ingestion of marijuana or to modify or affect the construction or application of any provision of this Code related to driving under the influence of marijuana or driving while impaired by marijuana.

"(6) Nothing in this subsection shall be construed to prohibit any person, business, corporation, organization or other entity, or district government agency or office, who or which occupies, owns or controls any real property, from prohibiting or regulating the possession, consumption, use, display, transfer, distribution, sale, transportation or growing of marijuana on or in that property.

"(7) Nothing in this subsection shall be construed to make unlawful any conduct permitted by the District of Columbia Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (D.C. Law 18-210; D.C. Official Code §§7-1671.01 et seq.)."

Sec. 3. Section 4 of the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code §48-1103), is amended as follows:

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

"(a) Except as authorized by Chapter 16B of Title 7, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human body a controlled substance; except that it shall be lawful for any person twenty-one years of age or older to use, or

possess with intent to use, drug paraphernalia to possess or use marijuana if such possession or use is lawful under section 48-904.01(a)(1), or to use, or possess with intent to use, drug paraphernalia to grow, possess, harvest or process cannabis plants, the growth, possession, harvesting or processing of which is lawful under section 48-904.01(a)(1). Whoever violates this subsection shall be imprisoned for not more than 30 days or fined for not more than $100, or both."

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

"(b) Except as authorized by Chapter 16B of Title 7, it is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; except that it shall be lawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, drug paraphernalia under circumstances in which one knows or has reason to know that such drug paraphernalia will be used solely for use of marijuana that is lawful under section 48-904.01(a)(1) or that such drug paraphernalia will be used solely for growing, possession, harvesting, or processing of cannabis plants that is lawful under section 48-904.01(a)(1). Whoever violates this subsection shall be imprisoned for not more than 6 months or fined for not more than $1,000, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than $5,000, or both."

Sec. 4. The amounts of the fines set forth in District of Columbia Code sections 22-3571.01 and 48-1103 shall be adjusted through implementing or amending legislation enacted by the Council of the District of Columbia to the extent necessary to ensure that this Act does not negate or limit any act of the Council of the District of Columbia pursuant to D.C. Code §1-204.46.

Sec. 5. This act shall take effect after a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Government Reorganization Act (Home Rule Act), approved December 24, 2971 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)).

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue an air quality permit (No. 6338-R1) to the U.S. Department of the Treasury, Bureau of Engraving and Printing to operate one (1) KBA Giori, Mini Orlof Intaglio II, sheet fed, non-heatset, intaglio research press, at the Bureau of Engraving and Printing, in the 1st Floor, A-Wing, Main Building (PDC) at 14th and C Streets SW, Washington DC. The contact person for the facility is David Kaczka**,** Environmental Compliance Manager, Office of Environment, Health & Safety at (202) 874-2107. The applicant's mailing address is 14th and C Streets SW, Washington, DC 20228.

Emissions:

Maximum volatile organic compound (VOC) emissions from the ink and cleaning solvents as a result of operation of the press, are expected to be 0.29 tons per year:

The proposed emission limits are as follows:

a. Emissions of volatile organic compounds (VOC) from the ink used in the process shall not exceed 0.08 pounds per hour.

b. VOC emissions from any cleaning solvents used shall not exceed 0.21 pounds per hour.

c. The total annual VOC emitted from the ink and cleaning solvent as a result of operation of the press shall not exceed 0.29 tons per year.

d. Visible emissions shall not exceed zero percent opacity from the press. [20 DCMR 606.1 and 20 DCMR 201]

e. 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 application to operate the presses 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 May 5, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

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 #6422-A1 and Permit #6423-A1 to the District of Columbia Water and Sewer Authority (DC Water) to amend and update the permit to construct and operate two (2) natural gas-fired steam boilers, issued on February 6, 2013. The equipment which is described below is located at the Blue Plains Advanced Wastewater Treatment Plant at 5000 Overlook Avenue SW, Washington, DC. The contact person for the facility is Meena Gowda, Principal Counsel at (202) 787-2628.

Equipment to be Permitted

Equipment Location	Address	Equipment Size	Model Number	Permit No.
Central Maintenance Facility- C7-2	5000 Overlook Avenue SW Washington, DC 20032	5.979 MMBTU/hr (150 hp)	CBLE-150-15ST	6422-A1
Central Maintenance Facility-C8-2	5000 Overlook Avenue SW Washington, DC 20032	5.979 MMBTU/hr (150 hp)	CBLE-150-15ST	6423-A1

The purpose of the permit amendment is to reduce the allowable heat input of the permitted boilers from 6.123 MMBTU/hr to 5.979 MMBTU/hr, to correspond with the actual heat input of the boilers that have been purchased and delivered to the facility for installation. The reduced heat input to the boilers will result in modest emissions reductions from the previous estimates. Other reasons for the amendment include the removal of redundant monitoring requirements and correction of a typographical error.

The application documentation, the permit amendment request letter, and the draft set of permits and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after May 5, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – Redacted – 1155-001

VIA EMAIL

March 25, 2014

xxxxxxxx xxxxxx
xxxxxxxxxxxxxxxxxxxxxx

Dear Ms. xxxxxx:

This responds to your March 10, 2014 email, by which you request advice concerning whether accepting an offer from xxxxxxxxx (a private corrections company) to conduct audits of seven (7) of its community confinement facilities, for which you would be compensated, would be consistent with your ethical obligations as xxxxx xx xxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxx Board of the District of Columbia ("xxx"). Based upon the information you provide in your email and in your follow-up conversation with a member of my staff, I conclude that, as long as you ensure that you meet the requirements set forth below, the outside auditing for pay activities would be permissible.

You are xxxxx of the xxx, which is responsible, pursuant to D.C. Official Code § 24-101a(a), for the inspection of all facilities housing District of Columba inmates who are under the jurisdiction of either the Federal Bureau of Prisons ("BOP") or the District of Columbia Department of Corrections. Your term will end in xxxx of this year.

You state that the xxxxxxxxx has offered to pay you to conduct Prison Rape Elimination Act audits of seven (7) of its community confinement facilities. These include: Reality House (Brownville, TX); Midvalley (Edinburg, TX); Marvin Gardens (Los Angeles, CA); Leidel Comp. Sanctions Ctr (Houston, TX); Taylor St (San Francisco, CA); Oakland Ctr (CA); and Grossman Ctr (Leavenworth, KS). You also state that the xxxxxxxxx has a contract to house BOP inmates in all seven (7) of these facilities. Nonetheless, you advise that no District inmates currently are housed in these facilities. As a result, you state that the xxx would not be mandated to inspect any of these facilities.

As xxxxxxxxxxxxxxxx, you are considered to be a "member of a board or commission" for purposes of section 1802 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ("CMPA"), effective March 3, 1979 (D.C. Law 2-139; D.C.

Official Code § 1-618.02).[1] The section provides that "[n]o employee, member of a board or commission, or a public official of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities."

Given that there are no District inmates housed in any of the seven (7) facilities targeted in the proposed audits, there would be no overlap with your xxx duties. As you state, your xxx responsibilities are solely concerned with the welfare of D.C. inmates. To be sure, if there were District inmates housed in one or more of these facilities, an inherent conflict would exist because of the overlap and the potential for bias in your audit. Insofar as you would be compensated for the audit work, the conflict would be one of a financial nature and clearly prohibited. However, as long as no District inmates are housed, or will become housed during the course of your audits, in any of the subject correctional facilities, I do not believe there would be a conflict between your engaging in the proposed auditing work and your xxx responsibilities. Please remember, too, that you may not use non-public information gained in the course of your xxx work for the benefit of an outside entity.

This advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You are also advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. Please, then, let me know your wishes about disclosure.

If you have any questions or wish to discuss this matter further, I can be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

_____/s/_____
DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

DPS/jjg/sp/mtb

#1155-001

[1] *See* section 301(2) of the CMPA (D.C. Official Code § 1-603.01(2) (defining "boards and commissions" to include bodies established by law consisting of "appointed members to perform a trust or execute official functions on behalf of the District government").

DEPARTMENT OF FORENSIC SCIENCES

NOTICE OF PUBLIC MEETING

On April 18, 2014, the Department of Forensic Sciences will be hosting a meeting of the Science Advisory Board in the Hayward Bennett Room at the Consolidated Forensic Laboratory, 401 E Street SW, Washington, DC 20024. The meeting will commence at 9:00 a.m. Any questions should be directed to Herb Thomas, 202.7278267. Mr. Thomas can also be reached at Herbert.Thomas@dc.gov.

DC Department of Forensic Sciences Science Advisory Board Meeting

18 APR 14

8:30-9:00	Introductions	Houck
9:00-9:15	Swearing in of Board	OBC
9:15-9:30	Board election of Chair	Board
9:30-10:00	Overview of DFS	Houck
10:00-11:30	Tour of DFS and CFL	Houck/Maguire
11:30-1:00	Working Lunch	
	3-year literature review commentary (Sec 13.3)	Houck
	Reports on allegations (Sec 13.1)	Houck/Funk
	Qualifications (Sec 13.4(D))	Houck
1:00-2:00	Review of Program Standards (Sec 13.2)	Maguire
2:00-3:30	Review of New and Existing Programs	
	Quality and Timeliness of forensic services (Sec 14.4 (A))	Houck
	Plans for:	
	Programs (Sec. 14.4 (C) and Sec 14 (C)(i))	Houck
	FSL Digital Evidence Unit (DEU)	
	FSL Materials Analysis Unit (MAU)	
	PHL FORESIGHT approach for public health	
	Potential Programs	

	Sustaining Existing Programs (Sec 14.4 (C)(ii)	Maguire
	Improving Programs (Sec 14.4 (C)(iii)	Maguire
	Elimination of Programs (Sec 14.4 (C)(iv)	Maguire
3:30-4:00	Concluding remarks; scheduling of next meetings	Board Chair
4:00	Adjournment	

HEALTH BENEFIT EXCHANGE AUTHORITY

NOTICE OF PUBLIC MEETING

Executive Board of the Health Benefit Exchange Authority

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be at 1100 15th Street, NW, Suite 800 Washington, DC 20001 on **Wednesday, April 9, 2014 at 5:30 pm**. The call in number is 1-877-668-4493, Access code 739 067 421.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION

NOTICE OF FUNDING AVAILABILITY
RFA # CHA_PHHSBG_041814
Preventive Health and Health Services Block Grant

The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) will release a Request for Applications (RFA) for funding of community-based organizations to provide services that will assist residents by providing innovative services and implementing programs which promote improving nutrition, reducing weight, increasing physical activity, and promoting tobacco control and cessation efforts that will improve chronic disease outcomes. These funds are made available through a grant (2B01DP009009-13) received by the Department of Health from the Centers for Disease Control (CDC) under the Preventive Health and Health Services Block Grant, authority of Part A, Title XIX, Section 1901, PHS Act as amended.

A total of $400,000 is available under this RFA for two focus areas:

- Focus Area A - Nutrition, Obesity and Physical Activity - up to 6 awards.
- Focus Area B - Tobacco Control and Cessation - up to 2 awards.

The projected start date for these awards is July, 2014. Grants awarded under this RFA are contingent upon the continued availability of funding.

The following entities are eligible to apply for the grant funds under this RFA: Not-for-profit community-based organizations with 501 (c) (3) status serving residents of the District of Columbia.

The release date for RFA #**CHA_PHHSBG_041814** will be **Friday, April 18, 2014.** The RFA will be available on the Office of Partnerships and Grants Services website, www.opgs.dc.gov under the DC Grants Clearinghouse. Copies will also be available for pick-up at 899 North Capitol Street, NE, third floor (Reception Area), Washington, D.C. 20002.

The deadline for submission and receipt of completed applications is **Monday, May 19, 2014 by 4:00 p.m.** Late submissions will not be accepted. The RFA will also be available on the Office of Partnerships and Grants Services website, www.opgs.dc.gov under the DC Grants Clearinghouse.

Applicants are encouraged to e-mail their questions to sherry.billings@dc.gov prior to the Pre-Application Conference scheduled for Friday, April 25, 2014 at 2:00 p.m. to 4:00 p.m. at 899 North Capitol St., NE, Conference Room 306. Send e-mail requests to valerie.brown@dc.gov. For assistance, call Sherry Billings at (202) 442-9173.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY

BOARD OF DIRECTORS MEETING
April 8, 2014
815 Florida Avenue, NW
Washington, DC 20001
5:30 pm

AGENDA

I. Call to order and verification of quorum.

II. Approval of minutes from the March 25, 2014 board meeting.

III. Vote to close meeting to discuss the approval of the Issuance of FHA-Insured Multifamily Housing Revenue Refunding Bonds Series 2014 to Refund and Redeem Certain Prior Issued FHA-Insured Multifamily Housing Revenue Bonds.

Pursuant to the District of Columbia Administrative Procedure Act, the Chairperson of the Board of Directors will call a vote to close the meeting in order to discuss, establish, or instruct the public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of the Issuance of FHA-Insured Multifamily Housing Revenue Refunding Bonds Series 2014 to Refund and Redeem Certain Prior Issued FHA-Insured Multifamily Housing Revenue Bonds. An open meeting would adversely affect the bargaining position or negotiation strategy of the public body. (D.C. Code §2-575(b)(2)).

IV. Re-open meeting.

V. Consideration of DCHFA Resolution No. 2014-03 for the Approval of the Issuance of FHA-Insured Multifamily Housing Revenue Refunding Bonds Series 2014 to Refund and Redeem Certain Prior Issued FHA-Insured Multifamily Housing Revenue Bonds.

VI. Interim Executive Director's Report.

- Discussion: First Quarter of Fiscal Year 2014 Budget Progress Report
- Government Affairs Update

VII. Other Business.

VIII. Adjournment.

KIPP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Classroom Multimedia Projectors & Installation

KIPP DC invites all interested and qualified firms to submit proposals for classroom multimedia projectors (non-interactive) and installation services. The Request for Proposal will be posted on Friday, April 4, 2014 at http://www.kippdc.org/about/procurement/.

Proposals are due no later than 5:00 pm on Friday, April 11, 2014.

OFFICE OF THE DEPUTY MAYOR FOR PUBLIC SAFETY AND JUSTICE

D.C. CORRECTIONS INFORMATION COUNCIL

NOTICE OF PUBLIC MEETING

The DC Corrections Information Council (CIC), in accordance with the D.C. Official Code §1-207.42 and § 2-575, hereby gives notice that it has scheduled the following meeting **Tuesday April 8, 2014** from **6:30 pm to 8:00 pm**. The Meeting will be held at **401 O Street, NW**, Washington DC 20001. For additional information, please contact Cara Compani, CIC Program Analyst, at (202) 445-7623 or DC.CIC@dc.gov.

The CIC is an independent monitoring body mandated to inspect and monitor conditions of confinement at facilities operated by the Federal Bureau of Prisons (BOP), D.C. Department of Corrections (DOC) and their contract facilities where D.C. residents are incarcerated. Through its mandate the CIC will collect information from many different sources, including site visits, and report its observations and recommendations.

Below is the draft agenda for this meeting. A final agenda will be posted on the CIC's website, available at https://sites.google.com/a/dc.gov/cic/.

DRAFT AGENDA

I. Call to Order (Board Chair)
II. Roll Call (Board Chair)
III. CIC Annual Report
IV. USP Lewisburg and FCI Schuylkill
V. USP Atlanta
VI. Update on: Video Visitation, USP Allenwood, FCI Allenwood Low, Rivers
VII. Community Outreach
VIII. Welcome Home Event
IX. Questions/Comments
X. Schedule Next CIC Open Meeting and Set Open Meeting Schedule
XI. Vote to Close Remainder of Meeting, pursuant to DC Code 2-574(c)(1)
XII. Closed Session of Meeting (if approved by majority of CIC Board)
XIII. Adjournment (Board Chair)

CLOSED MEETING

I. Closed Session of Meeting (if approved by majority of CIC Board)
II. Adjournment (Board Chair)

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES

1. On March 14, 2014, the Public Service Commission of the District of Columbia ("Commission") issued a Notice of Final Rulemaking ("NOFR") giving notice of the Commission's final rulemaking action approving the Potomac Electric Power Company's ("Pepco" or "Company") application to amend its Electricity Supplier Coordination Tariff, Schedule 2 ("Electricity Supplier Coordination Tariff") to update loss factors.[1] In that NOFR, the Commission directed that these amendments "shall be reflected in the billing cycle beginning April 1, 2014."[2]

2. On March 20, 2014, Pepco filed a Motion to Modify Effective Date for Updated Loss Factors, asking the Commission to "modify the effective date for the amendments to the Supplier Tariff to June 1, 2014."[3] According to Pepco, the "proposed June 1, 2014 effective date is necessary because Section 8.5 of the Supplier Tariff dictates that the Company 'will make a good faith effort to advise [Third-Party Suppliers] of any change in these loss factors more than thirty (30) days in advance of a change when warranted.'"[4] The Company argues that the "proposed June 1, 2014 effective date will permit the Company to timely advise Third-Party Suppliers and abide by the terms of the Supplier Tariff."[5] In addition, Pepco asserts that the proposed June 1, 2014 "effective date coincides with the effective period of the new Standard Offer Service ("SOS") rates" and therefore having "the new loss factors and approved SOS rates go into effect on the same date will promote administrative efficiency."[6] No opposition was filed in response to this Motion.

3. Inasmuch as Pepco has shown good cause to do so, the Commission substitutes June 1, 2014 for April 1, 2014 as the date the first billing cycle will commence reflecting the Commission-approved amendments to the Electricity Supplier Coordination Tariff.

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1 61 DCR 2126-2127 (March 14, 2014) (citations omitted).

2 61 DCR 2127.

3 *Formal Case No. 945, In the Matter of the Investigation into Electric Services Market Competition and Regulatory Practices* ("*Formal Case No. 945*"), Potomac Electric Power Company's Motion to Modify Effective Date for Updated Loss Factors, filed March 20, 2014 ("Pepco's Motion").

