VOL. 61 – NO. 18 FRIDAY, APRIL 25, 2014

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council schedules a public hearing on Bill 20-769, Protecting Pregnant Workers Fairness Act of 2014
- DC Council schedules an oversight roundtable on the "MoveDC Draft Plan"
- Department of Health Care Finance updates regulations on preventative care
- Office of the State Superintendent Education proposes a GED testing service pilot program
- Department of Consumer and Regulatory Affairs proposes enforcement penalties for businesses engaged in the sale or manufacture of synthetic drugs
- Public Service Commission approves Washington Gas Light's application for implementing a fee-free credit/debit card service for the company's residential and small commercial customers

DISTRICT OF COLUMBIA REGISTER

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DISTRICT OF COLUMBIA
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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

B20-772 American Academy of Achievement Real Property Tax Exemption Act of 2014

Intro. 04-09-14 by Councilmember Evans and referred to the Committee on Finance and Revenue

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B20-773 Workforce Investment Implementation Amendment Act of 2014

Intro. 04-09-14 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 RESOLUTION

PR20-732 Board of Architecture and Interior Designers Patrick Xavier Williams Confirmation Resolution of 2014

Intro. 04-08-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-734 National Presbyterian School, Inc. Revenue Bonds Project Approval Resolution of 2014

Intro. 04-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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Council of the District of Columbia
Committee on Economic Development
Notice of Public Hearing
1350 Pennsylvania Avenue, N.W. Washington, DC 20004

COUNCILMEMBER MURIEL BOWSER, CHAIRPERSON
COMMITTEE ON ECONOMIC DEVELOPMENT

ANNOUNCES A PUBLIC HEARING

On

Bill 20-594, the Disposition of District Land for Affordable Housing Amendment Act of 2013

B20-604, the Affordable Homeownership Preservation and Equity Accumulation Amendment Act of 2013

B20-622, the Housing Assistance Program for Unsubsidized Seniors Act of 2013

Bill 20-708, the Housing Production Trust Fund Baseline Funding Act of 2014

Bill 20-713, the District of Columbia Affordable Housing Act of 2014

MAY 29, 2014
10:00 AM
ROOM 120
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On May 29, 2014, Councilmember Muriel Bowser, Chairperson of the Committee on Economic Development, will hold a public hearing to consider Bills 20-594, 20-604, 20-622, 20-708, and 20-713.

Bill 20-594, the Disposition of District Land for Affordable Housing Amendment Act of 2013 establishes affordable housing set-aside requirements when District-owned land is being disposed for the development of multi-family residential projects with 10 or more units. A 30% affordable housing set-aside is required for projects that qualify as transit-oriented development, and a 20% set aside for all other projects. Affordability is defined as a 25% set-aside for households earning up to 30% of the Area Median Income (AMI) and 75% of units for households earning up to 50% of AMI for the development of rental units. For ownership units, affordability is defined as a set-aside of 50% of units for households earning up to 50% of AMI, and 50% of units for households earning up to 80% of AMI. The legislation also allows for the Mayor to waive set-aside requirements when the Chief Financial Officer certifies that it would not be economically feasible to comply.

B20-604, the Affordable Homeownership Preservation and Equity Accumulation Amendment Act of 2013 reduces the resale restriction time periods for which affordable units located in distressed neighborhoods and produced with District government subsidies from the Housing Production Trust Fund (HPTF) must remain affordable from 15 to 5 years. It also requires affordable housing subsidies to be repaid to the HPTF at the time an affordable unit is sold.

B20-622, the Housing Assistance Program for Unsubsidized Seniors Act of 2013 establishes a rental housing assistance program for low-income senior citizens to be administered by the D.C. Housing Authority and appropriates $5 million annually to fund the program.

Bill 20-708, the Housing Production Trust Fund Baseline Funding Act of 2014, will amend Title 42 of the District of Columbia Official Code to require that the Housing Production Trust Fund be funded at a minimum of $100 million annually. HPTF is the District's premier tool for producing and preserving affordable housing. Currently, funding for HPTF relies on a portion of taxes levied on real estate transactions, which subjects it to market volatility. The Housing Production Trust Fund Baseline Funding Act solves that problem by guaranteeing HPTF a minimum of $100 million per year. Establishing the HPTF baseline budget at $100 million per year will also help to address the current affordable housing crisis. For instance, the Interagency Council on Homelessness estimated that the District needs approximately 2,700 units for permanent supportive housing. The District of Columbia Housing Authority reports a waitlist of over 67,000 applicants for a housing choice voucher or public housing. And, one-in-five District households—over 50,000 families—spend half their income on housing. 700 families live in shelters.

Bill 20-713, the District of Columbia Affordable Housing Act of 2014, will develop a ten-year $1,000,000,000 affordable housing plan that provides for $100,000,000 per annum to increase, build, and modernize affordable housing in the District of Columbia, with $25,000,000 per annum for targeted populations. The bill will also authorize the issuance of bonds to finance the reconstruction, renovation, and emergency maintenance of affordable housing facilities.

The public hearing will begin at 10:00 AM in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Individuals and representatives of community organizations wishing to testify should contact Judah Gluckman, Legislative Counsel to the Committee on Economic Development, at (202) 724-8025, or jgluckman@dccouncil.us and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business May 28, 2014. Persons presenting testimony may be limited to 3 minutes in order to permit each witness an opportunity to be heard. Please provide the Committee 20 copies of any written 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 by June 12, 2014 to the Committee on Economic Development, Council of the District of Columbia, Suite 110 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE

and

COUNCILMEMBER JACK EVANS, CHAIRPERSON
COMMITTEE ON FINANCE AND REVENUE

ANNOUNCE A JOINT PUBLIC HEARING

on

Bill 20-677, D.C. Urban Farming and Food Security Act of 2014

on

Thursday, June 12, 2014
10:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson and Councilmember Jack Evans announce a joint public hearing of the Committee of the Whole and Committee on Finance and Revenue on Bill 20-677, the "D.C. Urban Farming and Food Security Act of 2014." The public hearing will be held Thursday, June 12, 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 20-677 is to amend the Food Production and Urban Gardens Program Act of 1986 to establish an urban farming land leasing initiative; to establish a nonrefundable tax credit for food commodity donations made to a District of Columbia food bank or shelter; and to establish a real property tax abatement for unimproved real property leased for the purpose of small-scale urban farming.

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, June 10, 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 June 10, 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. A copy of Bill 20-677 can be obtained through the Legislative Services Division of the Secretary of the Council's office or at http://lims.dccouncil.us/.

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 26, 2014.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

The Department of Parks and Recreation's Summer 2014 Camps and Activities, and the Summer Food Service Program

Bill 20-726, the Student Nutrition on Winter Weather Days Act of 2014

Monday, June 2, 2014
at 11:00 a.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, June 2, 2014, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public hearing on the Department of Parks and Recreation's Summer 2014 camps and activities, and its summer food service program. Additionally, the Committee will receive testimony on Bill 20-726, the Student Nutrition on Winter Weather Days Act of 2014, which would require the Department of Parks and Recreation to develop a plan to provide meals to low-income students on days when schools are closed due to inclement weather. The hearing will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on June 16, 2014.

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

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

COUNCILMEMBER VINCENT B. ORANGE, SR., CHAIR
COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS

ANNOUNCES A PUBLIC HEARING ON THE FOLLOWING MEASURES:

B20-728, THE "PROHIBITION OF PRE-EMPLOYMENT MARIJUANA TESTING ACT OF 2014"

B20-769, THE "PROTECTING PREGNANT WORKERS FAIRNESS ACT OF 2014"

Thursday, May 15, 2014, 10:00 a.m.
John A. Wilson Building, Room 412
1350 Pennsylvania Ave., NW
Washington, D.C. 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public hearing of the Committee on Business, Consumer, and Regulatory Affairs for the purpose of receiving testimony on B20-728, the "Prohibition of Pre-Employment Marijuana Testing Act of 2014" and B20-769, the "Protecting Pregnant Workers Fairness Act of 2014". The public hearing is scheduled for Thursday, May 15, 2014 at 10:00 a.m. in Room 412 of the John A. Wilson Building located at 1350 Pennsylvania Ave., N.W., Washington, DC 20004

B20-728, the "Prohibition of Pre-Employment Marijuana Testing Act of 2014", would ban employers from testing potential employees for marijuana use during the hiring process, unless otherwise required by law.