4 Pepco's Motion at 1.

5 Pepco's Motion at 1-2.

6 Pepco's Motion at2.

4. The substitution of June 1, 2014 for April 1, 2014 as the date the first billing cycle will commence reflecting the Commission-approved amendments to the Electricity Supplier Coordination Tariff will become effective upon publication of this Notice in the *D.C. Register*.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMEND FOR APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after May 1, 2014.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on April 4, 2014. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: May 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 2**

Anderson	Donnie C.	King Branson LLC 2200 Pennsylvania Avenue, NW, 4th Floor	20037
Bahur	Linda	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 205	20036
Brown	Barbara	Frederick Douglass Garden Apartments 1438 Cedar Street, SE	20020
Brown	Edith E.	McDermott, Will & Emery, LLP 500 North Capitol Street, NW	20001
Brown	Pamela D.	CH2MHILL 901 New York Avenue, NW, Suite 4000E	20001
Cheek	Dorothy	NLC Mutual Insurance Company 1301 Pennsylvania Avenue, NW, Suite #550	20004
Coker	Barbara B.	Grace Memorial Baptist Church 2407 Minnesota Avenue, SE	20020
Cunningham	Andra E.	Federal Communications Commissions 445 12th Street, SW	20554
Davis	Gwendolyn R.	Pillsbury Winthrop Shaw Pittman, LLP 2300 N Street, NW	20036
Debelie	Chernet W.	EZ Document Processing 1937 14th Street, NW, Suite 301	20009
Derr	Debra S.	Diversified Reporting Services 1101 Sixteenth Street, NW	20036
Diffee	Darlene R.	Debevoise & Plimpton, LLP 555 13th Street, NW, Suite 1100 East	20004
Dunlap	Edward J.	Rhapsody Condominium 2120 Vermont Avenue, NW	20001
Faddoul	C. Danielle	Capitol Tax Partners, LLP 101 Constitution Avenue, NW, Suite 675 East	20001

D.C. Office of the Secretary **Effective: May 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 3**

Griffith	Deborah V.	Together Travel & Cruises 3208 21st Street, SE	20020
Griffith	Pamela M.	Sutherland Asbill & Brennan LLP 700 6th Street, NW, Suite 700	20001
Jarboe	Jacquelyn C.	Planet Depos 1100 Connecticut Avenue, NW, Suite 900	20036
Johnson	Roxie L.	Akridge 601 13th Street, NW, Suite 300 North	20005
Johnson	Shawntai	I am the Way, the Truth and the Life Charity Foundation 3082 Stanton Road, SE	20020
Kiedrowski	Sandra	Sutherland Asbill & Brennan LLP 700 Sixth Street, NW, Suite 700	20001
Lane	Cecelia J.	CHV Tenants Association, Inc. 2900 14th Street, NW, Suite B	20009
Law, Jr.	Michael J.	TD Bank 1489 P Street, NW	20005
Mukta	Jeanette S.	Covington & Burlington LLP 1201 Pennsylvania Avenue, NW	20004
Perry	Janet M.	McCarter & English, LLP 1015 15th Street, NW	20005
Pierangeli	William R.	B. P. Printing & Office Supply Inc. t/a Byron S. Adams 1615 L Street, NW, Suite 100	20036
Quezada	Kimberley J.	Fried, Frank, Harris, Shriver & Jacobson LLP 801 17th Street, NW	20006
Quinn	Kathleen	John & Hengerer 1730 Rhode Island Avenue, NW, Suite 600	20036

D.C. Office of the Secretary **Effective: May 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 4**

Randall	Elaine S.	Conlon, Frantz & Phelan, LLP 1818 N Street, NW, Suite 400	20036
Randles	Jennifer	Jackson Kelly PLLC 1875 Connecticut Avenue, NW	20009
Reardon-King	Patricia V.	Self (Dual) 226 Emerson Street, NW	20011
Richardson	Joyce	MedStar Georgetown University Hospital 3800 Reservoir Road, NW, Room C3201	20007
Semple	Mable	Brighter Day Ministries 421 Alabama Avenue, SE	20032
Spencer	Cynthia A.	Self 4722 3rd Street, NW, #2	20011
Stevens	Darlene L.	TIAA-CREFF 601 Thirteenth Street, NW, Suite 700 North	20005
Swanson	Diane Elisa	Akin Gump Strauss Hauer & Field, LLP 1333 New Hampshire Avenue, NW	20036
Thakkar	Irma	LP Title LLC 4725 Wisconsin Avenue, NW, Suite 250	20016
Verchot	Rosa M.	APCO Worldwide Inc. 700 12th Street, NW, Suite 800	20005
Villarroel	Silvia	MedStar Georgetown University Hospital 3800 Reservoir Road, NW, Room C3201	20007
Von Hagel	Edward J.	Saint Dominic Catholic Church 630 E Street, SW	20024
Wade	Josie M.	Lutheran Social Services, NCA 4406 Georgia Avenue, NW	20011

D.C. Office of the Secretary **Effective: May 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 5**

West	Jacqueline M.	American Society for the Prevention of Cruelty to Animals (ASPCA) 600 Pennsylvania Avenue, SE, Suite 450	20003
Williams	Daisy	DC Department of Human Services, Office of the Attorney General 64 New York Avenue, NE, 6th floor	20001
Wingate-Robinson	Erica	Clarion Partners 1440 New York Avenue, NW, Suite 200	20005
Zamora	Katy M.	U.S. House of Representatives 1718 Longworth House Office Building	20515

SELA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Special Education Student Support Services

DC Hebrew Language Charter School, Inc. d/b/a Sela Public Charter School is advertising the opportunity to bid on special education student support services for children enrolled at the school for the remainder of the 2013-2014 school year.

Those interested in submitting a formal proposal can access the RFP on the Sela PCS school website (www.selapcs.org) under "Public Notices."

Proposals may only be submitted electronically by April 14, 2014 no later than 4:00 P.M and should be sent to the attention of Dr. Jason Lody, Executive Director, to jlody@selapcs.org with the subject line “Special Education Student Support Services Bid.”

All bids not addressing all areas as outlined in the RFP will not be considered.

OSSE BA 5/31/13

UNIVERSITY OF THE DISTRICT OF COLUMBIA

AUDIT, ADMINISTRATION AND GOVERNANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Audit, Administration and Governance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Monday, April 7, 2014 at 5:00 p.m. The meeting will be held in the in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. 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 – January 14, 2014

III. KPMG Audit

IV. Classification and Compensation Plan

V. DCMR, Chapters 1 and 2

VI. Sponsored Programs Policies

VII. Other Business

VIII. Closing Remarks

Adjournment

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BOARD OF TRUSTEES COMMITTEE OF THE WHOLE MEETING

NOTICE OF PUBLIC MEETING

The Committee of the Whole of the Board of Trustees of the University of the District of Columbia will be meeting on Tuesday, April 8, 2014 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 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. Tuition Increase

III. Closing Remarks

Adjournment

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Thursday, April 10, 2014 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

1.	Call to Order	Committee Chairperson
2.	Human Resource Updates	
3.	Other Business	
4.	Executive Session – To discuss personnel matters pursuant to D.C. Official Code § 2-575(b)(4)	Committee Chairperson
5.	Adjournment	Committee Chairperson

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Water Quality and Water Services Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Water Quality and Water Services Committee will be holding a meeting on Thursday, April 10, 2014 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

1.	**Call to Order**	Committee Chairperson
2.	**Water Quality Monitoring**	Assistant General Manager, Consumer Ser.
3.	**Action Items**	Assistant General Manager, Consumer Ser.
4.	**Emerging Issues/Other Business**	Assistant General Manager, Consumer Ser
5.	**Adjournment**	Committee Chairperson

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Order No. 17679-C of Jemal's TP Land LLC, **Motion for Modification of Approved Plans in Order No. 17679**, (**formerly BZA Application No. 18671**[1]), pursuant to § 3129 of the Zoning Regulations.

The original application (No. 17679) was pursuant to 11 DCMR § 3104.1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

NOTE: In this Order, the application is amended to include the relief already approved in the original application as well as requests for variance relief pursuant to 11 DCMR § 3103.2, from the parking requirements under § 2101.1 (95 spaces proposed; 103 spaces required) and from the loading requirements under § 2201 (30-foot loading berth proposed for each multi-family building; 55-foot loading berth and platform required for each multi-family building) to allow for the increase in the number of units and the modified plans. The revised caption with the amended relief reads as follows:

Application No. 17679-C of Jemal's TP Land LLC (formerly Case No. 18671), pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception for a new residential development under § 353, a special exception to allow more than one principal building on a single lot under § 2516, a special exception from the roof structure provisions under § 411.11, and a variance from the parking requirements under § 2101.1 and a variance from the loading requirements under § 2201, to allow two new apartment buildings, each containing 50 units, in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Maple Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 825, 840 and 843).

HEARING DATE (Original Application):	November 13, 2007
DECISION DATE (Original Application):	January 8, 2008 and February 5, 2008
FINAL ORDER ISSUANCE DATE (No. 17679):	April 23, 2008

[1] The Applicant initially filed a new application, BZA Case No. 18671, but upon review, the Board determined that the case was a Motion for Modification of Approved Plans in BZA Case No. 17679 with a request for additional variance relief added to the original application. The caption has been amended accordingly.

DECISION ON 1ST MOTION TO EXTEND ORDER:	June 22, 2010
ORDER ISSUANCE DATE OF 1ST EXTENSION (No. 17679-A):	June 29, 2010
DECISION ON 2ND MOTION TO EXTEND ORDER:	June 12, 2012
ORDER ISSUANCE DATE OF 2ND EXTENSION (No. 17679-B):	June 18, 2012
HEARING DATES FOR MODIFICATION:	December 10, 2013, February 11, 2014, and March 18, 2014
MODIFICATION DECISION DATE:	March 18, 2014

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS AND AMENDED RELIEF

BACKGROUND

On January 8 and February 5, 2008, the Board of Zoning Adjustment (the "Board" or "BZA") approved Jemal's TP Land LLC's (the "Applicant") original request for special exception approval of a new residential development in the R-5-A District with more than one principal building on a single lot and approval of roof structures. The original application (No. 17679) was pursuant to 11 DCMR § 3104.1, for special exceptions under §§ 353 and 2516, and under § 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843). BZA Order No. 17679 (the "Order"), approving the original request, was issued on April 23, 2008. (Exhibit 46.) That order approved the requested special exception relief and was issued on April 23, 2008.

1st Motion to Extend.

On April 6, 2010, the Board received a request from the Applicant, pursuant to 11 DCMR § 3130.6, for a two-year extension in the authority granted in the underlying BZA Order, which was then due to expire on April 23, 2010. (Exhibit 48.) The Applicant also filed supplemental information and a waiver request of § 3130.9 of the Zoning Regulations to accept the Applicant's time extension motion and to toll the Order's expiration. (Exhibit 50.) At a decision meeting on June 22, 2010, the Board found that the requirements of § 3130.6 had been met and granted the Applicant both the waiver it requested pursuant to § 3130.9 as well as a two-year time extension of BZA Order No. 17679 until April 23, 2012. (Exhibit 52, BZA Order No. 17679-A.)

2nd Motion to Extend.

On April 20, 2012, the Board received a request from the Applicant, pursuant to 11 DCMR § 3130.6, upon a showing of good cause, for a second two-year extension of

the authority granted in the original BZA Order, which was then due to expire on April 23, 2012, as well as requests for the Board to waive, pursuant to § 3100.5 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 54.) At a decision meeting on June 12, 2012, the Board found that the requirements of § 3130.6 had been met and granted the Applicant both the waivers it requested pursuant to §§ 3130.6 and 3130.9 as well as a two-year time extension of BZA Order No. 17679 until April 23, 2014. (Exhibit 59, BZA Order No. 17679-B.)

MOTION FOR MODIFICATION OF APPROVED PLANS AND AMENDED APPLICATION

On September 20, 2013, the Applicant submitted a new, self-certified application form for BZA Case No. 18671 for the special exception relief already approved in BZA Case No. 17679 and for modifications to the approved plans in that case. (See, Self-Certification Form 135 at Exhibit 65 and revised Self-Certification Form 135 at Exhibit 90B.) The application also requested new variance relief from loading requirements under § 2201.1, to allow the redevelopment of the approximately 2.3 acre parcel located at 6923-6953 Maple Street, N.W. and 6916-6926 Willow Street, N.W. with two new apartment buildings with a total of 110 units[2], a parking ratio of one space per unit, and a maximum building height of 40 feet. Initially, that application was given a new case number, BZA Case No. 18671. After the Applicant clarified that this was a request for a Modification of Approved Plans and amended relief in Case No. 17679, the Board directed staff to renumber the application to BZA 17679-C. (Exhibit 61.) The case was re-advertised and reposted as BZA Case No. 17679-C.

The record indicates that the new application was served on the parties to that case: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 4B, the affected ANC, and the Single District Member. There also was a party in opposition in the original case, BZA Case No. 17679, Mr. Jack Werner, IV. Mr. Werner submitted a new party status application in opposition for this case. (Exhibit 86.) The Board granted Mr. Werner's request for party status and allowed him to testify at the hearing. At the public hearing on March 18, 2014, Mr. Werner appeared and testified. In his testimony, he withdrew his request for party status in opposition on the record, indicating that he had discussions with the Applicant and that the Applicant had agreed to prepare a new traffic study.

The Applicant requested new variance relief in order to construct the project as modified. The caption in this case has been amended to reflect both the original and amended relief being granted. Thus, this application is considered a continuation of Case No. 17679, and that Case was amended to include the relief already approved in the original application together with the additional variance relief requested pursuant to 11 DCMR § 3103.2, from the parking requirements under § 2101.1 (95 spaces proposed;

[2] The request for 110 units was ultimately lowered to a request for 100 units in the revised final plans.

103 spaces required) and from the loading requirements under § 2201 (one 30-foot loading berth proposed for each multi-family building; one 55-foot loading berth and platform required for each multi-family building). According to the Applicant's pre-hearing statement, the purpose of the requests for variance relief is to permit the redevelopment of the Property with two multiple dwellings, each containing 50 units[3], in the R-5-A District, as depicted on the modified plans. Three single family homes are also depicted on the proposed modified plans. According to the Applicant, two of the single family homes currently exist on the Property, but will be relocated. A third single family home will be re-constructed on the Property. (See, Exhibit 90.)

The Applicant submitted a request for modification to the plans approved in BZA Order No. 17679, pursuant to 11 DCMR § 3129. According to the Applicant, the development proposed under the modification application is nearly identical to the one approved in 2008 as it relates to architectural design, building height, FAR, lot occupancy, parking ratio, and roof structures. However, the interior of the building has been modified so that each building has 55 (lowered to 50 in the final approved plans) units instead of the 38 units approved in 2008 for each building. The site plan (Sheet A101 in the plans) was also modified to accommodate additional parking commensurate with the increase in the number of units. There is also an additional point of ingress and egress for the project on Maple Street. (Exhibit 64.) The site plan was revised to address comments raised by the traffic consultant and the District Department of Transportation ("DDOT"). (Exhibit 94.) In order to redevelop the property with the modifications to the plans, the additional variance relief is needed. No other material facts have changed.

Subsection 3129.3 of the Zoning Regulations indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." The motion was filed within the two-year period following the second extension of the final order in the underlying case and thus is timely. Pursuant to § 3129.7, requests to modify other aspects of a Board order may be made at any time, but require a hearing. Subsection 3129.8 of the Zoning Regulations limits the scope of the hearing conducted to review a request for modification to the impact of the modification on the subject of the original application. Also, § 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.) The Board held a public hearing on this motion, pursuant to § 3129.7 and heard the requests for a modification to the approved plans and variances.

Pursuant to § 3129.4 of the Zoning Regulations, all parties are allowed to file comments within 10 days of the filed request for modification. OP submitted a timely report on the modification request, dated February 4, 2014, recommending approval of the Applicant's request to modify the approved plans and recommending approval of variance relief

[3] The final revised plans lowered the increase of the number of units from 55 to 50. (See, Exhibits 64 and 90.)

under §§ 2101 (parking requirements) and 2200 (loading requirements). (Exhibit 91.) DDOT submitted a timely report indicating it had no objection to the modifications or variance relief. DDOT recommended several Transportation Demand Management ("TDM") measures, which the Board adopted as conditions to this order. (Exhibit 93.) ANC 4B submitted a timely report, dated February 3, 2014, recommending approval of the motion to modify the plans and the variances. The ANC report indicated that at its regularly scheduled, duly noticed public meeting of January 27, 2014, at which a quorum was present, ANC 4B voted unanimously by a vote of 9-0 that it did not object to the proposed modifications and variances. (Exhibit 92.) As previously discussed, the party in opposition withdrew his opposition at the public hearing on the record. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a modification to the approved plans, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Variance Relief:

As previously discussed, the Applicant also requested variance relief to effectuate the modifications to the approved plans. As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, for a variance from the strict application of the parking requirements under § 2101.1 and a variance from the strict application of the loading requirements under § 2201. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of approved plans and variances is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS IN EXHIBITS 90 AND 94, WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates.
2. The Applicant shall provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bike room within each building that can house up to 48 bicycles each (or 96 bicycles total).
3. The Applicant shall provide at least 30 secure bicycle parking spaces in each bicycle storage room.
4. The Applicant shall unbundle the parking costs from the cost of lease or purchase.
5. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites.

In all other respects, Order No. 17679 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON JANUARY 8, 2008 AND FEBRUARY 5, 2008: 3-0-2

(Ruthanne G. Miller, Michael G. Turnbull, and Mary Oates Walker to Approve; Shane L. Dettman abstaining; Marc D. Loud not participating or voting.)

VOTE ON MODIFICATION OF APPROVED PLANS AND VARIANCE RELIEF ON MARCH 18, 2014: 3-0-2

(Lloyd J. Jordan, Marnique Y. Heath, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen,, not present or voting; no Zoning Commission member present or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 28, 2014

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 § 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18584 of Stjepan Sostaric on behalf of Greater Washington Animal Services, Inc., d/b/a City Dogs, pursuant to 11 DCMR § 3104.1 for a special exception under § 735 of the Zoning Regulations for animal boarding use, and pursuant to 11 DCMR § 3103.2 for an area variance from § 735.2 of the Zoning Regulations, to allow the use to abut a Residence Zone, at premises 1310 Pennsylvania Ave., S.E. (Square 1043, Lot 865) in the C-2-A Zone.

HEARING DATE: July 9, 2013
DECISION DATE: September 10, 2013

DECISION AND ORDER

This self-certified application was submitted on April 17, 2013 by Stjepan Sostaric ("Applicant"), on behalf of Greater Washington Animal Services, Inc., d/b/a/ City Dogs. The Applicant requested special exception relief for an animal boarding use under § 735 and area variance relief from the requirements of § 735.2, which prohibits an animal boarding use from abutting a Residence Zone. Following a public hearing, the Board of Zoning Adjustment (the "Board") voted on September 10, 2013, to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 23, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember of Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B06. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters providing notice of the hearing to the owner of the subject property, the Applicant's representative, ANC 6B, and all owners of property within 200 feet of the subject property. Notice was published in the *D.C Register* on April 26, 2013. (50 DCR 06052.)

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status for the following individuals as a consolidated party in opposition: Manuel R. Geraldo, Patricia A. Fisher, Kasse Andrews-Weller, Robert V. McMichael, and The Moss Group, Inc., represented by Judy L. Wood and Andie Moss.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed animal boarding use and asserted that the application satisfied all requirements for approval of the requested area variance and special exception relief. The Applicant indicated agreement with the conditions provided by the ANC and OP. Additionally, the Applicant expressed the

willingness to soundproof the building to the degree possible and to ensure that surrounding residents are not negatively affected by odor, vermin, or sanitation issues.

OP Report. By memorandum dated June 30, 2013, OP recommended approval of the special exception and approval of the area variance, subject to 12 conditions. The conditions provided for a five year term of approval, limits on the use of the premises, instructions for further maintenance of the air filtration system, sanitization of indoor floors, and repair of the rear garage door. (Exhibit 33.)

DDOT Report. By memorandum dated July 1, 2013, DDOT indicated no objection to the application. DDOT noted that vehicle parking demand may increase slightly as a result of the project, resulting in a higher level of parking utilization in the immediate area. DDOT determined that this minor potential effect would have no adverse impacts on travel conditions of the District's transportation network. (Exhibit 34.)

ANC Report. By letter dated June 14, 2013, ANC 6B indicated that, at a regularly scheduled, properly noticed meeting on June 11, 2013, a quorum of Commissioners voted 9-0-1 in support of the application. The ANC's support was conditioned on the Applicant's compliance with seven agreed-upon provisions. The conditions, like those proposed by OP, addressed concerns about noise, odor, waste management, HEPA filtration maintenance, and increased parking demand. The conditions required the creation of a Liaison Committee that would report on-going neighbor concerns to the ANC, who would, in turn, report findings to the Board. In their report, the ANC also urged the Board to approve the application for a limited number of years. (Exhibit 31.)