B20-769, the "Protecting Pregnant Workers Fairness Act of 2014", proposes to promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform on the job is limited by pregnancy, childbirth, or a related medical condition and to protect against workplace discrimination.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Ms. Faye Caldwell or Gene Fisher of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us or gfisher@dccouncil.us. Witnesses are asked to furnish their names, addresses, telephone number, email address, and organizational affiliation, if any, by the close of business, Thursday, May 8, 2014. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made part of the official record. The official record will remain open until the close of business of Thursday, May 29, 2014. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite G-6, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

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

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

COUNCILMEMBER VINCENT B. ORANGE, SR., CHAIR
COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS

ANNOUNCES A PUBLIC HEARING ON

B20-746, THE "VENDING REGULATIONS AMENDMENT ACT OF 2014"

Wednesday, April 30, 2014, 10:00 a.m.
John A. Wilson Building, Room 123
1350 Pennsylvania Ave., NW
Washington, D.C. 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public hearing of the Committee on Business, Consumer, and Regulatory Affairs for the purpose of receiving testimony on B20-746, the "Vending Regulations Amendment Act of 2014". The public hearing is scheduled for Wednesday, April 30, 2014 at 10:00 a.m. in Room 123 of the John A. Wilson Building located at 1350 Pennsylvania Ave., N.W., Washington, DC 20004.

B20-746, the "Vending Regulations Amendment Act of 2014" proposes to reinstate criminal penalties for violations of the District's vending regulations and all for their enforcement by the Metropolitan Police Department. The bill will ensure compliance of licensed vendors with vending regulations and provide for enforcement action against individuals found to be illegally vending.

Individuals and representatives of organizations who wish to testify at the public hearing are asked to contact Ms. Faye Caldwell or Gene Fisher of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us or gfisher@dccouncil.us. Witnesses are asked to furnish their names, addresses, telephone number, email address, and organizational affiliation, if any, by the close of business, Wednesday, April 23, 2014. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made part of the official record. The official record will remain open until the close of business of Wednesday, May 14, 2014. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite G-6, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

Bill 20-753, the Transportation Network Services Innovation Act of 2014

Monday, May 12, 2014
at 11:00 a.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, May 12, 2014, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on Bill 20-753, the Transportation Network Services Innovation Act of 2014. The roundtable will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on May 22, 2014.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC HEARING ON

Bill 20-759, the Transportation Reorganization Act of 2014

Wednesday, June 4, 2014
at 11:00 a.m.
in Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Wednesday, June 4, 2014, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public hearing on Bill 20-759, the Transportation Reorganization Act of 2014. The hearing will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Over the years, the District has organized the responsibilities for transportation in many different ways. Years ago, all of the functions were consolidated in the Department of Public Works (DPW). In 1998, the Department of Motor Vehicles (DMV) was spun off from DPW. The District Department of Transportation (DDOT) and the District Department of the Environment (DDOE) followed in 2002 and 2006, respectively.

Since DDOT was created, however, there has not been an open, reflective process to consider whether the current agency structures are working, whether they could be improved, and what other effective models exist. At the same time, many new major transportation programs have been created – from Circulator to Streetcar to performance parking to ridesharing. During the next 6 months, the Committee wants to facilitate such a process and consider whether any structural changes can be made to make agencies more efficient and effective.

Bill 20-759, the Transportation Reorganization Act of 2014, was introduced to provide a framework for this conversation. The bill would consolidate the related parking functions from DDOT, DPW, and DMV into a single agency. It would create a new independent local transit authority to provide governance and accountability to the $1 billion investment in local mass transit and to allow for a holistic look at all forms of public transportation. It would abolish the DC Taxicab Commission and divide its functions among other agencies. And, it would shift the Urban Forestry Administration from DDOT to DDOE.

To be clear, this bill is just one of many possible options for reorganizing transportation functions and the Committee looks forward to exploring and discussing all of them. This hearing will start the public process to consider the structure of transportation

agencies in the District. It will be followed by a series of public working group meetings over the summer before a second public hearing at the end of the Council's summer recess.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on June 18, 2014.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 20-670, "Sense of the Council in Support of Comprehensive Healthcare for New Hampshire's Veterans Resolution of 2014."

on

Thursday, June 12, 2014
10:00 a.m., Council Chamber, 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 20-670**, the "Sense of the Council in Support of Comprehensive Healthcare for New Hampshire's Veterans Resolution of 2014." The public hearing will be held Thursday, June 12, 2014, at 10:00 a.m. in the Council Chamber of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of **PR 20-670** is to declare the sense of the Council to urge the United States Congress to fund the development and implementation of a comprehensive health care delivery system to enhance the level of specialty care for New Hampshire's veterans.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Evan Cash, Committee Director, at ecash@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Tuesday, June 10, 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 June 10, 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 PR 20-670 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 Thursday, June 26, 2014.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE ON

The MoveDC Draft Plan

Monday, May 19, 2014
at 11:00 a.m.
in Room 500 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, May 19, 2014, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public oversight roundtable on the District Department of Transportation's draft MoveDC multimodal transportation plan. The roundtable will begin at 11:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

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

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on June 2, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

THURSDAY, MAY 1, 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-00020; The Stadium Group, LLC, t/a Stadium, 2127 Queens Chapel Road NE, License #82005, Retailer CN, ANC 5C
Renewal-Reapplication
This Hearing has been continued to May 14, 2014 at 9:30 am., at the request of the Parties.

Protest Hearing (Status) **9:30 AM**
Case # 14-PRO-00021; Pulse Nightclub, LLC, t/a Pulse Nightclub, 2142 Queens Chapel Road NE, License #94074, Retailer CN, ANC 5C
New Application

Protest Hearing (Status) **9:30 AM**
Case # 14-PRO-00008; Kiel, LLC, t/a MOVA, 2204 14th Street NW, License #87030, Retailer CT, ANC 1B
Renewal Application (Re-placard)

Protest Hearing (Status) **9:30 AM**
Case # 14-PRO-00010; Charm Restaurant Group, t/a New Town Kitchen and Lounge, 1336 U Street NW, License #93095, Retailer CT, ANC 1B
Renewal Application

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00076; Little Fountain Café, Inc., t/a Little Fountain Café 2339 18th Street NW, License #20251, Retailer CR, ANC 1C
Failed to Maintain Books and Records, Failed to Qualify as a Restaurant

Board's Calendar
May 1, 2014

Show Cause Hearing (Status) **9:30 AM**
Case # 13-CMP-00471; Fetlework Wolde, t/a Ethiopian Restaurant & Market 4630 14th Street NW, License #91373, Retailer CR, ANC 4C
Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00023; Good Neighbors, LLC, t/a Salt & Pepper, 5125 MacArthur Blvd NW, License #86790, Retailer CR, ANC 3D
Failed to File Quarterly Statements (3rd Quarter 2013)

Fact Finding Hearing* **9:30 AM**
1841 Columbia Road Custodian, LLC, t/a To Be Determined (Formerly- the Attic), 1841 Columbia Road NW, License #86065, Retailer CR, ANC 1C
Request to Extend Safekeeping

Show Cause Hearing* **11:00 AM**
Case # 13-CMP-00319; Sami Restaurant, LLC, t/a Bistro 18, 2420 18th Street NW, License #86876, Retailer CR, ANC 1C
Violation of Settlement Agreement

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

Protest Hearing **1:30 PM**
Case # 13-PRO-00150; Superclub Ibiza, LLC, t/a Ibiza, 1222 1st Street NE License #74456, Retailer CN, ANC 6C
Renewal Application
This Hearing has been continued to July 23, 2014 at 1:30 pm., at the request of the Parties.

Protest Hearing **1:30 PM**
Case # 13-PRO-00174; Ekho Events, Inc., t/a Echostage, 2135 Queens Chapel Road NE, License #90250, Retailer CN, ANC 5C
Renewal Application
This Hearing has been continued to September 10, 2014 at 1:30 pm., at the request of the Parties.