Acoustical Analysis Report. *By a letter dated July 3, 2013, the Applicant submitted an acoustical analysis report prepared by Scantek, Inc. measuring: the ambient noise level at the proposed site, the maximum noise level at the existing City Dogs location, the noise reduction between the proposed location of the dog holding areas and the abutting properties, and potential impact on noise from dogs in adjacent places. (Exhibit 38.) The acoustical analysis report was prepared pursuant to the agreement between the Applicant and ANC 6B. Following the hearing on July 9, 2013, the Applicant submitted supplemental acoustical analysis information in a letter dated August 13, 2013. (Exhibit 46.) The consolidated party in opposition filed a response to the supplemental acoustical analysis in a letter dated August 27, 2013, including a review of the report prepared by Scantek, Inc. conducted by Colleen Fricke & Associates, Inc. (Exhibit 48.)*

Persons in support. No persons appeared to testify in support of the Applicant. The Board received 27 letters of support from residents in the vicinity of the existing City Dogs location at 1836 18th Street, N.W. Each letter asserted that the operations of the business do not adversely impact the properties in its vicinity. The residents indicated that City Dogs does not impair their enjoyment of property nor create problems with noise, odor, sanitation, or vermin. (Exhibits 35-37.)

Party in opposition. The consolidated party in opposition asserted that the Applicant had not satisfied the requirements for a special exception under § 735 because the Applicant had not adequately shown that the entire building was capable of being soundproofed and because the facility would cause harm to the public good by producing objectionable noise, odor, and sanitation issues. The party in opposition also contended that the Applicant did not satisfy the requirements for an area variance because the Property was not sufficiently exceptional, the Applicant's practical hardship lacked a connection with the alleged exceptional conditions of the Property, and the granting of the variance would cause substantial harm to the public good. A petition in opposition to the Application with 48 signatures from neighboring residents of the subject property was also submitted to the record. (Exhibit 28.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 1310 Pennsylvania Avenue, S.E., mid-block between 13th Street and the intersection of G Street and Pennsylvania Avenue (Square 1043, Lot 865).

2. The subject property is a long and narrow lot. It measures 17.5 feet wide by 139 feet long at its longest point, with a total area of 2,357 square feet.

3. The building on the property consists of an original two-story row house in the front with a one-story warehouse addition to the rear that extends nearly the entire length of the property. There is a ten-foot rear yard on the property that is subject to an ingress/egress easement with the condominium building on 1306 Pennsylvania Avenue for parking, deliveries, and refuse removal.

4. The rear warehouse addition is enclosed with cement block walls. The warehouse addition has a concrete floor, one non-operative glass-block window, and a garage door that opens to the rear of the property.

5. The front, row house portion of the building shares a party wall with 1308 Pennsylvania Avenue to the West, which is a two-story row house and the residence of a member of the party in opposition. The row house also shares a party wall with 1312 Pennsylvania Avenue to the East, which is a two-story office building owned by members of the party in opposition and used as a criminal justice consulting firm. The rear of the Property abuts a shared public alley and a portion of the property owned by another member of the party in opposition.

6. The subject property is zoned C-2-A, which allows an animal boarding use as a special exception (11 DCMR § 735). A two-foot, six-inch portion of the property's northern edge abuts an R-4 residence zone.

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The Applicant's Project

7. The Applicant is the owner and operator of City Dogs, a dog day care service and overnight animal boarding establishment. The first City Dogs location was established about 14 years ago and currently operates at 1832 18th Street, N.W. ("Dupont Circle Location").

8. The Applicant proposes to use the subject property to operate a second City Dogs location, which would also be an animal boarding facility with accessory pet grooming and retail.

9. The Applicant provides care for 45-55 dogs per day in its original Dupont Circle location and expects that the proposed location on the subject property will have a similar level of operation.

10. Services provided at the proposed City Dogs location would include the boarding of 45-55 dogs during weekday business hours, overnight animal boarding, accessory pet grooming, and daily dog-walking for boarded dogs, if requested by their owners.

11. The Applicant proposes to use the front, row house portion of the building as the reception and retail area on the first floor and as storage, office space, and a pet grooming facility on the second floor. The warehouse addition at the rear of the building would be used as the animal boarding area, where the dogs would be cage-free and attended by staff at all times.

12. Pursuant to the agreed-upon conditions presented by ANC 6B and OP, The Applicant would repair or replace the existing rear garage door in the warehouse addition.

13. A HEPA filtration system would be installed in the building to absorb odor from within the building. The units and ducts would be professionally cleaned twice a year.

14. The Applicant would clean the floors with a water/chemical mixture in order to break down urine odor, utilize a code-compliant system to capture any drainage, and seal the floors so as to eliminate bacteria.

15. Animal waste would be stored within heavily-lined, closed containers and kept inside the building until collected by a waste disposal company three times a week.

16. The Applicant has agreed that all dogs would enter and exit the building through the front door. Aside from trash collection, all deliveries, employees, and customers will also access the facility through the front of the building.

17. The Applicant has agreed to refrain from using the rear, outdoor portion of the Property.

18. The Applicant would encourage customers to park legally, through verbal and written communications.

19. Pursuant to the Applicant's agreement with ANC 6B, the Applicant engaged an acoustic consultant to perform a sound test and submit recommendations to the Applicant.

20. Acoustical analysis of the City Dogs Dupont Circle location found that, during daytime hours, the sound generated in the facility can reach 70–75 decibels (dB(A)). Further soundproofing measures were suggested for the warehouse addition.

21. For residential zones, the Noise Control provisions of the District of Columbia Municipal Regulations permits a maximum noise level of 60 dB(A) during daytime and 55 dB(A) at nighttime. (20 DCMR § 2701.1.)

The Zoning Relief Required

22. Special exception relief is required in order to operate an animal boarding use in a C-2-A Zone, subject to the requirements of 11 DCMR §§ 735 and 3104.1.

23. Subsection 735.2 provides that the "animal boarding use shall not abut a Residence Zone." Since the proposed use cannot meet that condition, area variance relief is required.

CONCLUSIONS OF LAW

The Applicant requests special exception relief to allow an animal boarding use pursuant to § 735 in the C-2-A Zone District at 1310 Pennsylvania Ave, S.E. (Square 1043, Lot 865). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 735, the Board may grant special exception relief to allow for an animal boarding use, subject to certain requirements, including that the use must not abut a Residence Zone (§ 735.2). Because the rear portion of the Applicant's property abuts an R-4 Residence Zone, the Applicant requests area variance relief from the requirements of § 735.2.

The Board is also authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3) (2008) to grant variance relief from the strict application of the Zoning Regulations.

As noted by the Court of Appeals:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan.

> *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C.1987)
>
> An applicant for a use variance must show that strict compliance with the applicable regulation will result in an undue hardship while an applicant for an area variance must meet the less stringent standard that compliance will result in exceptional practical difficulties. (11 DCMR § 3103.7.)

As noted the Applicant is seeking an area variance. Since the Board cannot consider the special exception request unless it grants a variance from § 735.2, it must first consider whether the variance can be granted.

In this instance the Board need not consider whether the property is subject to an exceptional condition that leads to a practical difficulty because it is so evident that granting the Application would cause substantial detriment to the public good. The Board *was persuaded by the concerns of the party in opposition, especially in regard to the potential noise impact on their properties. The acoustical analysis conducted by the Applicant served to support the concerns of neighboring residents that the noise generated at the facility could have a significant, disruptive impact on the use and enjoyment of their properties. It also demonstrates that the Applicant cannot also meet the requirement of § 735.3 that the "animal boarding use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no noise … objectionable to nearby properties". The Applicant did not seek a variance from this requirement.*

The Board acknowledges that the Applicant was provided information and suggestions regarding further soundproofing measures to be applied to the warehouse portion of the building, however, concerns about the impact of noise on adjacent properties remain. Though the warehouse addition is a masonry structure with the potential to mitigate sound, the front portion of the building is a traditional row house that shares party walls with adjacent buildings to the East and West. The party walls of the row house are not likely to prevent noise from disturbing adjacent properties.

The potential impact of noise in this front portion of the building is significant. Pursuant to the conditions of the ANC and OP, all dogs will enter and exit through the front door during pick-up and drop-off, as well as when they are taken for walks during the day. Additionally, all customers and deliveries would only be permitted to access the facility through the front door. Further, the dog grooming use will take place on the second floor of the row house, increasing the potential for disruptive noise. Though the Applicant has expressed willingness to undertake soundproofing efforts, the party in opposition asserts, and the Board agrees, that these efforts would not be sufficient to protect the adjacent property owners from the high level of noise inherent to an animal boarding facility. Therefore, the Board finds that the Applicant failed to meet the burden of proof in regard to the final prong of the area variance test and that granting the application would cause a substantial detriment to the public good. Accordingly, area variance relief is denied.

Because variance relief from § 735.2 is denied, the Applicant cannot meet the specified requirement, and the Board need not consider the other requirements listed in § 735. Accordingly, the Board finds that the request from special exception relief to operate an animal boarding in a C-2-A Zone must also be denied.

ANC and OP Issues and Concerns

The Board gives "great weight" to the issues and concerns raised by the affected ANC in their written report. (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) (2001)).) The Board is also required to give "great weight" to the recommendations of OP. D.C. Official Code § 6-623.04 (2001). ANC 6B discussed the Applicant's proposed use of the property and voted to support the application, provided that the Applicant agree to seven conditions. OP also supported the application, but similarly, conditioned its approval on 12 provisions. The conditions presented by the ANC and OP shared many similarities and dealt with concerns about the potential impact of noise, odor, waste, and increased demand for parking generated by the facility. The ANC provided that the Applicant must engage an acoustic consultant to perform a sound test and submit recommendations to the Applicant. OP recommended that approval of the application be limited to a period of five years. Both the ANC and OP conditioned their approval on the creation of an on-going Liaison Committee that would address the neighbors' concerns about the use of the property and report its findings to the ANC. Based on the Committee's reports, the ANC would present to the Board any recommended changes to the agreement, up to and including revocation of the order.

Though ANC 6B and OP ultimately recommended approval of the application, the considerable list of conditions attached to both reports reflect significant concerns about the negative impact of the animal boarding use on surrounding properties. The conditions demonstrate the ANC and OP's awareness that an animal boarding facility could create issues with odor, vermin, and waste management that would be disproportionately felt by the facility's closest neighbors. Further, several of the ANC's conditions, such as requiring the Applicant to work with an acoustic consultant, demonstrate their concern with the level of noise likely to be generated by this use of the property. The Board considered the results of the resulting acoustic study and relied on its findings to determine that the noise created by this facility would be a substantial detriment to the public good. For these reasons the Board does not find the advice of OP and the ANC to be persuasive.

Therefore, for the reasons stated above, and having given great weight to the recommendations of OP and to the report of ANC 6B, the Board concludes that the Applicant has not met the burden of proof for area variance relief and therefore, cannot meet the requirements for a special exception to operate an animal boarding use in a C-2-A Zone. Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

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VOTE: 3-1-1 (Lloyd J. Jordan, S. Kathryn Allen, and Jeffrey L. Hinkle to Deny the application; Marcie I. Cohen to Approve the application (by absentee vote); one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: March 26, 2014

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. 18731of Horizon Hill Ventures, as amended, pursuant to 11 DCMR § 3104.1 for a special exception under section 353, and pursuant to 11 DCMR § 3103.2 for variances from the parking requirements under subsection 2101.1, loading requirements under subsection 2201.1, aisle width requirements under subsection 2117.5, nonconforming structure requirements under section 2001.3, and the maximum height/number of stories limitations under section 400, to construct additions to two existing apartment buildings and renovation of a third building in the R-5-A District at the intersection of Savannah Street, S.E. and 13th Street, S.E., known as 3232-3242, 3310-3318 13th Street, S.E. and 1301-1305 Savannah Street, S.E. (Square 5914, Lot 1 and Square 5915, Lots 1 and 2).*

***Note:** *Prior to the public hearing, the Applicant amended the application to include variance relief from § 400 (Exhibit 25).*

HEARING DATE: March 18, 2014
DECISION DATE: March 18, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2.

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") 8E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 8E, which is automatically a party to this application. ANC 8E did not submit a report related to the application. The Office of Planning ("OP") submitted a report in support of all requested relief except for the variance from § 400 related to maximum height/number of stories. (Exhibit 27.) The District of Columbia Department of Transportation ("DDOT") also submitted a report stating that "this proposed project will have no adverse impacts on the travel conditions of the District's transportation network" and that "DDOT has no objection to" approval of the application. (Exhibit 28.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for a variance from §§ 2101.1, 2201.1, 2117.5, 2001.3 and 400.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from § 2101.1, 2201.1, 2117.5, 2001.3 and 400.1, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 353. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 25A, and **SUBJECT** to the following conditions:

1. The Applicant shall provide a total of 68 bicycle spaces (44 bicycle spaces are long-term which shall be covered and the remaining 24 bicycle spaces shall be short-term).

2. The Applicant shall allow residents of Parcel 1 to also utilize parking spaces located on Parcel 3.

VOTE: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath and Jeffrey L. Hinkle to Approve; S. Kathryn Allen not present, not voting; no Zoning Commission Member participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

BZA APPLICATION NO. 18731
PAGE NO. 3

FINAL DATE OF ORDER: March 27, 2014

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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 05-22A
(View 14 Investments, LLC – PUD Modification @ Square 2868, Lot 155)
March 26, 2014

THIS CASE IS OF INTEREST TO ANC 1B

On March 24, 2014, the Office of Zoning received an application from View 14 Investments, LLC (the "Applicant") for approval of a modification to a previously approved planned unit development ("PUD").

The property that is the subject of this application consists of Lot 155 in Square 2868 in Northwest Washington, D.C. (Ward 1), which is located at 2303 14th Street, N.W. The property is zoned C-2-B.

The Applicant requests flexibility to permit a dog day care center to locate in the retail space on the ground floor of the existing building

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 14-05
(Forest City Washington – Text Amendment to § 1803 of the Zoning Regulations)
March 31, 2014

THIS CASE IS OF INTEREST TO ANC 6D

On March 27, 2014, the Office of Zoning received a petition from Forest City Washington (the "Petitioner") to amend § 1803 of the Zoning Regulations in order to permit more density and height for the western portion of The Yards development ("Yards West").

Yards West, the property that is the subject of this petition, consists of Parcel A, which fronts on M Street, S.E., and Parcels F, G, H, and I, which are south of Parcel A and between 1st Street, S.E. and Canal Street SE. The property is zoned SEFC/CR Zone District.

The SEFC Overlay predates the approval of the Ballpark and the CG Overlay, so the SEFC Overlay permits less height and density than is permitted on neighboring properties. The Applicant proposes amendments to the SEFC Overlay as follows:

> Section 1803.7(b): Permit a 1.0 floor area ratio ("FAR") bonus for residential use in the SEFC/CR Zone District;
>
> Section 1803.5(b): Allow a height permitted by the 1910 Height Act for any property that utilizes the residential bonus density described above;
>
> Section 1803.8: Require Zoning Commission design review for any property utilizing bonus height and density for residential use; and
>
> Section 1803.3(i): Authorize deviations from the ground-floor preferred use requirements only after approval from the Zoning Commission.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-01

October 11, 2013

Mr. Julian Byrd

Dear Mr. Byrd:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 10, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your requests for information under DC FOIA dated May 24, 2013, and revised and re-submitted August 2, 2013 (the "First FOIA Request").

Background

Appellant's FOIA Request, as revised in response to the requested clarification of DOC, was in six parts, but the only three of the parts are challenged in the Appeal, which parts sought:

1. "Any information" regarding certain specified cases "related to the miscalculation of my sentence and erroneous transfer to [the] Bureau of Prisons."

2. "Any information pertaining to a report issued on October 1999 by D.C. Correctional Trustee, John Clark ('Clark Report')."

3. "Any information [pertaining] to the studies conducted in 1985, 1989, 1996, 1997 as well as July 28, 2000, John Shaw report issued pursuant to U.S. District Judge Order."

In response, by letter dated August 2, 2013, DOC responded to each of the above-numbered parts as follows:

1. "If the requested information exists in the custody of the DOC, it would be contained in the institutional file maintained on you by the DOC. You may contact your Case Manager to help you access the file, so that you may review it and identify the record you want copied for you."

2. "The requested record is available at [a specified hyperlink]."

3. "Staff conducted due diligence search, however, no responsive record was found."

On Appeal, Appellant contends that DOC has not conducted an adequate search for the requested records. As to the first part of the FOIA Request, Appellant states that the failure of DOC to

conduct the search "is evident from DOC's own response." Furthermore, a public body must conduct a search and "not ask the requester to search himself in the institutional file." In addition, "DOC failed to conduct an electronic search in its computer system."

As to the second part of the FOIA Request, Appellant states that "even if a request is publicly available on the Internet," DOC must still conduct a search. Moreover, Appellant stated that he not only requested the Clark Report, "but also all information pertaining to that report."

As to the third part of the FOIA Request, Appellant states that cases 'clearly indicate the existence of those reports and recommendations," indicating that the records requested should exist

In its response, by letter emailed October 11, 2013, DOC reaffirmed its position.

As to the first part of the FOIA Request, DOC states that its "written policy is to channel the inmate's request for his institutional records to his Case Manager," as stated in Program Manual No. 1300.1F(Freedom of Information Act, FOIA). Under the written policy, "an inmate may request copies of specific documents from his or her official institutional file or request to review the entire file," a request so made shall be referred to the Case Manager, and the inmate may review these records by making a written request to the Case Manager by using an Inmate Request Slip or on a plain sheet of paper. DOC states that the policy is "calculated to ensure a thorough search."

As to the second part of the FOIA Request, DOC states that the study was not created by DOC. Furthermore, it contends that, even if the Clark Report was an agency record, according to its records retention schedule, the retention period for inspection records is three years, which period "has long passed." Furthermore, as detailed in an attached affidavit, "a thorough search was still conducted."

As to the third part of the FOIA Request, DOC similarly states that the requested records were not created by the agency; according to its records retention schedule, the retention period for inspection records is three years, which expired in 2003; and, as detailed in an attached affidavit, "a thorough search was conducted."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency

and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The issue presented by the Appeal is the adequacy of the search for the requested records in the first three parts of the FOIA Request. The legal principles regarding the adequacy of searches are familiar to DOC.

An agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In testing the adequacy of a search, we have looked to see whether an agency has made reasonable determinations as to the location of records requested and made, or caused to be made, searches for the records. *See*, e.g., Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-55. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

As to the first part of the FOIA Request, DOC maintains that it provided the appropriate response to Appellant because it referred him to his Case Manager in accordance with the procedure set forth in Program Manual No. 1300.1F(Freedom of Information Act, FOIA). However, while such written policy provides an alternative avenue for an inmate to obtain records, it does not supersede the requirements of DC FOIA. The law does not distinguish between inmates and other requesters. DCMR § 1-401.2 states: "Each agency head shall designate an individual as the Freedom of Information Officer of the agency and may delegate to that individual the authority to grant and deny requests . . ." As we stated in Freedom of Information Act Appeal 2013-04:

> [A] referral by a FOIA officer to another employee or employees does not satisfy an agency obligation under DC FOIA. The FOIA officer must conduct a search, consulting with other employees as may be necessary or appropriate, and notifying the requester whether responsive records will be produced.

While another agency employee may perform the search and provide the records, where, as here, an appellant submits a proper request, the agency FOIA Officer, not the appellant, must contact its employee and cause the search to be made. Accordingly, DOC shall search for the requested records and provide any responsive records to Appellant.

The second part of the FOIA Request sought records related to a report identified by Appellant as the Clark Report. The third part of the FOIA Request sought records related to studies identified by Appellant. While different records were requested by each part, the legal analysis with respect to each is the same. DOC interpreted each part as a request for the report or studies which were identified. However, as Appellant correctly asserts, the requests included a request for records related to such reports or studies. Nevertheless, despite this narrow interpretation by DOC, we do not believe that this changes the outcome of this matter. As stated above, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. Here, DOC provided a records retention schedule which indicates that DOC would have disposed of the records corresponding to the requested records. Furthermore, notwithstanding the records retention schedule, DOC searched its electronic records (Lotus Notes, Paper Clips, and JACSS[1]) and did not find any responsive records. Accordingly, we find that the search shall be deemed to be adequate.

Conclusion

[1] In its submission in Freedom of Information Act Appeal 2013-74, DOC explained that "'JACCS is the acronym for the agency's electronic records maintenance system, known as the Jail and Community Corrections System.'"

Based on the foregoing, the decision of DOC is upheld in part and remanded in part. DOC shall search for the records requested in the first part of the FOIA Request and provide any responsive records to Appellant.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DOC pursuant to this order.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-02

October 10, 2013

Dr. Henok Araya

Dear Dr. Araya:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated September 19, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Commission on Judicial Disabilities and Tenure (the "Commission") improperly withheld records in response to your request for information under DC FOIA dated April 23, 2013 (the "FOIA Request") by failing to respond to the FOIA Request.

Background

Appellant's FOIA Request sought answers to fourteen questions relating to the Commission, its members, and its response to the complaint of Appellant. When a response to the FOIA Request was not received, Appellant initiated the Appeal. On Appeal, Appellant notes the failure to respond and states that "the information should be made available without any further legal action."

In response to the Appeal, by letter dated October 3, 2013, the Commission states that, based on the confidentiality provision of D.C. Official Code § 11-1528(a)(1) and a legal opinion, dated December 10, 1979, of the Legal Counsel Division of the Office of the Attorney General (then the Corporation Counsel), the Commission is exempt from the provisions of DC FOIA. The Commission states that it so informed Appellant by letter dated September 30, 2013.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency

and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As stated above, based on the confidentiality provision of D.C. Official Code § 11-1528(a)(1) and upon a legal opinion of the Office of the Attorney General, the Commission asserts that it is exempt from the provisions of DC FOIA. However, the Commission overstates the reach of D.C. Official Code § 11-1528(a)(1) and the legal opinion. As stated by the Commission in its response to the Appeal, D.C. Official Code § 11-1528(a)(1) provides, in pertinent part, that

> the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

D.C. Official Code § 2-534(a)(6) provides an exemption from disclosure for "[i]nformation specifically exempted from disclosure by statute . . ." D.C. Official Code § 11-1528(a)(1) is one of the nondisclosure statutes which is covered by D.C. Official Code § 2-534(a)(6). However, D.C. Official Code § 11-1528(a)(1) provides only for nondisclosure of documents which are filed with the Commission or transcripts or recordings of testimony given to the Commission. While this nondisclosure provision may exempt a substantial portion of the records of the Commission from disclosure under DC FOIA, it does not exempt the Commission itself from DC FOIA. In this regard, we note that the Commission has a webpage on its website providing information on DC FOIA and the procedure for filing FOIA requests with the Commission. The legal opinion of the Legal Counsel Division does not state that the Commission is exempt under DC FOIA. It finds that the exemption applies "under its terms," but those terms are limited as we have explained. Thus, the nature of the records requested in each FOIA Request must be evaluated to determine whether the Commission maintains such records or whether any exemption, including, but not limited to, D.C. Official Code § 11-1528(a)(1), applies to any responsive records which the Commission maintains.

Under the law, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: "A request shall reasonably describe the desired record(s)."

"A FOIA request is not an opportunity to relitigate [a] case." *Stuler v. United States DOJ*, 2004 U.S. Dist. LEXIS 9777 (W.D. Pa. 2004). DC FOIA provides a right to access of documents, not

a right to challenge the correctness or reasoning of an agency decision, to interrogate an agency, to require an agency to conduct research, or otherwise to require answers to questions posed as FOIA requests. See *Department of Justice Guide to the Freedom of Information Act* (2009) at 51, n. 127 (collecting cases, reported and unreported).

The FOIA Request was a series of questions, seeking information such as whether a judge is allowed to pray or whether a judge is allowed to carry a bible in the courtroom. In addition, the FOIA Request posed questions related to a complaint which Appellant filed with the Commission. Accordingly, except as we note below, Appellant has not made a proper request under DC FOIA.

One question posed by Appellant asks: "What are the duties of Commission members?" However, Appellant also asks for a "job description or any appointment agreements or contracts for each commission member" and "if a member is paid, provide amounts and identify the payer." While the question itself suffers from the same defect described above, the follow-up to the question is in the form of a proper request. While this would ordinarily require us to remand the matter to the agency for a search, in this case, a remand would be pointless as it is plain that there will be no responsive records. Under the law creating the Commission, which law is codified in D.C. Official Code §§ 11-1521 through 1530, the members of the Commission are appointed by the President, the Mayor, and the chief judge of the United States District Court for the District of Columbia and serve pursuant to such appointments, not appointment agreements or contracts, carrying out the functions of the Commission as set forth under the law. Furthermore, D.C. Official Code § 11-1524 provides that the members of the Commission "shall serve without compensation," so there would be no responsive documents with respect to the request for payment records.

In our past decisions, we have stated:

> It has been held that an agency was not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). *See also* Crews v. Commissioner, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for documents that are publicly available either in the agency's reading room or on the Internet).

Freedom of Information Act Appeal 2013-04; Freedom of Information Act Appeal 2012-73; Freedom of Information Act Appeal 2012-63; Freedom of Information Act Appeal 2011-34; Freedom of Information Act Appeal 2011-31. We note that answers to some of the questions posed by Appellant can be found on the website of the Commission and the Appellant may wish to consult the website.

Conclusion

Therefore, we uphold the decision of the Commission. The Appeal is hereby dismissed.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Cathaee J. Hudgins

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-03

October 18, 2014

Fritz Mulhauser, Esq.

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 6, 2013 (the "Appeal"). You, on behalf of the American Civil Liberties Union ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated July 18, 2013 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "records created or modified in April 2003" regarding 5816 Foote Street, N.E., Apt. 101, Washington, D.C. 20019. Appellant states that, pursuant to the MPD request, it provided an authorization for release from "a person with ties to the address," but a final response was not received by the MPD-provided target date, Appellant initiated the Appeal.

In its response, dated October 16, 2013, MPD stated that they provided an Appellant with a responsive document upon receipt of the Appeal and, pursuant to continuing search for additional responsive records and will provide any such records within five days from the date of its response. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-04

October 22, 2013

Mr. Matthew Dursa

Dear Mr. Dursa:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 7, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Public Works ("DPW") improperly withheld records in response to your request for information under DC FOIA dated August 9, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought records relating to illegal signs in the Brookland neighborhood. DPW and Appellant exchanged a series of emails dealing with, among other thing, the timing of the production, a clarification of the FOIA Request, and a request by Appellant for a waiver of all fees. By email dated October 2, 2013, DPW notified Appellant that it would not grant the fee waiver request. On the same date, Appellant emailed DPW and notified it that he would appeal the denial of the fee waiver before DPW continued to process the FOIA Request.

On Appeal, Appellant challenges the denial of the fee waiver request. In response, dated October 16, DPW reaffirmed its position.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency

and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The sole challenge in the Appeal is the failure of DPW to grant the fee waiver requested by Appellant. In Freedom of Information Act Appeal 2013-56, we stated:

> As a general matter, we read our jurisdiction under D.C. Official Code § 2-537(a) to be limited to adjudicating whether or not a record may be withheld and not encompassing fee disputes. This is in accord with prior decisions under D.C. Official Code § 2-537(a).[1] However, in each of those decisions, the fees charged were not unreasonable or excessive. We will consider an appeal to be within our jurisdiction only where the fees to be charged are so unreasonable or excessive as to be deemed under the circumstances as a denial of the right to inspect the requested records. Appellant has made such an allegation in the Appeal.

In this case, like Freedom of Information Act Appeal 2013-56, there is no allegation that the fees to be charged are so unreasonable or excessive as to be deemed under the circumstances as a denial of the right to inspect the requested records. Therefore, as we have no jurisdiction in this matter and as DPW, having been given the opportunity to reconsider and change its position, has declined to do so, we must dismiss the Appeal.

Conclusion

The Appeal is dismissed.

[1] See MCU 406151, 51 DCR 4213 (2004); Matter No. 390592, 51 DCR 1527 (2004); OSEC 102301, 49 DCR 8641 (2002); Freedom of Information Act Appeal 2012-21; Freedom of Information Act Appeal 2012-22; Freedom of Information Act Appeal 2012-30; Freedom of Information Act Appeal 2013-26.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Christine V. Davis, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-05

October 18, 2013

Mr. Demetric Pearson

Dear Mr. Pearson:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 18, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Health ("DOH") improperly withheld records in response to your request for information under DC FOIA on September 17, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request was made orally and, as recorded by DOH, sought "information regarding a complaint made against his dog." In response, by letter dated October 7, 2013, DOH provided responsive records, with redactions for personal identifying information (mostly addresses) which are contained in such records. On Appeal, Appellant challenges only the redactions made with respect to the personal identifying information (here, the name, address and telephone number) of the individual who made a complaint with respect to the dog of Appellant.

In response, dated October 18, 2013, DOH reaffirmed its position. Citing case law, DOH states that the challenged redactions are exempt from disclosure under D.C. Official Code § 2-534(a)(2), asserting that there is a sufficient personal privacy interest in personal identifying information, enhanced by the "pledge of confidentiality" under which the information was obtained.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency

and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

While DOH has redacted various portions of the records to protect the personal identifying information associated with private individuals, the issue in this case is the redaction of personal identifying information with respect to the individual, unknown to Appellant, who made a complaint about the dog of Appellant.

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

As a general matter, the Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). A privacy interest is cognizable under DC FOIA if it is substantial, that is, anything greater than de minimis. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information.

> Information protected under Exemption 6 [the equivalent of Exemption (2) under the federal FOIA] includes such items as a person's name, address, place of birth, employment history, and telephone number. *See Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989); see also *Gov't Accountability Project v. U.S. Dep't of State*, 699 F.Supp.2d 97, 106 (D.D.C.2010) (personal email addresses); *Schmidt v. Shah*, No. 08–2185, 2010 WL 1137501, at *9 (D.D.C. Mar. 18, 2010) (employees' home telephone numbers); *Schwaner v. Dep't of the Army*, 696 F.Supp.2d 77, 82 (D.D.C.2010) (names, ranks, companies and addresses of Army personnel); *United Am. Fin., Inc. v. Potter*, 667 F.Supp.2d 49, 65–66 (D.D.C.2009) (name and cell phone number of an "unknown individual").

Skinner v. U.S. Dept. of Justice, 806 F.Supp.2d 105, 113 (D.D.C. 2011).

In the case of the Appeal, the information requested concerns the identity of a complainant. The cases are not uniform as to the privacy interest of an individual contacting his or her government.

On one hand, it has been held that FOIA requesters do not ordinarily expect that their names will be kept private. See, e.g., *Holland v. CIA*, 1992 WL 233820 (D.D.C. Aug. 31, 1992), citing and adopting statement in *Department of Justice Guide to the Freedom of Information Act*. It has been held that individuals commenting on proposed federal rules do not have a privacy interest in their identities where the agency indicated that they would not have their identities concealed. *Alliance for Wild Rockies v. Department of Interior*, 53 F.Supp.2d 32 (D.D.C. 1999). On the other hand, in *Lakin Law Firm, P.C. v. FTC*, 352 F.3d 1122 (7th Cir. 2003), the Court found a sufficient privacy interest in the names of complainants to the Federal Trade Commission. In *Holy Spirit Ass'n v. U.S. Dep't of State*, 526 F.Supp. 1022, 1032-34 (S.D.N.Y.1981), it was found that there was a sufficient privacy interest in the identities of individuals who wrote letters to senators about the Unification Church and those records were properly withheld. While the existence of a privacy interest will depend upon the circumstances in of each case, in general, we believe that an individual contacting the government with a grievance (here, regarding the dog of Appellant) has a privacy interest in his identity, as was the case in *Lakin*. There are no circumstances here which would change this conclusion.[1]

We find that there is a sufficient privacy interest in the redacted personal identifying information of the complainant.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Appellant does not specifically state a public interest which would overcome the individual privacy interest, but cites the loss of his dog and the effect on his family and neighborhood. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). Here, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of DOH. *See United States DOJ v.*

[1] Although it is not a touchstone, we note that in this case, unlike commenters in federal rulemaking, the consequences of any action decision are not nationwide, city-wide, or even ward-wide.

Reporters Comm. for Freedom of Press, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, 'we need not linger over the balance; something … outweighs nothing every time.' *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Accordingly, we find that DOH has justified the assertion of the exemption.

Conclusion

Therefore, the decision of DOH is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Phillip Husband, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-06

November 1, 2013

Kathryn Douglass, Esq.

Dear Ms. Douglass:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated October 8, 2013 (the "Appeal"). You, on behalf of Public Employees for Environmental Responsibility ("Appellant"),[1] assert that the District of Columbia Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated September 3, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought:

> 1. All Certification lists with individual rankings for the following positions, and all documents containing information on each ranked applicant and their qualifications for the position.
>
> - DDOT Legislative Analyst Grade 13 – Job ID 21632
> - DDOT Legislative Analyst Grade 13 – Job ID 22430
>
> 2. All documents containing names and job titles of the members of the hiring panels for all positions listed in #1.
>
> 3. All documents concerning or referencing how the make-up of the hiring panels were chosen for all positions listed in #1.
>
> 4. All documents concerning or referencing the hiring for any positions listed in #1 above.
>
> 5. Lists of all individuals interviewed for any positions listed in #1 above.
>
> 6. Name of the person hired for any positions listed in #1.

[1] Ms. Douglass is staff counsel for Public Employees for Environmental Responsibility ("PEER").

In response, by letter dated September 24, 2013, DDOT provided 28 pages of responsive records, but redacted portions of the records under D.C. Official Code § 2-534(a)(2) "due to personal privacy concerns, such as home addresses, telephone numbers, and non-governmental employees names and e-mail addresses." In addition, DDOT withheld 9 pages of responsive records "in their entirety due to personal privacy" under D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the response of DDOT to the FOIA Request, raising two main arguments. First, Appellant challenges the assertion by DDOT that the exemption for privacy under D.C. Official Code § 2-534(a)(2) applies. Citing the balancing test which applies under D.C. Official Code § 2-534(a)(2), Appellant argues that the first part of the test is not satisfied as there is not a sufficient privacy interest.

> [A]ny privacy interest that could be implicated by the release of the documents is minimal at best. . . . . any interest that the applicants or government employees may have in the material is limited because their interests concern information regarding an individual's business or professional activities, release of which does not impinge significantly on cognizable personal privacy interests.

As to the second part of the balancing test, Appellant argues that "[t]he public interest in disclosure is significant and substantially outweighs any minimal privacy interests." Specifically, Appellant asserts:

> Release here is necessary to reveal whether DDOT complied with its statutory duties under the CMPA [the Comprehensive Personnel Merit Act of 1978] and may show unlawful conduct by the government.

Appellant also argues that even if there is a sufficient personal privacy interest, DDOT could provide the records with redactions for narrow portions of the records as the privacy exemption is "generally limited to highly specific personally identifying information, such as a person's name, address, phone number, date of birth, criminal history, medical history, and social security number."

Second, Appellant asserts that DDOT did not respond fully to all of the items requested in the FOIA Request and DDOT should be ordered to perform a new search and provide the responsive records.

Subsequent to the filing of the Appeal, Appellant contacted DDOT, providing additional information about other FOIA requests and provided a release for information about a client (the "Client").

In its response, dated October 28, 2013, DDOT reaffirmed its position. DDOT states that, following the submission of additional information by Appellant, it conducted an additional search and "located 412 pages of documents consisting of application materials submitted by non-selected applicants for the Legislative Analyst position." Twelve of the pages consisted of application materials submitted by the Client and these pages were provided to Appellant.

DDOT addressed the two arguments of Appellant. First, with respect to its claim of exemption for personal privacy, after citing the balancing test which applies under D.C. Official Code § 2-534(a)(2) and based on two Freedom of Information Act Appeal decisions, DDOT indicates that there is a sufficient privacy interest, stating in pertinent part:

> 1. "DDOT withheld nine (9) pages of documents directly related to [the successful applicant's] DCHR Legislative Analyst application and [the successful applicant's] personnel file. . . . . Since DDOT disclosed [the successful applicant's] name, releasing additional information pertaining to his application and personnel file, such as Notification of Personnel Action forms and his employment application that detailed [the successful applicant's] work history, releasing such information would clearly be an unwarranted invasion of his privacy."
>
> 2. "400 pages of additional documents must be withheld since they contain application materials of non-selected candidates for DDOT's Legislative Analyst position. . . . These application materials consist of names, addresses, work history, and educational training of the non-selected candidates for the Legislative Analyst position. . . . Disclosing such information would be a clearly unwarranted invasion of the applicants' privacy. However, since DDOT received a signed release from [the Client], the 12 pages of documents pertaining to [the Client] will be released to Appellant."

With respect to the public interest in disclosure, DDOT also submits a Grievance Concerning Improperly Qualified, Ranked, or Certified Candidates for Competitive Appointment filed by PEER with the Department of Human Resources on behalf of the Client (the "Grievance"). DDOT states:

> It is clear based upon the document supplied by Appellant, that this FOIA request is simply seeking information to assist her with the representation of her client's grievance. . . . There is no public interest being sought here, thus releasing the personnel file of [the successful applicant] and the other non-selected candidates would clearly constitute an unwarranted invasion of privacy.

Second, with respect to the adequacy of the search, DDOT set forth the manner in which it conducted its search:

> DDOT's Personnel Department searched its computer and paper-based files. Since no hiring panel was used to select DDOT's Legislative Analyst, no documents pertaining to the hiring panel exist. A paper-based selection was made based upon the applications submitted.

DDOT submitted for in camera review the original records withheld and a sample of the 400 pages of additional responsive records withheld.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The main issue in this case is the withholding or redaction of records based on the assertion of the exemption for personal privacy under D.C. Official Code § 2-534(a)(2). The records in question are the application materials for the position of Legislative Analyst and the documents generated in selecting, and documenting the hiring of, the successful applicant.

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[2]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

[2] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, because it involves personnel records, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

In Freedom of Information Act Appeal 2011-36, we stated:

> There is a cognizable and sufficient privacy interest in information about an individual contained in employment applications and relating to the employment process. *Core v. United States Postal Service,* 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros,* 941 F. Supp. 1015 (D. Kan. 1996).