Fact Finding Hearing* **2:00 PM**
Queen of the Moon, Inc., 1815 Columbia Road NW, License #83118, Retailer A ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **2:30 PM**
Ferrol, Inc., t/a Todito Grocery, 1813 Columbia Road NW, License #60011
Retailer B, ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **3:00 PM**
Caladon, LLC, t/a Mr. Henry (Adams Morgan), 1836 Columbia Road NW
License #17006, Retailer CR, ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **3:30 PM**
Ephraim, Inc., t/a Roxanne/Peyote; 2296 Champlain Street NW, License #60338
Retailer CR, ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **4:00 PM**
Thalia, LLC, t/a Slaviya, 2424 18th Street NW, License #83910, Retailer CR
ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **4:30 PM**
Emily Jane Phifer, t/a Lautrec's, 2431 18th Street NW, License #85236, Retailer
CR, ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **5:00 PM**
Credence, LLC, t/a Legends, 1836 Columbia Road NW, License #86083,
Retailer CR, ANC 1C
License in Extended Safekeeping

Fact Finding Hearing* **5:30 PM**
Hopeful, Inc., t/a To be Determined; 2006 18th Street NW, License #91955
Retailer CR, ANC 1C
License in Extended Safekeeping

***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
ON
4/25/2014

Notice is hereby given that:
License Number: ABRA-094795 **License Class/Type: C Restaurant**
Applicant: APP100 LLC
Trade Name: APP100LLC
ANC: 1B

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

1924 9TH ST NW, WASHINGTON, DC 20001

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

6/9/2014

HEARING WILL BE HELD ON

6/23/2014

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:	10 am - 2 am	11 am -2 am	8 pm - 1:30 am
Monday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Tuesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Wednesday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Thursday:	10 am - 2 am	11 am - 2 am	8 pm - 1:30 am
Friday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am
Saturday:	10 am - 3 am	11 am - 3 am	8 pm - 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: April 25, 2014
Petition Date: June 9, 2014
Hearing Date: June 23, 2014
Protest Date: August 6, 2014

License No.: ABRA-094780
Licensee: Bread and Chocolate, Inc.
Trade Name: Bread and Chocolate
License Class: Retailer's Class "D" Restaurant
Address: 2301 M St. NW
Contact: Theodore Manousakis, President 703-549-7524

WARD 2 ANC 2A SMD 2A02

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 hearing date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for 1:30 pm on August 6, 2014.

NATURE OF OPERATION
Full service restaurant and carry-out serving breakfast, lunch and dinner with a seating capacity of 74. Total occupancy load of 114. Summer garden with 40 seats
.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION
Sunday 8 am – 9 pm, Monday through Saturday 7 am – 9 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April 25, 2014
Petition Date:	June 9, 2014
Hearing Date:	June 23, 2014
Protest Hearing Date:	August 6, 2014

License No.:	ABRA-094766
Licensee:	Rudrakalash, LLC
Trade Name:	Masala Art
License Class:	Retailer's Class "D" Restaurant
Address:	1101 4th Street, SW #120
Contact:	Atul Bhola (301)-503-6404

WARD 6 ANC 6D SMD 6D01

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 August 6, 2014 at 1:30 pm.

NATURE OF OPERATION

A new fine dining Indian Restaurant with a full bar service to patrons dining in the restaurant. Eating and drinking at the bar and lounge area. No dancing or entertainment. Total # of seats is 133 and the occupancy load is 150.

HOURS OF OPERATION/SIDEWALK CAFÉ/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/SIDEWALK CAFE

Sunday 10 am - 2 am
Monday through Thursday 11 am – 2 am
Friday through Saturday 10 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	April l 25, 2014
Petition Date:	June 9, 2014
Roll Call Hearing Date:	June 23, 2014
Protest Hearing Date:	August 6, 2014
License No.:	ABRA-094842
Licensee:	STEPHENS, DAVID J.W,
Trade Name:	Saloon 45
License Class:	Retailer's Class "C" Tavern
Address:	1821 18TH STREET, NW
Contact:	DAVID STEPHENS: 843-437-5260

WARD 2 ANC 2B SMD 2B08

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 August 6, 2014 at 1:30 pm.

NATURE OF OPERATION

W provide a small menu approximately 5 to 7 items of mostly fried foods along with over 50 specialty craft beers chosen mostly from local brewers. We have a small selection of wines and cocktails. Drinks and food will be provided in a quiet relaxing environment either inside at a table or outside in our summer garden. Summer Garden Seats #36, Total Occupancy Load #85.

HOURS OF OPERATION

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday: 10am – 2am, Friday and Saturday: 10am – 3am

SUMMER GARDEN HOURS OF OPERATION

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

SUMMER GARDEN HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday through Thursday: 8AM – 2am, Friday and Saturday: 11am-3am

DISTRICT OF COLUMBIA TAXICAB COMMISSION
GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC HEARING

Public Hearing Regarding Proposed Rulemaking For Establishing a New Private Sedan Class of Public Vehicles-For-Hire and Rules Pertaining to Dispatch Services
APRIL 30, 2014
10:00 A.M.

The DC Taxicab Commission (DCTC) has scheduled a Public Hearing at 10:00 am on Wednesday, April 30, 2014 at 441 4th Street, NW in the Old Council Chambers regarding proposed rulemaking for establishing a new private sedan class of public vehicles-for-hire and rules pertaining to dispatch services (Title 31 of the DCMR).

DCTC will use a protocol that will divide the hearing into two parts for those who intend to testify:

The first part of the hearing will consist of speakers on behalf of an association or advocacy group that represents vehicle owners and operators; a company or companies; or a company that is planning to begin operating in the District. These speakers may wish to appear together or with their leadership or legal representatives. Participants during this first part will be allowed up to thirty (30) minutes to present and must provide DCTC with ten (10) paper copies of their presentation delivered to DCTC's Executive Office by Friday, April 25, 2014 at 4:00pm. It should also be noted that the Commission members may elect to ask questions during this first phase.

Please be advised that if a legal representative, officer, or individual from an association, organization or company testifies during the first part of the hearing, then others from the same association, organization or company will NOT be allowed to testify in the second part of the hearing. The second part of the hearing will be reserved for the general public only. These participants will have the standard five (5) minutes to present. Although it is not required, participants are urged to submit their presentations in writing in advance of the hearing. Please register with Juanda Mixon at 202-645-6018 extension 4 no later than Friday, April 25, 2014, by 3:30 pm.

The Commission may create panels for both groups. All participants are reminded that this is an issue of material importance to public vehicle for hire industry in the District. Therefore, when making suggestions as to what should be added or deleted to the proposed rulemakings, participants should cite the specific section of the proposed rule that is a concern, and provide alternative language if appropriate. It is important to be clear and exact with presentations as these regulations will affect how companies and drivers will function.

The proposed rulemakings are Chapter 2, Definitions; Chapter 8, Operation of Taxicabs; Chapter 12, Luxury Services – Owners, Operators, and Vehicles; Chapter 14, Operation of Sedans; Chapter 16, Dispatch Services; and Chapter 17, Private Sedan Service – Businesses, Operators, and Vehicles, which were approved by the Commission for publication in the D.C. Register on April 9, 2014.

The Public Hearing will take place at the following time and location:

WEDNESDAY, APRIL 30, 2014
10:00 am
OLD COUNCIL CHAMBERS
441 4TH Street, N.W., Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JUNE 17, 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 FOUR

18776 ANC-4D — **Application of Ann Campbell,** pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy (section 772), and court (section 773) requirements for second floor rear deck and stair additions in the C-2-A District at premises 700 and 702 Kennedy Street, N.W. (Square 3152, Lots 59 and 60).

WARD THREE

18777 ANC-3G — **Application of Tiernan Sittenfeld and Darren Speece,** pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition to an existing one-family detached dwelling under section 223, not meeting the rear yard (section 404) requirements in the R-1-B District at premises 3120 Patterson Place, N.W. (Square 2339, Lot 23).

WARD ONE

18778 ANC-1C — **Application of KJ Florida Avenue Property, LLC**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the loading requirements (section 2201.1) and special exception relief from the height requirements (section 1402.1) and the roof structure requirements (sections 411 and 770.6), to allow the construction of a new multiple-unit residential building in the RC/C-2-B District at 1711 Florida Avenue, N.W. (Square 2562, Lot 95).

WARD FOUR

18781 ANC-4B — **Application of Mana Bilingual Child Development LLC,** pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (36 Children and 9 Staff) under section 205, in the R-1-B District at premises 6524 8th Street, N.W. (Square 2973, Lot 81).

WARD TWO

18780 ANC-2E **Application of Alexander Memorial Baptist Church,** pursuant to 11 DCMR § 3103.2, for variances from the lot area (section 401.3), lot occupancy (section 403), rear yard (section 404), and side yard (section 405) requirements to convert a church into two one-family dwellings in the R-3 District at premises 2709 N Street, N.W. (Square 1236, Lot 803).