Furthermore, as our decisions indicate, government employees have a privacy interest associated with their public service.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

Accordingly, there is a sufficient privacy interest in the application materials for the position of Legislative Analyst and documents generated in selecting, and documenting the hiring of, the successful applicant.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

In Freedom of Information Act Appeal 2011-36, we also stated:

> While it has been found that there is a public interest in disclosure of information by successful job applicants of information relating to name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary, which public interest would result in disclosure, there is not a public interest in similar information contained in applications of unsuccessful job applicants. *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996). These latter applicants have a substantial privacy interest in their anonymity as the disclosure of such information could reveal their identities and that knowledge of their nonselection could lead to embarrassment or adversely affect future employment or promotion prospects. *Id*.

As we stated above, records in question are the application materials for the position of Legislative Analyst and the documents generated in selecting, and documenting the hiring of, the successful applicant. Thus, presumptively, the public interest in disclosure does not outweigh the privacy interests in this matter.

There are not sufficient additional circumstances on the administrative record which would change this conclusion. In the FOIA Request, in seeking a fee waiver, Appellant stated that it is seeking to disseminate the information received to the general public through the news media, its webpage, and publication in its newsletter. However, in this regard, Appellant has made less than full disclosure. DDOT submitted for the administrative record the Grievance, which was filed by PEER on behalf of the Client and contests the selection made for the Legislative Analyst position. Moreover, the Grievance indicates that the Client, not PEER, is the requester for the FOIA Request and that the Client is awaiting the outcome of the Appeal for the purposes of the prosecution of the Grievance. As our decisions have made clear, a private need cannot overcome a privacy interest. "The Act is fundamentally designed to inform the public about agency action and not to benefit private litigants. *EPA v. Mink*, 410 U.S. 73, 79, 92 (1973); *Renegotiation Board v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974)." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 144 (1975). "The private needs of the companies for documents in connection with litigation, however, play no part in whether disclosure is warranted. [citations omitted]." *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984). Appellant argues that disclosure "is necessary to reveal whether DDOT complied with its statutory duties under the CMPA [the Comprehensive Personnel Merit Act of 1978] and may show unlawful conduct by the government." However, as we stated in Freedom of Information Act Appeal 2013-09 and Freedom of Information Act Appeal 2013-09, "a generalized interest in oversight, coupled with mere allegations that an agency is not doing its job, is insufficient to overcome a privacy interest. *Providence Journal Co. v. Pine*, 1998 WL 356904, 13 (R.I. Super. 1998)." *See also Oguaju v. United States*, 288 F.3d 448, 451 (D.C. Cir. 2002) ("[E]ven if the records Oguaju seeks would reveal wrongdoing in his case, exposing a single, garden-variety act of misconduct would not serve the FOIA's purpose of showing 'what the Government is up to'."). Here, the examination of a single hiring decision does not further a significant public interest. Moreover, based on the

Grievance, Appellant has no knowledge of wrongdoing, but is hoping to uncover evidence of wrongdoing to further the prosecution of its case for the Client. Thus, the public interest in disclosure does not outweigh the privacy interests in this matter.

However, this conclusion does not apply to the seven page employment application of the successful applicant. Both case law and our administrative decisions have made it clear that the public interest in the applications of successful candidates for government employment outweigh the privacy interest of the employees. In *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984), in finding that the public interest prevailed, the court stated:

> [D]isclosure of information submitted by the five successful applicants would cause but a slight infringement of their privacy. In contrast, the public has an interest in the competence of people the Service employs and in its adherence to regulations governing hiring. Disclosure will promote these interests.

Id. at 948.

See also Barvick v. Cisneros, 941 F.Supp. 1015 (D. Kan.1996), *Associated General Contractors, Northern Nevada Chapter v. U.S. Environmental Protection Agency*, 488 F.Supp. 861 (D. Nev. 1980)("It cannot be said under any standard of reasonableness that information regarding the education, former employment, academic achievements and qualifications of employees are so personal that disclosure would 'constitute a clearly unwarranted invasion of personal privacy.'" *Id*. at 863 -864). In ordering the release of an email chain regarding the hiring decision for an attorney, a California federal court stated:

> Plaintiff's interest-and the public's interest-in determining whether Ms. Goldstein's hiring was improper is sufficient to outweigh any minimal privacy interest Ms. Goldstein may have in keeping these opinions from the public. Accordingly, these documents must be disclosed.

Habeas Corpus Resource Center v. U.S. Dept. of Justice, 2008 WL 5000224, 4 -5 (N.D. Cal. 2008).

Our own appeals decisions have recognized and adopted this view. As we indicated above, in Freedom of Information Act Appeal 2011-36, relying on *Core* and *Barvick*, we stated, in pertinent part, that "it has been found that there is a public interest in disclosure of information by successful job applicants of information relating to name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary, which public interest would result in disclosure . . ." In Freedom of Information Act Appeal 2011-56, in recognizing these principles, the Department of Human Resources reconsidered its position and released the resumes of the Excepted Service appointees of the Mayor. In MCU 409467, citing *Core* among other authority, it was found that the "names, professional qualifications, and work experience of the successful candidates is required to be disclosed," but not other private information such as home telephone numbers and addresses, dates of birth, and social security numbers. In Freedom of Information Act 2012-75, we ordered

the disclosure of the resumes and employment applications which were maintained by OCFO for requested individuals, redacting only the personal information on those records.

Accordingly, DDOT shall provide to Appellant the seven page employment application of the successful applicant, redacted for the personal information thereon.

Appellant argues that the withheld records should be made available in redacted form. This would apply mainly to the application materials submitted by the unsuccessful applicants. However, we do not think that redaction of the identity of the unsuccessful applicants would be sufficient to protect the individual privacy interests as disclosure of the unredacted portion of the records may allow a person to discover the identity of the unsuccessful applicants by putting this information together with other available information.

The other issue which Appellant raises is the adequacy of the search based on its failure to respond to all items requested in the FOIA Request.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-22, the agency stated that its search was conducted by

examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-29, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

As set forth above, DDOT states that it performed its search as follows:

> DDOT's Personnel Department searched its computer and paper-based files. Since no hiring panel was used to select DDOT's Legislative Analyst, no documents pertaining to the hiring panel exist. A paper-based selection was made based upon the applications submitted.

We find DDOT has established that it made a search reasonably calculated to locate the requested records. DDOT chose the appropriate location of the requested records, its personnel department, and searched all types of files which would contain the requested records. Moreover, as DDOT states that a hiring panel was not convened, there would be no records for items 2 and 3 of the FOIA Request.

We note that item 1 of the FOIA Request included a request for "Certification lists with individual rankings." In the sample of records submitted for in camera review, such records included a rating sheet for applicants. For the reasons set forth above in our privacy analysis, the names of the applicants are exempt from disclosure. As to the balance of the information in the rating sheet, we find that they may be withheld as such information is exempt from disclosure under the deliberative process privilege.

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature

> that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

"Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 152 (1975).

Here, the ratings of the applicants for the Legislative Analyst position were prepared for the deciding official for the use of such official in making the hiring decision. They reflect a quantification of the judgments made by the rater for the use of the deciding official in making a final decision.

Conclusion

Therefore, the decision of DDOT is upheld in part and reversed and remanded in part. DDOT shall provide to Appellant the seven page employment application of the successful applicant, redacted for the personal information thereon.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-07

November 13, 2013

Oliver Hall, Esq.

Dear Mr. Hall:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 10, 2013 (the "Appeal"). You, on behalf of the Eastern Market Metro Community Association ("Appellant"), assert that the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") improperly withheld records in response to your request for information under DC FOIA dated July 23, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following:

> 1. The complete and final version of the Land Disposition and Development Agreement ("LDDA") providing for the transfer of ownership or control of the real estate identified as Lot 801 in Square 901, on which the former Hine Junior High School is located, from the District of Columbia to Stanton-EastBanc, LLC, or any other individual or entity, including all exhibits or appendices attached thereto, and all covenants, easements, contracts or agreements cited therein, and any other document providing for the rights, interests or obligations of the parties to the LDDA or the public, including but not limited to any document designated as the "Term Sheet."
>
> 2. If the terms of the LDDA are not final, the most recent version of that document, including all exhibits or appendices attached thereto, and all covenants, easements, contracts or agreements cited therein, and any other document providing for the rights, interests or obligations of the parties to the LDDA or the public, including but not limited to any document designated as the "Term Sheet."
>
> 3. The complete and final version of any other document created or executed in July 2013,which provides for the lease or sale of the real estate identified as Lot 801 in Square 901, or any portion thereof, from the District of Columbia to Stanton-EastBanc, LLC, or any other individual or entity, including all exhibits or appendices attached thereto, and all covenants, easements, contracts or agreements cited therein, and any other document

> providing for the rights, interests or obligations of the parties or the public, including but not limited to any document designated as the "Term Sheet."
>
> 4. All correspondence, including email, letters, notes, memoranda and any other written communication, including documents attached thereto, between the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") or any employee or agent thereof, and Stanton-EastBanc, LLC, Stanton Development Corporation, EastBanc, Inc., Dantes Partners, AutoPark Inc., The Jarvis Company, LLC, L.S. Caldwell & Associates, or any employee or agent of the foregoing entities, which was sent or received by DMPED or its employees or agents, between May 1, 2013 and July 23, 2013, and which references the Hine Junior High School or the property on which it resides (Lot 801 in Square 901), a Planned Unit Development ("PUD") to be located on that property, any document providing for the lease or sale of that property, or any litigation concerning the District of Columbia Zoning Commission's approval of a PUD to be located on that property, including but not limited to any such correspondence sent or received by DMPED employee Corey Lee on July 9, 2013, and any correspondence relating thereto.

In response, by email dated August 30, 2013, DMPED provided 480 pages of responsive records. However, it withheld or redacted other records, stating that

> the District objects to production of other documents and certain portions of documents because they contain 'commercial or financial information obtained from outside the government' that will 'result in substantial harm to the competitive position of the person from whom the information was obtained' or attorney-client communications and internal deliberations. These documents or portions of documents are exempt pursuant to D.C. Official Code §§ 2-534 (a)(1) and (4) respectively.

Thereafter, Appellant contacted DMPED, stating, among other things, that the response to the FOIA Request was insufficient. After an exchange of emails, by email dated September 20, 2013, DMPED supplemented its response to the FOIA Request, stating as follows:

> The attached documents supplement Request #3 and Request #4. These documents are the final versions of the documents that are responsive to your request. In addition, the District objects to production of certain portions of the documents because they contain "commercial or financial information obtained from outside the government" that will "result in substantial harm to the competitive position of the person from whom the information was obtained". These portions of the responsive documents have been redacted and are exempt pursuant to D.C. Official Code §2-534 (a)(1). Finally, any additional documents that may be responsive to Request #3 and Request #4 are already available to the public through the Recorder of Deeds: http://otr.cfo.dc.gov/service/otr-recorder-deeds.

By email dated September 20, 2013, in response, Appellant stated DMPED "has failed to provide complete, unredacted documents responsive to our request," most notably a lease for the subject property "which DMPED is required to make publicly available whether or not a request is filed." In addition, Appellant stated that the records which DMPED indicated were available

online could not be found. When DMPED indicated that its response was final, Appellant initiated the Appeal.

On Appeal, Appellant asserts the response of DMPED is incomplete and fails to justify the exemptions asserted. First, Appellant challenges the failure to produce responsive records. Appellant states that several emails produced "expressly refer to attached documents which DMPED failed to produce" and that "[o]ther responsive documents appear to be missing entirely." In addition, Appellant asserts that the statement of DMPED that certain records are available on the website of the Recorder of Deeds (OCFO) "is not a valid basis for DMPED to withhold access to a public record." Furthermore, Appellant states that "the Recorder of Deeds' online database does not disclose any documents in response to a search for Lot 801 in Square 901" and that DMPED has taken no action when so informed.

Second, Appellant asserts that the "redaction of portions of public contracts violates D.C. [Official] Code §§ 2-534(b) and 2-536(a)(6)." In particular, the Second Amendment to Land Disposition and Development Agreement and the Ground Lease, which was executed on July 11, 2013, "appear to have multiple pages omitted, and both documents have several pages or portions of pages redacted."

Third, Appellant asserts that the "failure to make public contracts available on its website violates D.C. [Official] Code § 2-536(a)(6)."

In its response, dated October 30, 2013, DMPED indicates that it will provide certain records which were withheld but otherwise reaffirms its position. DMPED notes that "it has produced the Land Disposition Agreement ('LDA') and the amendments to the LDA with redactions, 158 pages of emails and attached documents, and the ground lease." With respect to the redactions on the Land Disposition Agreement and the ground lease, DMPED states:

> All these redactions include commercial or financial plans and projections that were received by [sic] the development team. Production of this information would cause substantial competitive harm to the development team, and this information was withheld from disclosure under the exemption at D.C. Official Code § 2-534(a)(1).

DMPED also stated that it withheld 369 emails, as set forth on an accompanying privilege log. It states that it withheld certain of the emails based on the attorney-client privilege and the deliberative process privilege under D.C. Official Code § 2-534(a)(4). As to the other emails withheld, it states:

> Other email chains were withheld under the exemption at D.C. Official Code § 2-534(a)(1) because they contain commercial or financial information received by [sic] the development team or they reflect the development team's negotiation strategies around the finalization of documents needed to transfer the District owned property to the private development team. The proprietary financial information provided by the development team and their back and forth negotiations with the District reflect financial and strategic information. Allowing this information to be available to the public will harm their

ability to compete in the future if other development teams have access to either the financial information or the negotiation strategies employed.

In response to an invitation to submit a supplement clarifying the administrative record (including a chronology of the project, an identification of the parties mentioned in the FOIA Request, and the current status of the project, and to provide a copy of the withheld records, both in redacted and unredacted form, including the records identified in the privilege log, for in camera review), DMPED provided a timeline and description of the project, a list of the parties, and a sample of the records withheld.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The FOIA Request concerns the construction of a mixed-use residential, office, and retail project on the real property formerly occupied by Hine Junior High School. The school was closed in 2008 and the District, pursuant to the statutory process for the declaration and disposition of surplus property, conveyed the real property to the developer pursuant to a deed and ground lease, subject to various conditions and agreements regarding the redevelopment of the real property. While the real property has been conveyed to the developer, the commencement of the construction of the project is awaiting the resolution of an appeal of the planned unit development order of the Zoning Commission. The FOIA Request seeks records regarding the conveyance of the real property, including the various conditions and agreements regarding its redevelopment.

The main contention of Appellant is that DMPED withheld records, either by failing to produce them or by improperly referring Appellant to the website of the Recorder of Deeds (OCFO), or improperly redacted portions of records which it did provide to Appellant. The responsive records appear to fall into two categories: (1) agreements and other documents relating to the conveyance and use of the real property; and (2) emails relating to the effectuation of the conveyance and use of the real property. We will analyze the arguments of Appellant with respect to each group.

As stated, the first group of records withheld or for which redactions are alleged to have been improperly made are agreements and other documents relating to the conveyance and use of the real property. The main contention of DMPED is that the records withheld or redacted are exempt from disclosure under D.C. Official Code § 2-534(a)(1). Appellant contends that these are "public contracts" which are required to be provided, without redaction, under D.C. Official Code § 2-536(a)(6).

D.C. Official Code § 2-536(a)(6) states:

> (a) Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information, and do not require a written request for information: . . .
>
> (6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies.

While D.C. Official Code § 2-536(a)(6) provides that District contracts are "public information," contrary to the assertion of Appellant, the exemptions under DC FOIA are still applicable. In considering a claim of exemption under D.C. Official Code § 2-534(a)(1) for records of the Public Service Commission, the District of Columbia Court of Appeals stated:

> [S]ection 2-536 (a) does not mandate disclosure of data that satisfy the requirements of D.C. Code 2-534 (a). We base this conclusion on the introductory language of section 2-536 (a), which declares broad categories of information to be public '[w]ithout limiting the meaning of other sections of this subchapter.' We construe that qualifying language to denote that information that is determined to be exempt from disclosure under section 2-534 (a) need not be treated as public information and made available pursuant to section 2-536.

Office of the People's Counsel v. PSC, 955 A.2d 169, 176 (D.C. 2008). Nevertheless, while the exemptions under DC FOIA may be applicable to provisions of a contract which falls under D.C. Official Code § 2-536(a)(6), an agency must still justify the claim of any such exemption. As stated, DMPED asserts that D.C. Official Code § 2-534(a)(1) provides the exemption from disclosure.

D.C. Official Code § 2-534(a)(1) exempts from disclosure "trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained." This has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987). *See Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989), citing *CNA Financial Corp. v. Donovan.* In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). See also *McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375

F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would "likely" do so. [citations omitted]").

As we have stated in prior decisions,[1] in Freedom of Information Act cases, "'conclusory and generalized allegations of exemptions' are unacceptable, *Found. Church of Scientology of Wash., D.C, Inc*. v. *Nat'l Sec. Agency*, 197 U.S. App. D.C. 305, 610 F.2d 824, 830 (D.C. Cir. 1979) (quoting *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820, 826 (1973))." *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007). Here, DMPED provides generalized characterizations as to the types of information provided by the developer, e.g., plans and projections, and makes a conclusory allegation that disclosure will result in substantive competitive harm. However, DMPED does not describe, with reasonable specificity, the information in question or explain how the disclosure of such information will result in competitive harm. Its conclusory statements are insufficient to justify its claim of exemption.

Nevertheless, in light of the fact that potentially valuable third party information is involved, we invited DMPED to supplement its submission by providing all of the records withheld, both in redacted and unredacted form, for in camera review. DMPED responded by providing a "sample," but not all, of such records. To the extent that it provided unredacted records, it did not provide the unredacted form. Nonetheless, we reviewed the records which DMPED submitted.

Based on our review of the records, we have not found any information which would qualify for exemption under D.C. Official Code § 2-534(a)(1). The unredacted portions of the records which we reviewed contained provisions which were basic to real estate transactions and, to the extent that they were tailored to the specific transaction, were unremarkable. Two of the records provided, the Second Amendment to Land Disposition and Development Agreement and the Ground Lease, had redacted portions of the exhibits which were attached to the body of the agreements. While we were obviously not able to review the redacted portions of these documents, we reach the same conclusion based on the unredacted information in the other records.

For instance, Exhibit E on the Second Amendment to Land Disposition and Development Agreement is the "Milestone Schedule." Another record provided in the sample has a Milestone Schedule which is unredacted. The unredacted schedule consists of events in the planned development of the real property, beginning with closing and ending with substantial completion of construction, with a "Target Date" and an "Outside Date." The contents of this exhibit are typical of real estate construction projects and its disclosure would not result in substantial competitive harm. Exhibit B of the Ground Lease is the Basic Ground Rent Calculation Model. Based on our reading of the documents, the Ground Lease provides for a partial abatement of rent in the initial years of the lease. While the amount of a rent holiday is usually expressed as a fixed amount, the amount of the abatement here is expressed as a formula. In government

[1] See Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, Freedom of Information Act Appeal 2013-13, and Freedom of Information Act Appeal 2013-62.

contract cases, while some of the components used by a bidder to derive the aggregate amount of the consideration to be paid under a contract may be exempt from disclosure, the aggregate amount of the consideration is not exempt from disclosure. See, e.g., Freedom of Information Act Appeal 2011-16. Here, the aggregate amount of the consideration is the basic monthly rent. While it is expressed as a formula rather than a fixed amount, as it is the payment amount, it is not exempt from disclosure. The disclosure of the amount which the District receives from the sale or lease of its assets is in the public interest.

Our conclusion that the disclosure of these records is not exempt under D.C. Official Code § 2-534(a)(1) is buttressed by the fact that the contracting entity is in the nature of a joint venture among three real estate companies. That all three companies are in possession of the same commercial and financial information suggests that such information is not unique and is known by many concerns within the real estate industry. If some of the information was originally in the possession of just one company, it seems unlikely that, in the highly competitive real estate industry, that the company would provide valuable, proprietary commercial and financial information to two other competitors to be able to participate in just one transaction.

As stated above, Appellant asserts that the statement of DMPED that certain records are available on the website of the Recorder of Deeds (OCFO) "is not a valid basis for DMPED to withhold access to a public record." Furthermore, Appellant states that "the Recorder of Deeds' online database does not disclose any documents in response to a search for Lot 801 in Square 901" and that DMPED has taken no action when so informed. As a general matter, Appellant is incorrect in its assertion that a referral to responsive records posted on the website of an agency does not satisfy DC FOIA as to such records. In our past decisions, we have stated:

> It has been held that an agency was not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). *See also* Crews v. Commissioner, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for documents that are publicly available either in the agency's reading room or on the Internet).

Freedom of Information Act Appeal 2013-04; Freedom of Information Act Appeal 2012-73; Freedom of Information Act Appeal 2012-63; Freedom of Information Act Appeal 2011-34; Freedom of Information Act Appeal 2011-31; Freedom of Information Act Appeal 2014-02.

Here, the responsive records were not posted on the website of DMPED but of another District agency. For the purposes of this decision, we will presume that the fact that the records are posted on the website of a sister agency is not, standing alone, insufficient. However, we do not believe that the response of DMPED in this case satisfies DC FOIA. In Freedom of Information Act Appeal 2012-73, we found that DCPS satisfied DC FOIA where it "posted the records online and provided the information necessary to allow Appellant to access the requested records." In this case, DMPED provided a link to the homepage of the website with no further instructions to facilitate access to the requested records. Moreover, when Appellant attempted to access the requested records and was unable to do so, DMPED made no further effort to assist Appellant in obtaining the records from the website. While an agency may satisfy DC FOIA by referring a

requester to records posted on its website, such referral must enable an average constituent to locate the requested records. In this instance, the attorney for Appellant, trained in research methods, was unable to find the responsive records after attempting to do so.[2] Accordingly, the failure to provide sufficient instructions to locate the responsive records and the failure to cure such deficiency when requested to do so constitutes an insufficient response under DC FOIA.

Therefore, with respect to the first category of records, DMPED shall provide to Appellant all records which were withheld without redactions and all records which it alleges are available on the website of the Recorder of Deeds (OCFO). If not already produced, such records should include the Land Disposition and Development Agreement, all amendments thereto, the Ground Lease, and the exhibits to all those documents.

The second category of records consists of emails relating to the effectuation of the conveyance and use of the real property. The first grouping of this category involves approximately 100 emails by and between employees of DMPED and/or other District agencies. The pertinent portion of the FOIA Request, which is in paragraph 4, sought emails and other similar correspondence between DMPED and outside entities. Therefore, this first grouping, consisting of internal emails, is nonresponsive to the FOIA Request and need not be produced.[3] Accordingly, it is unnecessary to consider the claims of exemption based on the attorney-client privilege and the deliberative process privilege under D.C. Official Code § 2-534(a)(4).

The balance of the emails are responsive to the FOIA Request, but DMPED claims that they are exempt from disclosure under D.C. Official Code § 2-534(a)(1). DMPED asserts that such emails reflect negotiation strategies and financial information both of which are proprietary.

With respect to negotiation strategies, there does not appear to be a record or records which set forth the negotiation strategy of the developer. Indeed, it would be foolish for the developer to state explicitly its negotiating strategy to DMPED via email or otherwise. Rather, as we interpret its argument, DMPED is seeking nondisclosure for the negotiation strategy which may be inferred from the contents of the emails. Furthermore, DMPED provides only a conclusory allegation that such negotiation strategy as may be inferred from the emails constitutes unknown, valuable commercial information. As we stated above, we cannot accept a conclusion alone to justify a claim of exemption. Moreover, DMPED does not cite, and we are unaware of, any authority that negotiation strategies have been found to be protected commercial information under D.C. Official Code § 2-534(a)(1) or its federal equivalent. DMPED has provided two emails as samples of the withheld emails. These emails reflect the exchange of communications

[2] We have made no determination as to whether the responsive records are, in fact, located on the website.

[3] The nonresponsive records are the following numbered items on the privilege log submitted by DMPED: 42, 43, 44, 45, 49, 54, 55, 58, 59, 67, 71, 74, 75, 76 77, 78, 79, 80, 81, 83, 84, 92, 93,107, 108, 109, 110, 112, 114, 116, 117, 118, 121, 126, 127, 128, 133, 134, 135, 136, 137, 138, 139, 140, 145, 146, 148,152, 154, 155, 158, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170, 171, 177, 178, 183, 184, 185, 186, 189, 194, 195, 199, 200, 201, 202, 204, 205, 206, 207, 247, 249, 266, 269, 274, 298, 301, 302, 303, 304, 305, 307, 308, 309,310, 313, 314, 317, 320, and 333.

made in the ordinary course of finalizing documents for a real estate closing and do not provide a hint of negotiation strategy, much less strategies whose disclosure would result in substantial competitive harm.

DMPED also asserts that the mails contain "proprietary financial information," but, again, fails to provide further specificity or explain the harm which would result from the disclosure. It appears that such information refers to the same information which was alleged to be exempt from disclosure in the real estate documents which we discussed above, but for which DMPED was unable to justify the claim of exemption.[4] The same analysis applies here.

Accordingly, DMPED has not justified its claim of exemption and the emails which were withheld shall be provided to Appellant.

Appellant also states that some of the attachments to the emails which were already provided were missing. It does not appear that the missing attachments are in controversy. Such omissions may be a consequence of the electronic printing and retrieval of records. Consequently, it is not clear on the administrative record that DMPED is aware of which attachments are missing. Therefore, Appellant should provide a list of the missing attachments to DMPED. When DMPED receives the list from Appellant, it shall provide the missing attachments to Appellant.

Appellant asserts that the failure of DMPED to make its contracts available on its website violates D.C. Official Code § 2-536(a)(6) and requests that we order DMPED to make all its contracts, not simply those responsive to the FOIA Request, available on its website. As we have stated in our past decisions, and most recently in Freedom of Information Act Appeal 2014-04, as a general matter, we read our jurisdiction under D.C. Official Code § 2-537(a) to be limited to adjudicating whether or not a record may be withheld. The order which Appellant seeks is beyond the relief which we are authorized to provide under D.C. Official Code § 2-537(a) and we will not consider this issue.

Conclusion

Therefore, the decision of DMPED is reversed and remanded. DMPED shall provide to Appellant the withheld records. With respect to the missing attachments to the emails, when DMPED receives the list of missing attachments from Appellant, it shall provide the missing attachments to Appellant.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DMPED pursuant to this order.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

[4] The sample emails contain no financial information.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ayesha Abbasi, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-08

November 21, 2013

Ms. Felicia Chambers

Dear Ms. Chambers:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 19, 2013 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA transmitted August 15, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought:

1. "[T]he record who paid and the amount paid of real property taxes for [a specified real property] for each tax period from June 1978 to the present."

2. "[T]he Records Disposition and Retention Schedule that pertain to the above records for each time period."

In response, by email dated October 17, 2013, OCFO provided a schedule of payments made and payors, to the extent that the payors were known, for tax years 1995 through 2013.

On Appeal, Appellant challenges the response of OCFO, stating that the agency

> failed to provide all of the requested tax payment information and provided none of the Records Disposition and Retention Schedules. In addition, based on FOIA Appeal 2013-64 (citing FOIA Appeal 2013-04), I have reason to believe that the requested information may exist on microfiche or may have been transferred to an offsite archives.

In response, dated July 17, 2013, OCFO reaffirmed its position. It states that "this office has provided Ms. Chambers with the only available information that is housed within our agency. Moreover, Ms. Chambers was informed that the particular years in question, 1978 through 1994 does not exist and is not maintained in our Archive."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The FOIA Request is similar to the FOIA request considered in Freedom of Information Act Appeal 2013-64, in which Appellant and OCFO were the parties. The FOIA request in that case sought the real estate assessment for the same real property for four time periods, the earliest of which was June 1978. There, OCFO maintained that it did not have on its premises the records requested prior to 1993. However, based on the applicable portion of its records retention schedule which indicated that such older records would have been transferred to, and retained in, its archives and rules which provide that records sent to archives remain in the control of the transferring agency, we required OCFO to search the archives.

In the case of the Appeal, the FOIA Request is not for the real estate assessments, but for payments and payors of the real estate taxes for the specified real property. Appellant challenges the response of OCFO as to this portion of the FOIA Request to the extent that it has not produced records prior to 1995.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-22, the agency stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-29, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

In the case of the Appeal, OCFO states simply that it "has provided Ms. Chambers with the only available information that is housed within our agency" and that the requested records for "1978 through 1994 do[] not exist and [are] not maintained in our Archive." As we have stated in prior decisions,[1] in Freedom of Information Act cases, generalized and conclusory allegations cannot suffice to establish an adequate search or the availability of exemptions. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007). OCFO has provided only a conclusory statement that the requested records for 1978 through 1994 do not exist, onsite or in the archives. However, it has given no indication as to whether it conducted a search of its archives or that a sufficient determination was made in another manner. As the applicable portion of the records disposition and retention schedule in Freedom of Information Act Appeal 2013-64 indicated that the records requested there would be maintained in the archives, ostensibly in an effort to determine whether the requested records here are of the type that are maintained in the archives, Appellant requested the applicable portions of the records disposition and retention schedule. However, OCFO failed to respond at all to that portion of the FOIA Request or to address it in its response to the Appeal.

[1] See Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, Freedom of Information Act Appeal 2013-13, and Freedom of Information Act Appeal 2013-62, and Freedom of Information Act Appeal 2014-07.

Accordingly, OCFO shall conduct a search for the requested records for the tax periods of 1978 through 1994 and provide any responsive records. OCFO shall state to Appellant the manner in which the search was conducted or, if a determination was made that such records no longer exist, how such determination was made. In addition, OCFO shall provide to Appellant the applicable portions of the records disposition and retention schedule with respect to such records. If Appellant is not satisfied with the response of OCFO as ordered, Appellant may challenge such response by separate appeal, identifying the deficiencies and proposing an appropriate order.

Conclusion

Therefore, the decision of OCFO is reversed and remanded. OCFO shall conduct a search for the requested records for the tax periods of 1978 through 1994 and provide any responsive records. OCFO shall state to Appellant the manner in which the search was conducted or, if a determination was made that such records no longer exist, how such determination was made. In addition, OCFO shall provide to Appellant the applicable portions of the records disposition and retention schedule with respect to such records.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, the response of OCFO pursuant to this order.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Angela Washington
Charles Barbera, Esq.
Laverne Lee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-09

November 21, 2013

Mr. Michael S. Gorbey

Dear Mr. Gorbey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 20, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your requests for information under DC FOIA dated July 11, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought legal visitation records and logs and unit housing logs for specified time periods.

In response, by letter dated September 13, 2013, DOC provided a log of the legal visits to Appellant for the specified time periods, with the names of the visitors redacted to protect their privacy.

On Appeal, Appellant contends that DOC has not provided "unit call-out logs" or "tv-communications visits."

In its response, by letter emailed October 11, 2013, DOC reaffirmed its position. DOC states that it "does not maintain call-out logs. In fact, call-out cards (or 'passes') are not retained." [1] DOC provides an affidavit of its Security Sergeant in support of its contention.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-

[1] DOC states: "'Call-out' cards or 'passes' are 'movement' cards issued to inmates for the purpose exiting their housing units to engage in activities, such as legal visits, and to return upon completion of the activities.

531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The issue presented by the Appeal is the adequacy of the search for the certain requested records which DOC did not provide. According to Appellant, those records were the "unit call-out logs" or "tv-communications visits." The legal principles regarding the adequacy of searches are familiar to DOC.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In testing the adequacy of a search, we have looked to see whether an agency has made reasonable determinations as to the location of records requested and made, or caused to be made, searches for the records. *See,* e.g., Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-55. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

In the case of the Appeal, DOC states that it does not maintain call-out logs and call-out cards (or "passes") are not retained. The affidavit of the Security Sergeant provides, in pertinent part:

> A pass is issued to an inmate for the limited purpose of 'clearing' the inmate to engage in an activity outside the housing unit. A common activity engaged in by inmates outside housing units is a legal visit with an attorney or a social visit with family members. Upon return from an activity, the pass is collected from the inmate and routinely destroyed.
>
> A pass is issued for a single out-of-unit activity only, and cannot be used to engage in another activity. To engage in another activity, another pass must be issued.

As we stated above, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. Here, DOC has established that the record created for engaging in an activity outside a housing unit is the call-out card or pass and that such record is destroyed when an inmate returns to the housing unit. Thus, DOC has established that it does not maintain "unit call-out logs" or logs of "tv-communications visits" as such records would pertain to activities outside a housing unit.

Accordingly, we find that the search is adequate.

Conclusion

Based on the foregoing, the decision of DOC is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-10

November 21, 2013

Mr. Michael Wonson

Dear Mr. Wonson:

This letter responds to your consolidated administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 22, 2013 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your requests for information under DC FOIA (the "FOIA Requests").

Background

Appellant's first FOIA Request sought records pertaining to the employment and/or termination of a specified MPD employee. Appellant's second FOIA Request sought records pertaining to a specified motor vehicle and a statement made by a named individual in relation to a specified criminal proceeding.

In response to the first FOIA Request, by letter dated September 18, 2013, MPD stated that it could neither admit nor deny the existence of the requested records regarding the named MPD employee because it would be an unwarranted invasion of privacy of the employee under D.C. Official Code § 2-534(a)(2). In response to the first FOIA Request, by letter dated September 18, 2013, MPD stated that because the requested records are "a part of an open/ongoing investigation," such records are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A). In addition, MPD stated that "[t]o the extent that the documents contain any personal information regarding victims, witnesses, and/or suspects, or law enforcement sensitive material, they too would be exempt from disclosure under D.C. Official Code § 2-534(a)(2) and D.C. Official Code § 2-534(a)(3)."

On Appeal, Appellant challenges the denial of the FOIA Requests as he is the subject of proceedings relating to records sought in the FOIA Requests.

In its response, dated November 7, 2013, MPD reaffirmed its position. With respect to the first FOIA Request, MPD reiterated that "release of personnel records would be an unwarranted invasion of privacy of the subject former employee." With respect to the second FOIA Request, MPD stated that upon receipt of the Appeal, which concerned Appellant, the vehicle, and a citizen, it determined that the related criminal case is on appeal and the disclosure of the records "could jeopardize an enforcement proceeding."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As stated above, Appellant's first FOIA Request sought records pertaining to the employment and/or termination of a specified MPD employee. MPD asserts that the requested records are exempt from disclosure under D.C. Official Code § 2-534(a)(2).

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352,

[1] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The exemption in this matter is asserted under, and, as it involves personnel records, would be judged by the standard for, Exemption (2).

> 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

Our decisions have established that employees have a personal privacy interest in their personnel records. Thus, there is clearly a sufficient personal privacy interest in the requested records in this matter.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Appellant indicates that the records are needed in connection with a proceeding of which he is the subject. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). "The Act is fundamentally designed to inform the public about agency action and not to benefit private litigants. *EPA v. Mink*, 410 U.S. 73, 79, 92 (1973); *Renegotiation Board v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974)." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 144 (1975).

In this case, Appellant has offered, at most, a private need to overcome the privacy interest. However, the disclosure of the records will not contribute anything to public understanding of

the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

As stated above, Appellant's second FOIA Request sought records pertaining to a specified motor vehicle and a statement made by a named individual in relation to a specified case. MPD asserts that the requested records are exempt from disclosure because there is a related criminal case on appeal and the disclosure of the records "could jeopardize an enforcement proceeding."

D.C. Official Code § 2-534(a)(3) provides, in pertinent part, for an exemption from disclosure for:

> Investigatory records compiled for law-enforcement purposes, including the records of Council investigations . . ., but only to the extent that the production of such records would:
>
> (A) Interfere with:
>
> (i) Enforcement proceedings; . . .
>
> (C) Constitute an unwarranted invasion of personal privacy; . . .

In the Appeal, there does not appear to be any dispute that the records have been compiled for law enforcement purposes. The issue is whether the disclosure would interfere with enforcement proceedings.

Disclosure of records would, among other things, interfere with enforcement proceedings where such disclosure would reveal the size, scope and direction of the investigation, see, e.g., *Alyeska Pipeline Service Co. v. U.S. EPA*, 856 F.2d 309, 312 (D.C. Cir. 1988), allow the targets of an investigation to avoid arrest and prosecution and provide them information that would allow them to change their operations to avoid detection, see, e.g., *Boyd v. Crim. Div. of the United States DOJ*, 475 F.3d 381, 386 (D.C. Cir. 2007), and expose the legal thinking, strategy, and weaknesses in the government's evidence, see, e.g., *Mapother v. Department of Justice,* 3 F.3d 1533, 1542-1543 (D.C. Cir. 1993).[2] See also Freedom of Information Act Appeal 2011-47, where we upheld the exemption based on the statement of the agency, supported by affidavit, that "disclosure of records at this time may expose witnesses to danger, alert potential criminal suspects to the ongoing investigation, and reveal the direction of the investigation, thus potentially compromising the investigation." Nevertheless, the exemption has been held not to

[2] As stated herein, the standard for establishing the exemption is that the disclosure would interfere with enforcement proceedings. This was formerly the standard under the federal Freedom of Information Act. However, in 1986, the federal Freedom of Information Act was amended and the exemption is established thereunder if the disclosure "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). Nevertheless, although the current federal standard is less demanding than the prior standard, the examples cited would establish the requisite interference under either standard.

apply when the target of the investigation has possession of, or has submitted, the requested records. *See*, e.g., *Lion Raisins v. USDA*, 354 F.3d 1072, 1085 (9th Cir. 2004); *Dow Jones Co. v. FERC*, 219 F.R.D. 167, 174 (C.D. Cal. 2002).

In order to justify its claim of exemption, MPD states that the "criminal case involving the requested records is currently on appeal" and the disclosure of the records "could jeopardize an enforcement proceeding." As it did in Freedom of Information Act Appeal 2012-64 and Freedom of Information Act Appeal 2013-06, MPD appears to be arguing for a per se exemption whenever there is a pending proceeding. As we stated in Freedom of Information Act Appeal 2013-06:

> MPD argues, as it did in Freedom of Information Act Appeal 2012-64, for a per se exemption whenever there is a pending investigation or a related law enforcement proceeding. In Freedom of Information Act Appeal 2012-64, we rejected such contention, stating:
>
> > We note that MPD has raised a claim of exemption which may otherwise be allowable. However, MPD has not sustained its burden of proof on the applicability of this exemption. It merely asserts that there is a pending law enforcement investigation, in effect contending that there is a per se exemption whenever there is a pending investigation or a related law enforcement proceeding. In order to sustain the exemption, it must show that disclosure 'would interfere' with the law enforcement proceeding or that it would deprive a person of a right to a fair trial or an impartial adjudication. In this case, MPD has not explained how the interference or deprivation would occur (the FOIA office has not indicated that it has seen the records).