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 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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Thursday, June 12, 2014, @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Z.C. Case No. 14-01 (Jemal's Hecht's, LLC - Consolidated PUD & Related Map Amendment @ Square 4037)

THIS CASE IS OF INTEREST TO ANC 5D

On January 27, 2014, the Office of Zoning received an application from Jemal's Hecht's, LLC (the "Applicant") requesting approval of a consolidated planned unit development ("PUD") and related zoning map amendment from the C-M-2 Zone District to the C-3-C Zone District for property located at 1401 New York Avenue, N.E. (part of Lots 7 and 804, Square 4037) (the "Property"). The Office of Planning submitted a report to the Zoning Commission, dated February 14, 2014. At its February 24, 2014, public meeting, the Zoning Commission voted to set the application down for a public hearing. The Applicant provided its prehearing statement on April 1, 2014.

The Property that is the subject of this application is located on the south side of New York Avenue, N.E. with approximately 345 linear feet of frontage on New York Avenue, N.E. and 344 linear feet of frontage on Fenwick Street, N.E. Square 4037 is bounded by New York Avenue, N.E. to the north, 16th Street, N.W. to the east, Okie Street, N.E. to the south, and Fenwick Street, N.E. to the west. The Property has a lot area of approximately 119,037 square feet (2.73 acres). The Property is located in Ward 5 and within the boundaries of Advisory Neighborhood Commission ("ANC") 5D.

The proposed project is a mixed-use development that includes approximately 195,640 square feet of gross floor area devoted to retail, service, and restaurant uses, and approximately 294,384 square feet of gross floor area devoted to approximately 270 dwelling units (plus or minus 10%). The overall project will have an density of 4.1 FAR, which is less than the maximum permitted density of 6.5 FAR for the proposed C-3-C Zone District, and a maximum height of 87.65 feet.

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

How to participate as a witness.

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

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

How to participate as a party.

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

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

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

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

OFFICE OF 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 two Notices of Final Rulemaking issued by the Department of Consumer and Regulatory Affairs (DCRA) and published in the *D.C. Register* on March 28, 2014, Part 2, at 61 DCR 3048 and 61 DCR 3060.

The rulemakings amend Chapters 2A and 13A of Subtitle A (Building Code Supplement of 2008) of Title 12 (D.C. Construction Codes of 2008) of the District of Columbia Municipal Regulations (DCMR). These amendments are grandfathered into the Building Code Supplement of 2013 pursuant to Section 123 of the District of Columbia Building Code Supplement, 12 DCMR A.

In the table of contents (page i of the March 28, 2014 *D.C. Register*), the rulemakings are incorrectly identified as amendments to the Building Code Supplement of 2013; the rulemakings actually amend the Building Code Supplement of 2008. The table of contents should be revised to read as follows:

Subtitle A (Building Code Supplement of 2008) amending Chapter 2A (Definitions) and Chapter 13A (Green Building Promotion) 003048-003059

Subtitle A (Building Code Supplement of 2008) amending Chapter 13A (Green Building Requirements) 003060-003062

In addition, in the Notice of Final Rulemaking, 61 DCR 3060, one line under Section 1301.1.12 (Transitory Provisions Applicable to Certain Projects) mistakenly cites to Sections 1301.1.1.12.1, 1301.1.1.12.2, and 1301.1.1.12.3. These citations should be to Sections 1301.1.12.1, 1301.1.12.2, and 1301.1.12.3, so that the section reads as follows:

Chapter 13A (Green Building Act Requirements) of Subtitle A (Building Code Supplement) of Title 12 (D.C. Construction Codes Supplement of 2008) of the District of Columbia Municipal Regulations is amended as follows:

Insert new Section 1301.1.12 in the Building Code to read as follows.

> **1301.1.12 Transitory Provisions Applicable to Certain Projects.** Privately-financed Group R-1 *projects* shall be permitted to utilize the definition of *residential* in the *Green Building Act* regulations (Chapter 13A) adopted on November 14, 2012 and published in the *D.C. Register* on November 30, 2012 (59 DCR 13942) for the purposes specified in Sections 1301.1.12.1 through 1301.1.12.3. Privately-financed Group R-1 *projects* that do not meet the requirements of Sections 1301.1.12.1, 1301.1.12.2, or 1301.1.12.3 are

required to utilize the definition of *residential* in the *Green Building Act* regulations (Chapter 13A) in the emergency and proposed rulemaking adopted on July 1, 2013 and effective as of August 2, 2013 (60 DCR 11287).

The rules are effective upon the original publication date of March 28, 2014.

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. 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 adoption of a new Section 909, entitled "Screening, Diagnostic and Preventive Services," of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This final rule reflects DHCF's Preventive Services State Plan Amendment (SPA) to the District of Columbia State Plan for Medical Assistance, which proposes to change the definition of "other diagnostic, screening, and preventive services", in accordance with the definition enacted through Section 4106 (Improving Access to Preventive Services for Eligible Adults in Medicaid) of the Patient Protection and Affordable Care Act of 2010, approved March 23, 2010 (Pub. L. No. 111-148; 124 Stat. 119). The revised definition includes clinical services assigned a grade of A or B by the United States Preventive Services Task Force and all approved vaccines recommended by the Advisory Committee on Immunization Practice. Consistent with guidance set forth in the *Federal Register* (78 Fed. Reg. 39,870), the definition also incorporates preventive care and screening of infants, children, and adults, as recommended by the Health Resources and Services Administration's Bright Futures program, as well as additional preventive services for women recommended by the Institute of Medicine.

The corresponding SPA requires approval by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The SPA was approved by the Council in the Medical Assistance Program Emergency Amendment Act of 2013, effective July 30, 2013 (D.C. Act 20-130; 60 DCR 11384 (August 9, 2013)) and is currently pending approval by CMS. CMS approved the SPA in March 2014 with an effective date of December 31, 2013.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 20, 2013 at 60 DCR 017049. No comments were received and no substantive changes have been made. The Director adopted these rules as final on April 18, 2014 and they will become effective on the date of publication of this notice in the *D.C. Register*.

A new Section 909 (Diagnostic, Screening and Preventive Services) is added to Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the DCMR to read as follows:

909 SCREENING, DIAGNOSTIC, AND PREVENTIVE SERVICES

909.1 In accordance with Section 1905(a)(13) of the Social Security Act ("the Act") (42 U.S.C. § 1396d(a)(13)), each beneficiary may be eligible to receive the following

screening, diagnostic, and preventive services subject to the requirements set forth in these rules:

(a) Services assigned a grade of A or B (*i.e.*, indicated as strongly recommended or recommended) by the United States Preventive Services Task Force;

(b) Indicated vaccines recommended by the Advisory Committee on Immunization Practices and approved for use by the United States Food and Drug Administration;

(c) Preventive care and screening of infants, children and adults as recommended by the Bright Futures Program of the Health Resources and Services Administration; and

(d) Age appropriate services for women, as recommended by the Institute of Medicine.

909.1 Services described in § 909.1 shall in no way diminish access to the Early and Periodic Screening, Diagnostic, and Treatment services authorized by Section 1905(r) of the Act (42 U.S.C. § 1396d(r)) for beneficiaries ages zero (0) through twenty-one (21).

909.2 All services authorized under this section shall be recommended by a physician or other licensed practitioner of the healing arts acting within the authorized scope of practice under the Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), and implementing rules, or comparable law in the state where the provider is licensed.

909.99 For purposes of this section, the following terms shall have the meaning ascribed:

Beneficiary – An individual enrolled in a medical assistance program, authorized under Titles XIX or XXI of the Social Security Act.

Indicated vaccines – Recommended age groups and medical indications for which administration of currently licensed vaccines is commonly recommended.

DISTRICT OF COLUMBIA HOUSING FINANCE AGENCY

NOTICE OF FINAL RULEMAKING

The Board of Directors of the District of Columbia Housing Finance Agency (Agency), pursuant to Section 306 of the District of Columbia Housing Finance Agency Act of 1979, effective March 3, 1979, (D.C. Law 2-135; D.C. Official Code § 42-2703.06 (2012 Repl.)) (Act), and 10-B DCMR § 3508.1, hereby gives notice of its adoption of the following amendments to Chapter 35 (Housing Finance Agency), Chapter 36 (HFA: Financing and Loan Program), Chapter 37 (HFA: Financing Section 8 Housing), and Chapter 38 (HFA: Single Family Mortgage Purchase Program) of Title 10, Subtitle B (Planning and Development) of the District of Columbia Municipal Regulations (DCMR).

Chapter 35 is amended to change the day and time of the Agency's monthly meeting and to conform with statutory amendments to the Act, including procedures for conducting meetings, the composition of the Board, resolving conflicts of interests, the requirement for an Agency Advisory Commission, and other technical amendments to the Act.

Chapter 36 is amended to refer exclusively to the financing of multifamily housing projects. Section 3605, Conflicts of Interest, is repealed and added to Chapter 35. Additionally, the chapter in general is amended to reflect more accurately how the Agency conducts business.

Chapter 37, regarding Section 8 housing, is repealed in its entirety.

Finally, Chapter 38 is amended to conform with the current operations of the Agency's single family housing program including the changing of the term participation agreement to origination agreement. Also, language relating to single family housing which was removed from Chapter 36 was added to Chapter 38.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on March 14, 2014 at 61 DCR 2238. No comments were received and no substantive changes were made to the rules as published. The Board of Directors of the Agency adopted these rules as final on November 12, 2013 and they shall become effective upon the date of publication of this notice in the *D.C. Register*.

Title 10-B, PLANNING AND DEVELOPMENT, of the District of Columbia Municipal Regulations is amended as follows:

Section 3500, GENERAL PROVISIONS, of Chapter 35, HOUSING FINANCE AGENCY, is amended to read as follows:

3500 GENERAL PROVISIONS

3500.1 The District of Columbia Housing Finance Agency (also referred to in this chapter as the "Agency") shall have its principal office in the District. Other offices of the Agency shall be in places deemed necessary and appropriate by the Board of Directors or the Executive Director.

3500.2 The corporate seal of the Agency shall be of a design approved and adopted from time to time by the Board of Directors, and may be affixed to any document by impression, by printing, by rubber stamp, or otherwise.

3500.3 The fiscal year of the Agency shall end on the thirtieth (30th) day of September of each year.

3500.4 The Board of Directors may authorize the use of facsimile and or electronic signatures instead of manual signatures

Section 3501 is amended to read as follows:

3501 BOARD OF DIRECTORS

3501.1 General policies governing the operations of the Agency shall be determined by the Board of Directors.

3501.2 Each member shall hold office for the term for which he or she is appointed, unless he or she is removed in accordance with the law.

3501.3 The Chairperson and Vice-Chairperson may be chosen by the Board at any meeting of the Board from among the members, and their tenure shall commence immediately and continue until the next succeeding annual meeting of the Board or until their successors are chosen, whichever first occurs.

3501.4 The Chairperson, and in his or her absence the Vice-Chairperson, shall be the presiding officer at all meetings of the Board of Directors. The Chairperson shall also have such powers and perform other duties as the Board of Directors may prescribe.

3501.5 In the absence of both the Chairperson and Vice Chairperson, the member of the Board who has the longest tenure of all other members of the Board present at the meeting shall preside.

Section 3502 is amended to read as follows:

3502 MEETINGS OF THE BOARD OF DIRECTORS

3502.1 The Board of Directors shall have a regular meeting on the second (2^{nd}) and fourth (4^{th}) Tuesday of each month at 5:30 p.m. in the principal office of the Agency. If the day of the regular meeting falls on a holiday, the meeting shall be held on the next succeeding business day.

3502.2 Other meetings of the Board of Directors may be held upon the call of the Chairperson, Secretary, or of a majority of the incumbent members of the Board.

3502.3 Special meetings shall be held at the principal office of the Agency, or at such locations as may be established by the Board of Directors. Notice of each special meeting shall be provided in accordance with the applicable laws of the District of Columbia.

3502.4 The annual meeting of the Board shall be held on the second (2nd) Tuesday of January of each year at 5:30 p.m. at the principal office of the Agency, or at such locations as may be established by the Board of Directors; provided, that if the date falls on a holiday, the annual meeting shall be held on the next succeeding business day.

3502.5 Except as provided in Section 3503 of this chapter, each regular and special meeting of the Board shall be open to the public.

3502.6 No person or representative of any person or group shall have the right to be heard or to present oral or written evidence at a meeting of the Board without permission of the presiding officer of the meeting. The presiding officer may impose reasonable conditions in granting permission.

Section 3503 is repealed and replaced with:

3503 CLOSED SESSIONS

3503.1 The Board may hold a closed session at the times and places it determines to be in the interest of the Agency.

3503.2 Closed sessions shall not be open to the public.

3503.3 Minutes of closed sessions shall be kept and made a part of the Agency's permanent records.

Section 3504 is amended to read as follows:

3504 VOTING

3504.1 Members may not be represented by proxy at any meeting of the Board of Directors.

Section 3505 is amended to read as follows:

3505 COMMITTEES OF THE BOARD

3505.1 The Board of Directors may by resolution designate from among its members one (1) or more committees, each of which, to the extent provided by resolution of the Board, shall perform the duties and exercise powers specified in the resolution.

Section 3506 is amended to read as follows:

3506 OFFICERS, AGENTS AND EMPLOYEES OF THE BOARD

3506.1 The principal officers of the Agency shall consist of a Chairperson of the Board of Directors, a Vice-Chairperson, an Executive Director, who shall also act as Secretary, and other principal officers that may be designated by the Board of Directors from time to time.

3506.2 There shall also be other officers, agents and employees as deemed necessary by the Board.

3506.3 All officers, agents, and employees of the Agency shall have the authority and perform the duties in the management and conduct of the business of the Agency as are provided in this chapter, as may be established by resolution of the Board of Directors not inconsistent with this chapter, or as may be delegated to them in a manner not inconsistent with this chapter.

3506.4 The compensation of the officers, agents and employees of the Board shall be fixed, from time to time, by the Board of Directors.

3506.5 The principal officers, agents and employees of the Board shall be selected by the Board of Directors.

3506.6 Each officer shall hold office until his or her successor is chosen and qualified, or until he or she dies, resigns, retires, or is removed from office, whichever event shall first occur.

3506.7 Selection or appointment without express tenure of an officer, agent or employee of the Board shall not itself create contract rights.

3506.8 Any officer, agent or employee of the Board may be removed by the Board of Directors.

3506.9 Any removal of an officer, agent or employee of the Board shall require an affirmative vote of three (3) members of the Board, and shall be without prejudice to the contract rights, if any, of the person removed.

3506.10 Any vacancy in any office shall be filled in the manner prescribed in this chapter for selection or appointment to the office.

Section 3507 is amended to read as follows:

3507 EXECUTIVE DIRECTOR

3507.1 The Executive Director shall be the Chief Executive Officer of the Agency and shall have the powers and perform duties prescribed by the Board of Directors.

3507.2 The Executive Director shall be the Secretary to the Board of Directors and in that capacity he or she shall have powers in accordance with § 203 of the Act (D.C. Official Code § 42.2703.03(b)) and in general, perform all the duties ordinarily incident to the office of the Secretary.

3507.3 The Secretary, and his or her designee, shall be expressly empowered to attest signatures of officers of the Agency and to affix the seal of the Agency to documents.

3507.4 The Executive Director and each Board member shall be bonded in accordance with § 205 of the Act (D.C. Official Code § 42.2702.05).

Section 3508 is amended to read as follows:

3508 AMENDMENT OF BYLAWS

3508.1 The power to alter, amend, or repeal the provisions of §§ 3500 through 3899 of this chapter (the bylaws of the Agency), or to adopt new bylaws, not inconsistent with this law, is vested in the Board of Directors.

3508.2 The affirmative vote of three members of the Board of Directors shall be necessary to effect an amendment of the bylaws or the adoption of new bylaws.

Section 3509 is inserted to read as follows:

3509 CONFLICT OF INTERESTS

3509.1 Any member, officer, or employee of the Agency who, either directly or indirectly, has an ownership or other financial interest in, or who is an officer or employee of, any firm or agency interested directly or indirectly in any transaction with the Agency or whose relationship to that firm or agency creates the appearance of a conflict of interest, shall disclose this interest to the Agency.

3509.2 For purposes of this section, a "transaction with the Agency" shall include, but shall not be limited to, any loan to any sponsor, builder, or developer.

3509.3 Each disclosure shall be set forth in the public record of the Agency.

3509.4 The member, officer, or employee having the interest or relationship, as described in § 3509.1 of this chapter, shall not participate on behalf of the Agency in the deliberation, authorization, or implementation of any transaction with the Agency.