Moreover, MPD offers only that disclosure *could* interfere with an enforcement proceeding. Under D.C. Official Code § 2-534(a)(3)(A)(i), it must be demonstrated that disclosure w*ould* interfere with an enforcement proceeding. As MPD indicates that the criminal case is on appeal, we presume that there has been a trial. As the prosecution is constitutionally required to provide any exculpatory material to the defense and, upon information and belief, the local prosecutors liberally provide evidence to the defense, it would not be surprising that some or all of the records maintained by MPD would have already have been provided. Furthermore, as the matter has already gone to trial, it is unlikely that revealing evidence would affect an ongoing investigation as any investigation would likely have been completed prior to trial. Accordingly, such records shall be provided to Appellant.[3]

However, notwithstanding the foregoing, the administrative record is sufficient to consider a claim of exemption for an unwarranted invasion of personal privacy under D.C. Official Code §

[3] As the Office of the United States Attorney has a potential interest in the disclosure and such interest has not been represented on the administrative record, we would be willing to reconsider the issue upon a declaration by the Office of the United States Attorney stating which records have not been provided to the defense and stating specifically the manner in which the disclosure of such records would interfere with the current enforcement proceedings.

2-534(a)(3)(C) regarding the statement made by the named individual, who is identified by MPD as a citizen. As indicated in footnote 1 above, Exemption (3)(C) provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."

As stated above, an inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. Although the factual circumstances surrounding the Appeal have not been detailed, it appears that the named individual would be a victim or a witness. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question. Thus, there is a sufficient personal privacy interest in the statement of the named individual.

It is not a material consideration that the named individual may have testified in the criminal trial. As we stated in Freedom of Information Act Appeal 2013-19:

> The fact that certain portions of a process may be conducted publically does not require that all information connected to such process be disclosed. For instance, the fact that a witness testifies at trial does not waive his or her privacy and make all witness statements in the possession of the government subject to disclosure. *See*, e.g., *Neely v. FBI*, 208 F.3d 461 (4th Cir. 2000); *Burge v. Eastbern*, 934 F.2d 577 (5th Cir. 1991). In Freedom of Information Act Appeal 2013-16, we found that identifying information of criminal defendants was not subject to disclosure, notwithstanding that such information may be available in court records.

As also stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. As was the case with the first FOIA Request, Appellant has offered, at most, a private need to overcome the privacy interest and this is not sufficient to establish the requisite public interest.

Accordingly, the statement of the named individual is exempt from disclosure.

Conclusion

Therefore, the decision of MPD is upheld in part and reversed and remanded in part. MPD shall provide to Appellant the records withheld in response to the second FOIA Request other than the statement of the named individual.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-11

November 20, 2013

Kathryn Douglass, Esq.

Dear Ms. Douglass:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated October 25, 2013 (the "Appeal"). You, on behalf of Public Employees for Environmental Responsibility ("Appellant"),[1] assert that the Department of Human Resources ("DCHR") improperly withheld records in response to your request for information under DC FOIA dated August 30, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought:

> 1. All Certification lists with individual rankings for the following positions, and all documents containing information on each ranked applicant and their qualifications for [certain specified] positions. . . .
>
> 2. All documents containing names and job titles of the members of the hiring panels for all positions listed in #1.
>
> 3. All documents concerning or referencing how the make-up of the hiring panels were chosen for all positions listed in #1.
>
> 4. All documents concerning or referencing the hiring for any positions listed in #1 above.
>
> 5. Lists of all individuals interviewed for any positions listed in #1 above.
>
> 6. All documents containing or referencing any explanation for why any position listed in #1 has not been filled.

[1] Ms. Douglass is staff counsel for Public Employees for Environmental Responsibility ("PEER").

7. All documents related to the hiring of [a specified individual] for any position in the government of the District of Columbia, including all documents establishing his level of salary.

8. All documents concerning or referencing [a client's (the "Client") applications for employment with the government of the District of Columbia from June 1, 2012 to the present.

9. All personnel records for [the Client].

In response, by letter dated October 8, 2013, DCHR provided responsive records from the "Merit Staffing Files," but redacted portions of the records based on an exemption for personal privacy under D.C. Official Code § 2-534(a)(2) and withheld the lists of individuals interviewed, requested under Item 5 above, under the same exemption.

On Appeal, Appellant asserts two challenges to the response of DCHR to the FOIA Request. First, Appellant challenges the assertion by DCHR that the exemption for privacy under D.C. Official Code § 2-534(a)(2) permits the withholding (or redaction) of the lists of individuals interviewed.

Second, Appellant asserts that "there are several documents which are responsive to the requests but were not provided." As to this part of the DCHR response to the FOIA Request, Appellant specifies deficiencies with respect to nine other documents.

In its response, dated November 5, 2013, DCHR addressed the challenge of Appellant with respect to four of the specified documents by providing a missing document, providing a better copy, or clarifying a mistaken redaction. However, as to the balance of its original response, it reaffirmed its position.

DCHR addressed the two challenges of Appellant. First, with respect to its claim of exemption for personal privacy, after citing the balancing test which applies under D.C. Official Code § 2-534(a)(2), DCHR indicates that there is a sufficient privacy interest in the identity and personal information of job applicants, here the interviewees, in the withheld or redacted records.

With respect to the public interest in disclosure, DCHR asserts that Appellant has not demonstrated any public interest in the disclosures sought.

Second, with respect to the records which Appellant asserts were not provided, as to four of the records, DCHR indicates that it provided a missing document, provided a better copy, or clarified a mistaken redaction. As to the records described as the 2008 Rating and Ranking Schedule (Vacancy Announcement 21274), the 2008 Rating and Ranking Schedule (Vacancy Announcement 21457), June 2013 Certifications lists, and the hiring documents of successful applicants for vacancy announcements 22727 and 22814, DCHR states that it produced all records contained in the file associated with the relevant vacancy announcement to the extent it was available. As to the hiring documents of successful applicants for vacancy announcements 22727 and 22814, DCHR states that the vacancies were active at the time that the FOIA Request was received.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The FOIA Request is similar to the FOIA request which was made by Appellant in Freedom of Information Act Appeal 2014-06. In Freedom of Information Act Appeal 2014-06, the District of Columbia Department of Transportation chose to assert exemptions for some of the same types of records which DCHR has chosen to provide to Appellant. In Freedom of Information Act Appeal 2012-15, we stated that "[u]nless otherwise prohibited by law, the release of records under DC FOIA as well as the federal FOIA is discretionary and can and should be made, notwithstanding the applicability of an exemption, if the public interest will not be harmed by its release." Thus, in this Appeal, it is only necessary to address the records for which exemptions are claimed, regardless of whether exemptions could have been claimed for other records.

The first issue in the Appeal is the withholding or redaction of the lists of interviewees for specified positions based on the assertion of the exemption for personal privacy under D.C. Official Code § 2-534(a)(2). Our analysis on this issue follows, in all material respects, our analysis in Freedom of Information Act Appeal 2014-06. We will re-state the relevant portions of such analysis for the convenience of the parties.

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[2]

[2] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

In Freedom of Information Act Appeal 2011-36, we stated:

> There is a cognizable and sufficient privacy interest in information about an individual contained in employment applications and relating to the employment process. *Core v. United States Postal Service,* 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros,* 941 F. Supp. 1015 (D. Kan. 1996).

Furthermore, as our decisions indicate, government employees have a privacy interest associated with their public service.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

Accordingly, there is a sufficient privacy interest in the lists of interviewees which were withheld or redacted.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

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broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, because it involves personnel records, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

In Freedom of Information Act Appeal 2011-36, we also stated:

> While it has been found that there is a public interest in disclosure of information by successful job applicants of information relating to name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary, which public interest would result in disclosure, there is not a public interest in similar information contained in applications of unsuccessful job applicants. *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996). These latter applicants have a substantial privacy interest in their anonymity as the disclosure of such information could reveal their identities and that knowledge of their nonselection could lead to embarrassment or adversely affect future employment or promotion prospects. *Id*.

The records sought by Appellant are the lists of interviewees, i.e., the unsuccessful job applicants. Thus, the public interest in disclosure does not outweigh the privacy interests in this matter.

The other issue which Appellant raises is the failure to provide nine documents which are responsive to the FOIA Request.

As stated above, as to four of the records, DCHR indicates that it provided a missing document,[3] provided a better copy,[4] or clarified a mistaken redaction.[5]

The balance of the records in question are identified by Appellant as the 2008 Rating and Ranking Schedule (Vacancy Announcement 21274), the 2008 Rating and Ranking Schedule (Vacancy Announcement 21457), the June 2013 Certifications lists, the hiring documents of

[3] As to the objection that DCHR provided no document establishing the salary of a named successful job applicant, DCHR provided the associated personnel form SF-50.

[4] This responded to the objection that the 2008 Rating and Ranking Schedule for two vacancies did not include the name of the Client and/or is otherwise illegible.

[5] As to the objection that DCHR that the certification list for vacancy announcement 22640 redacted ("apparently mistakenly") the residency preference for the "4th 'WQ' applicant," DCHR states that "we agree that the residency preference was mistakenly redacted; the 4th WQ applicant did not claim a residency preference."

successful applicants for vacancy announcements 22727 and 22814, and a record or records which justify the salary of a named successful job applicant. The issue which is raised by the assertion of Appellant is the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-22, the agency stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-29, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

As set forth above, as to the records described as the 2008 Rating and Ranking Schedule (Vacancy Announcement 21274), the 2008 Rating and Ranking Schedule (Vacancy

Announcement 21457), the 2008 Rating and Ranking Schedule (Vacancy Announcement 222814), and the June 2013 Certifications lists, DCHR states that it produced all records contained in the file associated with the relevant vacancy announcement to the extent it was available.[6] As to the hiring documents of successful applicants for vacancy announcements 22727 and 22814, DCHR states that the vacancies were active at the time that the FOIA Request was received.

Thus, DCHR establishes the manner in which it performed the search, i.e., by searching the all records contained in the file associated with the relevant vacancy announcement. We find that DCHR has established that it made a search reasonably calculated to locate the requested records by determining the appropriate location of the requested records, the files for the relevant vacancy announcements, and searching those files. In the case of hiring documents for two specified vacancy announcements, DCHR explains that there were no responsive records because no hiring decision had been made.

Conclusion

Therefore, the decision of DCHR is upheld in part and moot in part.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Justin Zimmerman, Esq.

[6] DCHR did not specifically address a record or records which justify the salary of a named successful job applicant, but the search method for all the records was established by the other portions of its response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-12

December 3, 2014

Fritz Mulhauser, Esq.

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated November 3, 2013 (the "Appeal"). You, on behalf of the American Civil Liberties Union ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated July 18, 2013 (the "FOIA Request"), and appeal as provided in our decision in Freedom of Information Act Appeal 2014-03 (the "Decision").

Background

Appellant's FOIA Request sought "records created or modified in April 2003" regarding 5816 Foote Street, N.E., Apt. 101, Washington, D.C. 20019. Appellant initiated an appeal when it did not receive a final response by the MPD-provided target date. In the Decision, we dismissed the Appeal as moot based on the representation of MPD that, in addition to the one responsive record which it had provided, it was continuing to search for additional responsive records and would provide any such records within five days from the date of its response. However, the Decision provided that Appellant could challenge, by separate appeal, the response of MPD as a result of its continuing search.

On October 24, 2013, MPD emailed Appellant, stating that it had identified one additional responsive record, a "6D Nuisance Property List." MPD stated further:

> The Nuisance Property List is a document created and maintained by the Neighborhood and Victim Services Section of the Office of the Attorney General. I have consulted with OAG and have been informed that they deem the document to be Attorney Work Product and therefore exempt from FOIA. Accordingly, we are withholding this document.

Pursuant to the Decision, Appellant challenges the MPD response. Citing applicable judicial authority, while acknowledging that the "[work product] privilege protects documents prepared by an attorney and has a general purpose to protect attorneys' trial preparation from scrutiny," Appellant states that it does not apply to a document prepared by attorneys in the ordinary course of business and "was not intended to protect documents involving attorneys simply because litigation might someday occur." While Appellant acknowledges that "the District may bring an action against the owner of property that . . . is used for the sale, storage, or use of drugs,

weapons or prostitution," it notes that the "District sends warning letters when evidence suggests a problem" and that the "statute allows court action only after notice and an opportunity to cure." Thus, Appellant contends that litigation is an "extraordinary step" which would only apply to a few properties. Here, Appellant states that it is not seeking "any D.C. government internal analysis or debate leading to a decision concerning the treatment of property," but "seeks on behalf of a person, not a property owner, only records of facts—records showing police interactions with the named property with which he has a significant connection."

In response, letter emailed November 26, 2013, MPD reaffirmed and amplified its position. In pertinent part, MPD states as follows:

> The department maintains its position that the property list should be withheld pursuant to D.C. Official Code § 2-534(a)(4) on the basis that is attorney work product. The department also asserts, pursuant to the same provision, that the list is exempt from release pursuant to the deliberative process and attorney-client privileges. The document is clearly the work product of OAG attorneys charged with determining the relevant facts he did notice proceed against property owners. The list contains the attorneys notes, impressions and legal strategy for proceeding against the property owners. This list is deliberative in nature as it contains discussions for future action regarding each listed property between the attorneys and officials from the department. In this context, the discussions are also attorney-client communications between OAG and the department, the client agency.

MPD has submitted a copy of the withheld record for in camera review.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This exemption has been construed to "exempt those

documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). These privileges would include the deliberative process privilege, the attorney-client privilege, and the work product privilege. MPD argues that all three privileges apply in the case of the Appeal. Based on our examination of the withheld record submitted for in camera review, we find that the claim of exemption by MPD based on the deliberative process privilege is justified.

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

"Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 152 (1975).

As stated, in this matter, we have examined the record itself. While the record is denominated as a list, it is more than that. It identifies four real properties (one of which is the real property identified by Appellant) and, for the each real property, the Office of the Attorney General and MPD exchange reports and assessments as to activities related to each real property, requests for further reports, and/or recommendations for further action. All of these exchanges apply to the subject property. The withheld record sets forth ideas and thoughts which may or may not be part of the final determination as to action and reflects the candor and give-and-take which the deliberative process privilege is designed to protect.

Appellant states that it is not seeking "any D.C. government internal analysis or debate leading to a decision concerning the treatment of property," but "only records of facts." Under applicable law, while internal communications consisting of advice, recommendations, and opinions do not pose particular problems of identification as exempt where the deliberative process is applicable, factual information or investigatory reports may present the need for additional scrutiny. The legal standard is that

> purely factual material which is severable from the policy advice contained in a document, and which would not compromise the confidential remainder of the document, must be disclosed in an FOIA suit. . [citing, by footnote, *Environmental Protection*

> *Agency v. Mink*, 410 U.S. 73, 91 (1973)]. . . . We have held that factual segments are protected from disclosure as not being purely factual if the manner of selecting or presenting those facts would reveal the deliberate process, [citing, by footnote, *Montrose Chem. Corp. v. Train*, 491 F.2d 63, 68 (D.C. Cir. 1974)] or if the facts are "inextricably intertwined" with the policy-making process. [citing, by footnote, *Soucie v. David*, 448 F.2d 1067, 1078 (D.C. Cir. 1971)]. The Supreme Court has substantially endorsed this standard. [citing, by footnote, *Environmental Protection Agency v. Mink*, 410 U.S. 73, 92 (1973)].

Ryan v. Department of Justice, 617 F.2d 781, 790 (D.C. Cir. 1980).

Here, to the extent that the record may be factual, the "facts" selected are a part of the analysis provided and are connected to the deliberative nature of the entry. Accordingly, we do not believe that the record is factual in nature or that any "factual" portion may be segregated.

Based on our conclusion that the claim of exemption based on the deliberative process privilege is justified, it is not necessary to consider the applicability of the exemptions for the attorney-client privilege and the work product privilege.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-13

December 4, 2013

Ms. Bessie Peete
Mr. Diron Peete
Ms. Leslie Peete

Dear Mesdames Peete and Mr. Peete:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), undated (the "Appeal"). You ("Appellant") assert that the District of Columbia Retirement Board ("DCRB") improperly withheld records in response to your undated request for information under DC FOIA (the "FOIA Request").

Background

Appellant's FOIA Request sought the personnel file of Author Lee Peete, who was identified as the husband and biological father of the requesters.

In response, by letter dated October 28, 2013, DCRB denied the FOIA Request. DCRB stated that, as the benefits administrator of the District of Columbia Police Officers and Firefighters' Retirement Plan, it "is only responsible for *retired* Plan members and their survivors" and "does not maintain personnel files for active or deceased District employees." In addition, it stated that the family of Appellant had made the same request previously "for confidential member information, which is legally exempt from disclosure" and that, "[i]n 2010, the Superior Court of the District of Columbia also dismissed your efforts to obtain confidential information."

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant states that they are "the wife and biological heirs of Mr. Peete" and that the requested records are not exempt from disclosure under D.C. Official Code § 2-534. Appellant also states that their case in Superior Court was dismissed without prejudice and did not consider the issue of confidential information.

In its response, dated November 19, 2013, DCRB reaffirmed its position. DCRB states, in pertinent part:

> [T]this matter has been reviewed, appealed and decided 3-years ago. This current FOIA appeal (which is identical to their FOIA appeal in 2010 and 2011) represents the Peetes' continuing their quest for the documents/funds. . . . DCRB gave them [Appellant] whatever relevant information DCRB had and . . . what they are seeking does not exist. . .

> the information they seek is exempt from disclosure under FOIA since a retiree's file is not subject to FOIA without a court order. They do not represent their father's estate and they are not beneficiaries . . . Furthermore, in 2010, the Peetes filed a complaint in the D.C. Superior Court alleging that they did not have access to the retirement file held at DCRB belonging to Ms. Peetes' ex-husband. On March 19, 2010, Judge Zeldon granted the District's motion to dismiss on several grounds, including failure to state a claim and failure to provide notice pursuant to 12-309. Finally, FEGLI made the beneficiary determination based on FEGLI records. This issue should be treated as a closed matter.

DCRB was invited to supplement its submission to address certain points in its response, but elected not to do so.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

DCRB advances several arguments in response to the Appeal. Its main contention is that the matter has been decided previously through the administrative appeals and judicial process. The relevant administrative appeal is Freedom of Information Act Appeal 2010-41, in which Mr. Diron Peete appealed the denial by DCRB of his request for the personnel folder of his father. On May 20, 2010, because Ms. Bessie Peete had filed an action in the Superior Court of the District of Columbia seeking the same information, this office stayed the administrative appeal "pending a final determination by the Superior Court." According to DCRB, and confirmed by Appellant, the Superior Court dismissed the action. DCRB submitted its motion to dismiss the complaint, but, although we invited it do so, did not submit the final decision of the court. Based on the legal argument set forth in the motion, it appears that the action was dismissed on procedural matters (failure to give proper notice of the action and failure to properly plead its cause of action) and the merits of the claim were never addressed. This appears to be confirmed by the statement of Appellant that the matter was dismissed "without prejudice." Subsequent to the dismissal of the judicial action, the stay in Freedom of Information Act Appeal 2010-41 was

never lifted and a decision on the merits in the administrative appeal was never issued. Apparently, rather than re-open the administrative appeal, Mr. Peete, together with his two other family members, chose instead to file the FOIA Request. In this regard, we note that the Peetes have been prosecuting these matters pro se. Thus, there has been no decision on the merits of the request of Appellant for the records specified in the FOIA Request.