3509.5 It shall not be considered having a prohibited interest in a firm or agency if the only relationship is one of depositor in a bank or savings and loan or of customer or vendor in an arms length business relationship with the firm or agency.

3509.6 At a public session of the Board, the Board may by a two-thirds majority vote of the incumbent Members, on the public record, waive a conflict of interest that a Member or Officer may have in regards to a particular transaction, sponsor, builder, firm, developer, business, corporation, bank, partnership, limited partnership, person, government agency or other legal entity after the conflict has been specifically identified on the public record (i) outlining the relationship of the Officer or Member to the particular transaction, sponsor, builder, firm, developer, business, corporation, bank, partnership, limited partnership, person, government agency or other legal entity, and (ii) stating any benefit, advantage or gain (financial or otherwise), direct or indirect, received by the Officer or Member.

3509.7 The Board may waive a conflict of interest by a two-thirds majority vote of the incumbent Members, on the public record, in cases where the Officer or Member is merely an employee of the sponsor, builder, firm, developer, business, corporation, bank, partnership, limited partnership, person, government agency or other legal entity and the Officer or Member has no decision making authority with respect to or influence over the matter presented to the Board for a waiver of conflict.

3509.8 Notwithstanding anything to the contrary, the Board may waive a conflict of interest by a two-thirds majority vote of the incumbent Members if the Board determines on the public record that the interest will not adversely affect the Agency.

Section 3510 is inserted to read as follows:

3510 PROCEDURES FOR EVICTIONS AND PROTECTIONS FROM RETALIATORY ACTION

3510.1 Tenants of Housing Projects shall be protected from eviction as well as retaliatory action in accordance with 14 DCMR §§ 4300 – 4399, as amended.

Section 3511 is inserted to read as follows:

3511 CONDITIONS AND PROCEDURES FOR RELOCATION ASSISTANCE

3511.1 Tenants displaced from Housing Projects shall be given relocation assistance in accordance with 14 DCMR § 4401, as amended.

Section 3513, AGENCY ADVISORY COMMITTEE, is repealed.

Section 3514, ADVISORY COMMITTEE SELECTION PROCESS, is repealed.

Section 3515, ADVISORY COMMITTEE CONFLICT OF INTERESTS, is repealed.

Section 3516, OPERATION OF THE ADVISORY COMMITTEE, is repealed.

Section 3517, ANNUAL REPORT OF THE ADVISORY COMMITTEE, is repealed.

Section 3599 is amended to read as follows as follows:

3599 DEFINITIONS

3599.1 When used in Chapters 35, 36 and 38 of this title, the following words and phrases shall have the meaning ascribed:

Act - the District of Columbia Housing Finance Agency Act, effective March 3, 1979, as amended (D.C. Law 2-135; D.C. Official Code §§ 42-2701.01 *et seq*.).

Agency Housing Program - a program for financing or assisting housing that has been formally adopted by the Agency.

Annual income - the anticipated total annual income of eligible persons from all sources for the twelve (12) month period following the date of determination of income. All payments from all sources received by the family head (even if temporarily absent) and each additional member of the household who is not a minor shall be included in the annual income.

Applicant - a corporation, partnership, limited partnership, joint venture, trust, firm, association, sponsor, individual, family, public body, or other legal entity or any combination of these applicants, applying to receive Agency monies, assistance, or services under the Act.

Application - a request for Agency assistance under the Act made on forms furnished by the Agency and containing information required by the Executive Director.

Construction loan - a short term advance of monies authorized for the purpose of constructing or rehabilitating residential housing or housing projects, and

which is secured or is to be secured as provided in the Act and in Chapters 35, 36, and 38.

Eligible persons - individuals and families who qualify for housing under a given program according to the requirements of the program as established by the Agency.

Executive Director - the person and his or her designee, employed by the Agency Board who is the chief executive officer of the Agency and who serves as Secretary to the Board.

Feasible housing project - a proposed housing project where the Agency has made a determination that the project can reasonably be expected to be operated in a fiscally sound manner in conformance with the housing goals and policies of the Agency and the requirements of the Act.

Housing project - one (1) or more housing units located in the District assisted by the Agency under the provisions of this act including, but not limited to, units acquired, financed, refinanced, constructed, rehabilitated or converted to a condominium or a cooperative with the assistance of the Agency. A Housing project may incorporate ancillary facilities which may include:

(a) Necessary or desirable appurtenances to residential housing such as, but not limited to, streets, sewers, utilities, parks, and stores, as the Agency determines to be appropriate;

(b) Community facilities including, but not limited to, health, welfare, recreational, and educational facilities that the Agency determines to be appropriate; and

(c) Ancillary commercial facilities which the Agency determines to be appropriate; Provided, that the primary use (consistent with the I.R.S. regulations concerning tax exempt financing) of the project shall be for residential housing.

Housing unit - living accommodations within a housing project that are intended for occupancy by eligible persons.

Low-income persons - eligible persons whose annual income as determined by the Agency does not exceed the low-income limits established by resolution of the Agency, from time to time, in accordance with § 102(1) of the Act (D.C. Official Code § 42.2702.12).

Moderate-income persons - persons and families whose annual income as determined by the Agency does not exceed the moderate-income limits

established by resolution of the Agency, from time to time, in accordance with § 102(m) of the Act (D.C. Official Code § 42.2702.13).

Mortgage finance rate reduction - the differential between prevailing mortgage interest rates and a lower rate which is paid by a sponsor of a project for which financing has been made available, directly by the Agency or through a mortgage lender, from the proceeds of bonds issued by the Agency.

Permanent mortgage loan - a mortgage loan that is authorized by resolution of the Agency, or by a mortgage loan commitment issued on behalf of the Agency, and which is made available to a sponsor or eligible person from the proceeds of the sale of the Agency's bonds or any other funds available to the Agency for the purpose of providing long-term financing to develop or purchase housing projects or housing units, the repayment of which is secured or is to be secured as provided in the Act and in this chapter.

Chapter 36, HFA: FINANCING AND LOAN PROGRAM, is amended to read as follows:

Chapter 36 HFA: MULTIFAMILY FINANCING AND LOAN PROGRAM

Section 3600 is amended to read as follows:

3600 AGENCY HOUSING PROGRAM

3600.1 The Board may adopt an Agency housing program or programs which shall set forth, as Agency goals, the number, location, and other characteristics of housing units to be financed by the Agency, specifically those which the Agency desires to be occupied by low- and moderate-income persons. Agency housing programs may be amended from time to time

Section 3601 is amended to read as follows:

3601 SCOPE OF AGENCY FINANCING AUTHORITY

3601.1 The agency shall be empowered to make or originate the following:

(a) Loans to sponsors for the acquisition, construction, equipping, rehabilitation, mezzanine financing, interim financing, or permanent financing of rental projects for Eligible persons;

(b) Funds available for rent subsidy to be utilized by Eligible persons;

(c) Funds available in a loan guarantee fund to be used by the Agency to guarantee or insure loans in accordance with criteria established by the Agency; and

(d) Counseling programs, as part of residential services, available to low-income and moderate-income families who participate in rental projects funded by the Agency.

Section 3602 is amended to read as follows:

3602 FUNDING OF AGENCY PROJECTS

3602.1 The undertakings of the Agency as provided in the Act or this chapter may be funded in whole or in part by the issuance of bonds, notes, or other obligations on whatever terms and conditions the Agency determines.

3602.2 In addition to proceeds from bonds, notes, or other obligations issued by the Agency, the Agency may receive gifts, grants, loans, appropriations, or other funds, property or other assets, or any other type of financial assistance (including insurance and guarantees) from any federal, District, private, or other source, and may do any and all things necessary to avail itself of that aid.

3602.3 Funds or other forms of assistance may be used to finance, or assist the financing of, any of the following activities:

(a) Loans to sponsors for the acquisition, equipping, construction, rehabilitation, mezzanine financing, interim financing, or permanent financing of rental Housing projects for Eligible persons;

(b) Rent subsidy programs to be utilized by Eligible persons;

(c) A loan guarantee fund to be used by the Agency to guarantee or insure loans in accordance with criteria established by the Agency;

(d) Counseling programs for low-income and moderate-income families who participate in rental projects funded by the Agency; and

(e) Any other activities permitted in the Act.

3602.4 Agency funds or other forms of assistance may also be used in the furtherance of the exercise of Agency powers as contemplated in the Act with respect to any of the programs permitted in § 3602.3.