DCRB also asserts that "the information they seek is exempt from disclosure under FOIA since a retiree's file is not subject to FOIA without a court order." However, DCRB cites no legal authority for its contention that a court order is necessary for disclosure and did not elect to specify such legal authority in response to our invitation to supplement the administrative record on this point. We are not aware of any legal authority requiring a court order.

DCRB states it "gave them [Appellant] whatever relevant information DCRB had and . . . what they are seeking does not exist." The issue which is raised is the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-22, the agency stated that its search was conducted by

examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-29, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

Here, DCRB does not indicate the manner in which it conducted a search for the requested records nor does it appear on the administrative record in Freedom of Information Act Appeal 2010-41. Instead, it states simply that it does not possess the requested records. However, generalized and conclusory allegations cannot suffice to establish an adequate search or the availability of exemptions. *See*, e.g., Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, and Freedom of Information Act Appeal 2013-13. In its October 28, 2013, response to the FOIA Request, DCRB stated that it "does not maintain personnel files for active or deceased District employees." As indicated above, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records and we have accepted the declaration regarding maintenance of records by agency employees who were familiar with requested records. While the statement of the DCRB FOIA officer as to the maintenance of records by DCRB regarding deceased employees could otherwise establish that the records are not in possession of the agency, as the particular personnel file was the subject of administrative and judicial litigation, the personnel file may have been retained as a consequence of such litigation.[1] Accordingly, we cannot conclude that DCRB has conducted an adequate search. Therefore, DCRB shall search for the records requested in the FOIA Request and provide any responsive records to Appellant or, if no responsive records are located, so inform Appellant and state the manner in which the search was conducted.

It should be clearly noted that by directing a search to be made, we are not indicating that responsive records do, in fact, exist. Until such search is conducted, we will not know whether or not there are records which are to be disclosed. Moreover, while Appellant may feel that DCRB should maintain the requested records, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records if none exist.

[1] Noting that the file has been the subject of previous litigation, and, therefore, its retention may have varied from its usual retention practice, DCRB was invited to supplement the administrative record to address the manner in which it conducted the search or otherwise made the determination that it did not retain the requested records. However, it did not do so.

Conclusion

Therefore, the decision of DCHR is reversed and remanded. DCRB shall search for the records requested in the FOIA Request and provide any responsive records to Appellant or, if no responsive records are located, so inform Appellant and state the manner in which the search was conducted.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Erie Sampson, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-14

December 6, 2013

Mr. Gordon S. Swartz

Dear Mr. Swartz:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 5, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated September 1, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "*a copy of the transcript of a 911 police call that was made on July 1, 2013, summoning DC Police Officers to the block of 1800 Belmont Road NW, Washington, DC 20009.*" Appellant indicated that the recording or a transcript was needed. In response, by email dated September 4, 2013, MPD denied the FOIA Request, stating that it could neither admit nor deny the existence of the record and that the release thereof would constitute an unwarranted invasion of personal privacy which is exempt from disclosure under D.C. Official Code § 2-534 (a)(2).

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant contends that both the existence of the telephone call and the identity of the person who placed the call were "documented" in a filing in a guardianship proceeding in Rhode Island and provides a copy of the document in support of such contention. Appellant also contends that the "*[f]ailure to release the requested information will obstruct the fair progress of the civil action in Rhode Island*."

In response, dated November 27, 2012, MPD reaffirmed its position, that is, "that release of a 911 call to someone other than the person making the call would constitute an unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534 (a)(2)."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public

record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In its original response, MPD stated that it can neither admit nor deny the existence of the requested 911 call. In response to the Appeal, MPD appears to acknowledge the existence of the 911 call and we will presume that the 911 call was made.

Based on such presumption, the question is whether MPD may withhold the audio of the 911 call because disclosure would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2). [1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

The administrative record does not clearly establish the circumstances which gave rise to the call. Although the Appellant alleges that a named individual is the caller and implies that the call was made for the purpose of assisting in the service of process in the guardianship proceeding, the usual case is that a 911 caller is a victim or a witness and there is evidence which would

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the administrative record in this case does not indicate that the incident involves a criminal matter, the exemption here is asserted under, and would be judged by the standard for, Exemption (2).

support that conclusion. In the absence of evidence establishing otherwise, we will presume that the caller is a victim or a witness.

An individual who is a victim has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). The same principle applies to, among others, witnesses. *See Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

Even if the identity of the caller is known, this is not dispositive. In Freedom of Information Act Appeal 2013-07, we found that, under the principles stated above, there was a personal privacy interest in the 911 call for a named caller where the appellant alleged that MPD officers had stated that the call was made by the named individual. *See also* Freedom of Information Act Appeal 2011-61 (a privacy interest was found despite the fact that the identity of the caller was reported in a newspaper article and acknowledged by the caller.)

In Freedom of Information Act Appeal 2013-16, we rejected the argument that a sufficient privacy interest does not exist because the information has already been disclosed in court records which are publically available.

> With respect to defendants, applying the "categorical principle" of *Reporters Comm. for Freedom of Press*, quoted above, that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, the federal district court in *Long v. U.S. Dept. of Justice*, 450 F.Supp.2d 42 (D.D.C. 2006), held that "disclosure of fields identifying the subject of the records would implicate privacy interests protected by Exemption 7(C). . . . The categorical principle announced in *Reporters Committee* is particularly applicable here, where the information at issue is maintained by the government in computerized compilations. . . . the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government. . . . the records available at NARA and on PACER are no substitute for the central case management databases at issue in this litigation." *Id*. at 68). While the court did note that "the extent to which the withheld information is publicly available

> is relevant in determining the magnitude of the privacy interest at stake [and] that information available at the NARA or . . . through PACER is decidedly less obscure than 'public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country,'" *Id*., it nevertheless found that there was a privacy interest in the names of the criminal defendants and the case captions and docket numbers.

Drawing on such principle, in Freedom of Information Act Appeal 2013-19, we stated: "The fact that information can be compiled if great effort or resources are devoted thereto does not make the information freely available."

While "[a]n individual can waive his privacy interests under FOIA when he affirmatively places information of a private nature into the public realm," *Prison Legal News v. Exec. Office for United States Attys.*, 628 F.3d 1243, 1249 (10th Cir. 2011), an individual does not do so merely by participating in judicial proceeding. In Freedom of Information Act Appeal 2013-19, we stated:

> The fact that certain portions of a process may be conducted publically does not require that all information connected to such process be disclosed. For instance, the fact that a witness testifies at trial does not waive his or her privacy and make all witness statements in the possession of the government subject to disclosure. *See*, e.g., *Neely v. FBI*, 208 F.3d 461 (4th Cir. 2000); *Burge v. Eastbern*, 934 F.2d 577 (5th Cir. 1991). In Freedom of Information Act Appeal 2013-16, we found that identifying information of criminal defendants was not subject to disclosure, notwithstanding that such information may be available in court records. Here, as was the case in *Seized Property Recovery, Corp. v. U.S. Customs and Border Protection*, 502 F.Supp.2d 50 (D.D.C. 2007), the fact that some portions of the seizure and forfeiture process may be conducted publically does not cause all information arising from the process to be information which must be disclosed to the public. [footnote omitted].

Accordingly, we find that there is a sufficient personal privacy interest in the audio of the 911 call.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Appellant states that the record is needed in connection with civil litigation. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). As the administrative record does not otherwise indicate that the conduct of MPD is in question, it does not appear that the disclosure of the records will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Therefore, the withholding of the 911 audio was proper.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-15

December 3, 2013

Mr. Joshua Deahl

Dear Mr. Deahl:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated November 15, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Fire and Emergency Medical Services Department ("FEMS") improperly withheld records in response to your request for information under DC FOIA dated June 28, 2013 (the "FOIA Request).

Appellant's FOIA Request sought records relating to a fire occurring at a specified real property on a specified date. FEMS denied the FOIA Request, stating that the requested records were investigatory records compiled for law enforcement purposes exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A). Appellant challenged the denial of the FOIA Request.

In its response, dated November 27, 2013, FEMS stated that, on November 26, 2013, it provided the requested records to Appellant as the investigation related to the records had been concluded. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Shakira Pleasant, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-16

December 3, 2013

Fritz Mulhauser, Esq.

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated November 17, 2013 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated October 7, 2013 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records "pertaining to contact award by MPD members with [the client] on August 7, 2013 at or near the Sixth District MPD station." MPD responded to Appellant and requested and obtained a privacy release from the client. When a final response was not received, Appellant initiated the Appeal.

On December 2, 2013, Appellant submitted an "amended appeal" indicating that, on November 18, 2013, MPD responded to the FOIA Request. It should be noted that, as D.C. Official Code § 2-537 contemplates a summary procedure, we do not accept amendments of appeals unless the amendment is submitted shortly after the original filing and the amendment does not substantially change the legal issues.[1] Here, neither condition is met. The issue in the Appeal is failure to respond to the FOIA request. As the submission of Appellant indicates both that the agency has now responded and contests such response, we will consider the Appeal to be moot and process the new submission as a new appeal (now docketed as Freedom of Information Act Appeal 2014-18) as it substantially change the legal issues.

Accordingly, the Appeal is dismissed.

Sincerely,

[1] In the exceptional case when we accept an amended filing, the time to respond to the appeal will be re-set.

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-17

December 11, 2013

Mr. Philip Kerpen

Dear Mr. Kerpen:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated November 19, 2013 (the "Appeal"). You ("Appellant") assert that the Executive Office of the Mayor ("EOM") improperly withheld records in response to your request for information under DC FOIA dated October 23, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

> 1. "[A]ny written or electronic communications from any City Council member (including but not limited to Muriel Bowser), City Council staffer (including but not limited to [named employee] and [named employee]), and/or resident of the 3300 block of Tennyson Street NW (including but not limited to Michael Zeldin and Peter Fenn) regarding the installation of a 'speed hump' or 'speed bump' on the 3300 block of Tennyson Street NW."
>
> 2. "[A]ll records or logs of telephone or in-person communications from any City Council member (including but not limited to Muriel Bowser), City Council staffer (including but not limited to [named employee] and [named employee]), and/or resident of the 3300 block of Tennyson Street NW (including but not limited to [named individual] and [named individual]) regarding the installation of a 'speed hump' or 'speed bump' on the 3300 block of Tennyson Street NW -- as well as any internal documents referencing, pursuant to, or related to any such communication or request."
>
> 3. "[A]ll written or electronic communications to, from, or between any staffer in the Executive Office of the Mayor (EOM) and the District Department of Transportation (DDOT) regarding the installation of a 'speed hump' or 'speed bump' on the 3300 block of Tennyson Street NW."
>
> 4. "There were unauthorized attempts by DDOT to install a speed hump at 3322 Tennyson Street NW on October 28, 2010, March 11, 2011, and June 8, 2012. This

> request is intended to find any communications related to these attempts, as well as any other such attempts that may have occurred or be ongoing.
>
> Specifically, a previous FOIA request to DDOT initially concealed but later revealed on appeal that on October 28, 2010 [named employee] (EOM) wrote to [named employee] (EOM) and [named employee] (DDOT) saying: 'So the person was lying when he said there was a petition on file.' [Named employee] replied: 'I hope not, but it seems so.'
>
> I specifically request any records that include the original apparently deceptive claim that [named employee] and [named employee] were referring to, as well as any antecedent and subsequent communications with that individual regarding a 'speed hump' or 'speed bump.'
>
> I further request any records of communications related to the subsequent unauthorized installation attempts on March 11, 2011 and June 8, 2012."

In response, by letter dated August 20, 2012, EOM provided responsive records. It also provided the search terms and the date range for the principal search conducted by the Office of the Chief Technology Officer of all EOM email accounts. The date range was October 28, 2010 to June 8, 2012. Thereafter, as reflected by an email dated November 18, 2013, Appellant indicated to EOM that he thought that it had provided an insufficient response to the FOIA Request. First, he stated that the FOIA Request "was not time-limited to October 28, 2010 to June 8, 2012" and that he believed that "there are responsive documents from 2009." Second, based on a document which Appellant received in the response to a FOIA request made to the Council of the District of Columbia and which Appellant states apparently came from a personal email account of former Mayor Fenty, Appellant indicates that a search of the personal email accounts of former Mayor Fenty should be made. Third, as Appellant did not receive responsive "records that include the original apparently deceptive claim that [two named employees] were referring to," Appellant suggested use of an additional search term for a new search. In response, EOM invited Appellant to submit a new FOIA request. EOM also advised Appellant of his right to submit an administrative appeal under D.C. Official Code § 2-537. Appellant elected to file the Appeal.

On Appeal, Appellant challenges the "the arbitrary restriction of the date range of responsive records produced." Appellant states:

> The original request was clearly not limited to a specific date range. I wrote:
>
> 'There were unauthorized attempts by DDOT to install a speed hump at 3322 Tennyson Street NW on October 28, 2010, March 11, 2011, and June 8, 2012. This request is intended to find any communications related to these attempts, as well as any other such attempts that may have occurred or be ongoing.'
>
> The Agency did not at any time enter into any negotiation with me regarding date range or indicate that an open-ended search would not be performed. Yet the response from the Agency included this arbitrary restriction:

> 'Since time frame for the requested search spanned from the previous administration into the current administration a search was initiated with the assistance of the Office of the Chief Technology Officer ('OCTO') against all EOM electronic mail accounts using the following qualifiers from October 28, 2010 - June 8, 2012.'

In its response, by letter dated December 2, 2013, EOM reaffirmed its position. First, EOM set forth the manner in which the search was conducted. Second, EOM contends that the conduct of an "open-ended search" is not reasonably required.

> The Appellant's reference to an 'open-ended' search would not qualify as 'reasonable' as defined by D. C. Official Code § 2-532. Furthermore, the Request did not specifically state that an 'open-ended' search was sought. In fact, the presumption that an 'open-ended' search was intended could not be inferred from the Request given the reference to three specific dates in the Request.

Third, EOM contends that Appellant is attempting to expand the scope of the FOIA Request without submitting a new request in order to shorten the time period for the response.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As set forth above, in response to the FOIA Request, EOM provided responsive records to Appellant and also provided the search terms and the date range for the principal search, i.e., the search conducted, pursuant to the request of EOM, by the Office of the Chief Technology Officer of all EOM email accounts. After reviewing the records provided by EOM, Appellant contacted EOM and indicated that a supplemental search should be conducted, identifying the manner in which the original search could or should be augmented. Because it determined that Appellant had expanded the scope of the FOIA Request, EOM requested that Appellant submit a new FOIA request. When Appellant declined to do so, EOM advised Appellant that he could file an appeal, which he elected to do. While Appellant indicated to EOM several respects in which

he considered the search to be deficient, Appellant has raised only one of such alleged deficiencies in the Appeal, i.e., the time period for which the search was conducted.

Appellant states that EOM placed an "arbitrary restriction" on the time period for which the search was conducted and indicates that an "open-ended" search should be performed.

As EOM indicates, D.C. Official Code § 2-532(c) provides that an agency, "upon request reasonably describing a record," shall make the record available. DCMR § 1-402.5 states:

> Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

Here, Appellant did not specify any time period in which responsive records may be located. However, this does not require that a search without any time parameters be conducted and such a search may be unduly burdensome. See Freedom of Information Act Appeal 2011-09R.[1] Under the principles applicable to the conduct of an adequate search, described below, it is not arbitrary, contrary to the contention of Appellant, to choose limiting time parameters in designing an appropriate search and such determination may be required in order to avoid a search which is unduly burdensome. In a case where the request does not describe the record sufficiently so as to allow the records to be located, an agency should contact the requester to obtain clarification. See Freedom of Information Act Appeal 2012-40 and Freedom of Information Act Appeal 2011-09R. In the case of the Appeal, it is obvious that EOM determined that a search could be conducted without contacting Appellant to clarify the FOIA Request. While an agency should contact a requester for clarification if it cannot conduct a search without specification of an applicable time period, there is no duty to seek a clarification where none appears to be needed and there is certainly no duty to "negotiate." Where no time period is specified for a search, it is not arbitrary for an agency to make a determination of the time period during which responsive records are likely to be found and, in fact, we believe that such determination is the appropriate course of action. The issue which remains is the adequacy of the search in light of the choice of the time range by EOM.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

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[1] In Freedom of Information Act Appeal 2011-09R, with respect to the request under consideration, we stated: "The open-ended nature of the request, not limited by time or other limiting parameters, would appear to be unreasonably burdensome on its face."

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In this case, we believe that EOM has made a good-faith effort to locate the responsive records pursuant to the FOIA Request. We note that EOM was not the agency which engaged in the activity underlying the FOIA Request, i.e., the alleged attempt to install the speed bumps, and would not have the same familiarity with the attendant factual circumstances as the agency conducting the activity, here, the District Department of Transportation ("DDOT"). In that light, we also note that the FOIA Request could have been crafted more precisely to provide better guidance to EOM, although we do not expect requesters to draft with the precision of lawyers and it was, therefore, appropriate for EOM to proceed with the search.

It appears to us that EOM chose the time period of October 28, 2010 to June 8, 2012 because that covers the dates when Appellant alleges that the attempts to install the speed bumps occurred. These dates would have included communications which occurred in the prior Mayoral administration as Appellant advised. However, with the benefit of the opportunity to examine the administrative record before us, we see that, in the FOIA Request, Appellant referenced an October 28, 2010 email and referred to "antecedent" communications. Thus, Appellant gave an indication that there may be responsive records prior to October 28, 2010, although a beginning date for the search some time in 2010 would have been reasonable and it is not apparent that a beginning date some time in 2009 would have been warranted.

In Freedom of Information Act Appeal 2013-37, we found that, by changing the time period for the search, the design of the search could be modified to locate any responsive records which the prior search may have missed. Likewise, we believe that a beginning date for the search earlier than October 28, 2010 is appropriate here. Therefore, we are directing EOM, through OCTO, to make a supplemental search with the same search terms as used previously but with a revised time period. However, at this juncture, we need not quibble over the best inference to be drawn regarding the beginning date of the search based on the FOIA Request as we know, based on the administrative record, that Appellant believes that there may be responsive records in 2009.

Using the same approach that we employed in Freedom of Information Act Appeal 2013-37, rather than speculating on the appropriate beginning date for the new search, EOM shall use a beginning date in 2009 as shall be supplied by Appellant.[2] Appellant shall contact the EOM

[2] As EOM has already conducted an email search for the period beginning October 28, 2010, the ending date for the search would be October 27, 2010.

FOIA Officer when Appellant makes the determination of the appropriate beginning date in 2009 for the new search. As it may be necessary for EOM to consult DDOT, the agency which engaged in the activity underlying the FOIA Request, as well as other agencies, regarding the results of the supplemental search, rather than the 15 business days which would ordinarily be provided for the search, EOM may need an additional 10 business days to provide any responsive records. Therefore, EOM shall provide any responsive records, subject to any applicable exemptions, to Appellant 25 business days after Appellant supplies the appropriate beginning date in 2009 for the new search.

It should be clearly noted that by directing a new search to be made, we are not indicating that responsive records do, in fact, exist. Until such search is conducted, we will not know whether or not there are records which are to be disclosed.

Conclusion

Therefore, we remand this matter to EOM for disposition in accordance with this decision.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Mikelle L. DeVillier, Esq.

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