3602.5 In the furtherance of the Agency's program or programs to finance housing, there may be created by resolution of the Board from time to time, reserve and other

funds as may be necessary or appropriate to secure bonds, notes, and other forms of indebtedness issued by the Agency.

3602.6 Funds created or set aside under § 3602.5 shall be administered as provided in applicable indentures, resolutions, or other agreements concerning security for bondholders, noteholders, or creditors holding other forms of indebtedness issued by the Agency.

Section 3605, CONFLICT OF INTERESTS, is repealed.

Section 3606 is amended to read as follows

3606 EQUAL OPPORTUNITY

3606.1 All Housing projects financed or otherwise assisted under the Act shall be open to all persons in accordance with applicable District and federal laws including, but not limited to, the Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.1 *et seq*.), and the Equal Opportunity for Local, Small, and Disadvantaged Business Enterprises Act of 2005, effective October 20, 2005, as amended (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq*.).

3606.2 All mortgagors, contractors, and subcontractors engaged in the construction, acquisition, equipping, rehabilitation, sale, or rental of housing financed or assisted under the Act shall provide equal opportunity for employment, without discrimination, in accordance with the laws referred to in § 3606.1.

Section 3610 is repealed and replaced to read as follows:

3610 LOANS: GENERAL

3610.1 The provisions of Chapters 36 shall implement the provisions of the District of Columbia Housing Finance Agency Act, effective March 3, 1979, as amended (D.C. Law 2-135, D.C. Official Code §§ 42-2701 *et seq*.) (the "Act").

3610.2 Procedures, instructions, guidelines, and appropriate forms for the solicitation, receipt, processing, and evaluation of applications for Agency financing and other assistance and the taking of other actions that may be necessary or desirable for the implementation and administration of all aspects of the Agency's programs may be established and modified from time to time by the Executive Director (or in the absence of the Executive Director, a designee(s) of the Board), with the approval or ratification of the Agency Board.

3610.3 Agency procedures, instructions, guidelines, and forms shall be consistent with the requirements of the Act and this chapter.

3610.4 The Agency staff may provide technical assistance to applicants seeking to complete applications.

3610.5 The Board, by resolution, may waive or vary particular provisions of Chapter 36 to the extent not inconsistent with the Act for the following reasons:

(a) To conform to the requirements of the federal government in connection with any Housing project or housing unit with respect to which federal assistance is sought; or

(b) In exceptional circumstances if, in the determination of the Board, the application of the rule(s) to a specific case or under an emergency situation may result in undue hardship.

3610.6 If any clause, sentence, paragraph, section, or part of Chapter 36 is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section, or part directly involved in the controversy in which the judgment has been rendered.

Section 3611 is repealed and replaced to read as follows:

3611 LOANS: FEDERALLY ASSISTED

3611.1 When housing financed by the District of Columbia Housing Finance Agency (the "Agency") loan is, in whole or in part, federally insured or otherwise directly or indirectly assisted by the federal government, the regulations of the federal government program pursuant to which that assistance is provided shall apply to the extent they are not inconsistent with the provisions of the Act and Chapter 36 of this title.

Section 3612 is repealed and replaced to read as follows:

3612 LOANS TO SPONSORS: RENTAL HOUSING

3612.1 As set forth in § 302 of the Act (D.C. Official Code § 42-2703.02(a)), the Agency may make or participate in making construction, permanent, mezzanine, and interim loan financing available to sponsors for the development of rental Housing projects for Eligible persons.

3612.2 Financing under § 302 of the Act (D.C. Official Code § 42-2703.02(a)) shall be on whatever terms and conditions the Agency determines to be appropriate in the circumstances. The terms and conditions of financing shall be established in the Agency procedures and guidelines.

3612.3 The terms and conditions of financing may include, but shall not be limited to the following:

(a) Interest rates;

(b) Repayment terms;

(c) Fees, charges, and other conditions of originating and servicing loans;

(d) Collateral and other security arrangements;

(e) Maximum loan term;

(f) Debt service requirements;

(g) Pre-payment penalties; and

(h) Refinancing terms.

Section 3613 is repealed and replaced as follows:

3613 APPLICATIONS AND PROCESSING OF LOANS

3613.1 Specific instructions concerning applications for Agency predevelopment loans, permanent loans, construction loans, mezzanine loans, interim loans, or for other assistance, and the processing, evaluation, and approval of the applications shall be contained in the Agency's processing procedures, instructions, and guidelines promulgated pursuant to § 3610.

3613.2 Applications and allocation plans, if any, for Agency financing shall be available to all applicants requesting them from the Agency. Such applications or allocations plans may contain information relating to rent levels, tenant relocation, and underwriting expectations.

3613.3 Upon receipt of a completed application, the Agency staff shall, pursuant to agency guidelines and allocation plans, undertake appropriate analyses, investigations, and reviews in order to evaluate the proposed Housing project in accordance with the Agency's requirements, goals, policies, and selection criteria. The staff shall then make recommendations pursuant to Agency guidelines and allocations plans to the Board on the feasibility of the project for Agency financing.

3613.4 If the Board preliminarily determines a proposed Housing project to be feasible for financing with an Agency predevelopment, construction, mezzanine, interim, or permanent loan, the Executive Director (or in his or her absence, designee(s) of the Board) shall issue to the sponsor a conditional commitment or financing feasibility letter.

3613.5 The financing feasibility or conditional commitment letter may be issued for whatever term the Executive Director determines is appropriate in the circumstances.

3613.6 The conditional commitment letter shall constitute the Agency's intent to fund, as approved by the Board, the Housing project, subject to the completion of the terms and conditions as enumerated in the letter.

3613.7 The financing feasibility letter shall not constitute a commitment on behalf of the Agency, but shall constitute a determination by the Agency staff that the proposed Housing project is feasible for financing by the Agency on the basis of preliminary reviews and analyses of the proposed site, market, design, development costs, operating budget, management plan, housing sponsor qualifications, and compliance with legal requirements.

3613.8 The financing feasibility or conditional commitment letter shall specify that upon satisfaction of the terms and conditions contained in the letter, and upon submission of a satisfactorily completed final application for Agency financing, or due diligence as may be required, the entire loan application shall be processed. Loans requiring a financial feasibility letter shall be presented to the Board for action with respect to the authorization of an Agency construction loan, permanent loan, or both.

3613.9 The financing feasibility or conditional commitment letter shall establish submission requirements, as determined appropriate by the Executive Director (such as the submission of preliminary designs), prior to submission of final application.

3613.10 Upon satisfaction of the terms and conditions contained in the financing feasibility letter and completion of the processing of the final loan application by the Agency staff, the Executive shall present to the Board his or her recommendations with respect to the application together with the Agency's analysis of the completed application. The Board shall make a determination by resolution whether the proposed Housing project is a feasible housing project and is approved by the Agency for construction or permanent financing or other assistance.

3613.11 The Board resolution shall authorize the issuance of an Agency construction or permanent financing commitment, or both, to the sponsor with respect to the

proposed Housing project. The commitment may be issued for whatever term the Board determines to be appropriate in the circumstances.

3613.12 The resolution may include any conditions that the Agency considers appropriate with respect to the commencement of construction of the proposed Housing project, the marketing and occupancy of the housing development, the use, disbursement and repayment of the construction or permanent loan authorized, and all other matters relating to the acquisition, equipping, development, construction, or rehabilitation and operation of the proposed housing project.

Section 3614, TENANT SELECTION PLAN, is repealed.

Section 3615, BOARD APPROVAL OF LOAN APPLICATIONS, is repealed.

Section 3616 is amended to read as follows:

3616 REGULATIONS OF HOUSING SPONSORS

3616.1 It shall be the policy of the Agency to ensure the operational stability of Housing projects to the greatest extent possible. To that end, the Agency's processing procedures, instructions, and guidelines may require the submission of any organizational documents necessary to determine the qualification of the applicant as a housing sponsor and desirable recipient of Agency financing.

3616.2 As a condition precedent to the closing of an Agency loan, the sponsor may be required to execute a regulatory agreement with the Agency and any other related documents that the Executive Director (or designee(s) of the Board) determines to be necessary or appropriate.

3616.3 The regulatory agreement or other documents related to the financing of the proposed housing project shall authorize the Agency to regulate any aspects of the development of the proposed housing project that the Executive Director (or designee(s) of the Board) determines to be necessary or appropriate to protect the interests of the Agency and permit fulfillment of the Agency's duties and responsibilities under the Act, particularly, §§ 302(b)(1)(B) and 306(b)(1), (2), and (3) of the Act (D.C. Official Code § 42.2703.02 and § 42.2703.06).

Section 3617 is amended to read as follows:

3617 COLLATERAL AND SECURITY

3617.1 The Executive Director may, from time to time, establish the type and amount of collateral or other security to be provided by borrowers necessary to ensure repayment of permanent loans, repayment of construction loans, or successful completion of the proposed Housing projects.

3617.2 Collateral and security may be in the form of letters of credit, guarantees, cash benefit or other insurance, payment bonds, performance bonds, or other types approved by the Executive Director.

3617.3 The requirements for collateral and security shall be set forth in the Agency procedures, guidelines, and loan contract forms.

Section 3618, RENT LEVELS, is repealed.

Chapter 37, HFA: FINANCING SECTION 8 HOUSING, is repealed.

Chapter 38, HFA: SINGLE FAMILY MORTGAGE PURCHASE PROGRAM, is amended as follows:

Chapter 38 HFA: SINGLE FAMILY MORTGAGE PROGRAM

Section 3800 is amended to read as follows:

3800 GENERAL PROVISIONS

3800.1 The provisions of this chapter shall establish the procedures for the administration of the Program.

3800.2 In order to generate funds from private and public sources to increase the supply and lower the cost of funds available for residential Mortgages and thereby help alleviate the critical shortage of adequate affordable housing for Low-income and Moderate-income persons in the District, the Agency is authorized under § 303 of the Act (D.C. Official Code § 42-2703.03) to invest in, purchase, make commitments to purchase, and take assignments from Approved Mortgage Lenders of Mortgage loans made to Low and Moderate-income persons for the financing of eligible residential housing that meets the requirements established by the Act and the Agency.

3800.3 The Agency shall be empowered to make or originate the following:

(a) Loans to sponsors for the acquisition, equipping, construction, rehabilitation, or permanent Mortgage financing of home ownership housing projects for Eligible persons;

(b) Loans through Approved Mortgage Lenders for the purchase of owner occupied residential housing by Eligible persons;

(c) Funds available for home ownership Mortgage interest subsidy to be utilized by Eligible persons;

(d) Loans to Eligible persons for the rehabilitation of residential housing;

(e) Funds available to assist eligible prospective home purchasers to meet down payment requirements in order to obtain Mortgage financing;

(f) Funds available in a Mortgage loan guarantee fund to be used by the Agency to guarantee or insure Mortgage loans in accordance with criteria established by the Agency;

(g) Counseling programs available to Low-income and Moderate-income families; and

(h) Loans for the prevention of foreclosures.

3800.4 The purchase of Mortgage loans shall be on whatever terms and conditions that the Agency determines to be appropriate in the circumstances.

3800.5 Terms and conditions shall be established in the Agency's Program documents.

3800.6 The Agency shall fund the purchase or origination of Mortgage loans or Mortgaged-backed securities with the proceeds of its Bonds or other available money.

3800.7 The Agency's obligation to purchase or originate Mortgage loans or Mortgaged backed securities shall be contingent on its ability to issue Bonds or acquire funds at a rate and upon other conditions acceptable to the Agency.

Section 3801 is repealed and replaced to read as follows:

3801 ELIGIBLE MORTGAGE LENDERS AND INVITATION TO RESERVE FUNDS

3801.1 The Agency may accept as participants in the Program those Approved Mortgage Lenders which have demonstrated to the Agency, among other things, that they have the ability to originate and service Mortgage loans in the District and that they are in compliance with applicable local and federal statutes and regulations.

3801.2 The Agency shall invite interested Approved Mortgage Lenders to enter into a Participating Mortgage Lender Single Family Program Agreement in connection with the Program.

3801.3 Mortgage lenders may request, from time to time, an allocation of funds expected to be available for the purchase of Mortgage loans.

3801.4 Specific instructions concerning the following shall be contained in the Agency's program documents:

(a) The Agency's availability of funds;

(b) Terms for purchasing qualified Mortgage loans; and

(c) The method of allocating funds.

Section 3802 is repealed and replaced to read as follows:

3802 ALLOCATION OF FUNDS FOR SPECIAL PROGRAMS

3802.1 The Agency may from time to time, establish Special Programs on the basis of the following:

(a) The availability of adequate funds;

(b) The effect of the allocation on the marketability of the Agency's Bonds;

(c) The requirements of the Act and the Internal Revenue Code of 1954, as amended, and applicable I.R.S. regulations regarding the use of Bond proceeds;

(d) The effect of the allocation in achieving the Agency's housing goals in the District; and

(e) Other criteria that may be established by the Agency.

Section 3803 is amended as follows:

3803 MORTGAGE LOAN TERMS

3803.1 Each Mortgage loan shall be secured by a Mortgage which constitutes a lien on the interest in the Single-family residency encumbered by the mortgage or on the leasehold interest in the Single-family residence having an unexpired term equal to or longer than the term in which the Mortgage loan secured is to be amortized.

3803.2 Mortgage loan terms shall be established as the Agency determines to be appropriate in the circumstances.

3803.3 Mortgage loan terms shall be specified in the program documents and may include, but not be limited to, the following:

(a) Maximum and minimum terms;

(b) Type of financing (*e.g.*, graduated payment loan, variable rate loan);

(c) Assumption provisions;

(d) Prepayment penalties;

(e) Fee, charges, and other conditions of originating and servicing requirements;

(f) Maximum loan-to-value ratio;

(g) Down payment requirements;

(h) Interest rates; and

(i) Acceleration provisions.

3803.4 The Agency shall establish the interest rate to be charged on the Mortgage loans, taking into account the Agency's costs of borrowing the funds required to purchase the Mortgage loans, administrative costs of the Agency, and possible losses due to Mortgage loan defaults.

3803.5 The interest rate on Mortgage loans financed with tax-exempt Bond proceeds shall not exceed the maximum permitted by application of the provisions of § 103 and § 141 through 150 of the Internal Revenue Code of 1986, as amended, and applicable Internal Revenue Service (I.R.S.) regulations.

Section 3804 shall be amended to read as follows:

3804 ELIGIBLE SINGLE FAMILY RESIDENCES

3804.1 The Agency may finance single family residences located in the District which satisfy the applicable requirements of the Act , I.R.S. regulations, the Department of Housing and Urban Development or other laws, rules, regulations, Program documents and guidelines applicable under the Agency’s financing plan.

3804.2 The Program documents for eligible Single-family residences may provide the following:

(a) Types of units to be financed (attached or detached single family, condominiums, cooperatives, new construction, substantial rehabilitation, existing homes);

(b) Maximum purchase price for each type of unit;

(c) Minimum number of occupants for units of different sizes;

(d) In the case of condominium or cooperative units, pre-sale requirements, approval requirements, and maximum number of units to be financed in any building or project; and

(e) Targeted areas.

Section 3805 is amended to read as follows:

3805 DISTRIBUTION OF LENDABLE BOND PROCEEDS

3805.1 In order to comply with § 103 and § 141 through 150 of the Internal Revenue Code of 1986, as amended, and applicable I.R.S. regulations, and to carry out the policy for which the Agency was created, the Agency shall provide a mechanism assuring that a necessary or reasonable amount of lendable Bond proceeds are distributed in Targeted areas and to such persons as the Agency determines suffer from a critical shortage of affordable financing, or are otherwise in need of appropriate financing for Single-family residences.

Section 3806 is amended to read as follows:

3806.1 The Agency may purchase or originate Mortgage loans or Mortgage-backed securities made to eligible persons and families who satisfy the requirements of §103 and § 141 through 150 of the Internal Revenue Code of 1986, as amended, applicable I.R.S. regulations, and the Act and who meet certain additional criteria or goals as may, from time to time, be established by the Agency in its Program Documents.

Section 3807 is amended to read as follows:

3807 PROGRAM FEES

3807.1 The Agency may charge and collect from an Approved Mortgage Lender a reasonable fee to participate in the Program and to cover the Agency's cost of administering the Program and certain other costs as the Agency determines are necessary to cover cash flow or security deficiencies in connection with the issuance of the Program's Bonds.

3807.2 The Agency may also allow Approved Mortgage Lenders to charge the mortgagors or the sellers of Single-family residences reasonable fees to

participate in the Program and defray the costs of originating and servicing the Mortgage loans to the extent permitted by applicable law.

Section 3808 is amended to read as follows:

3800 LOAN PROCESSING AND PROGRAM DOCUMENTS

3808.1 Mortgage loans to be purchased under the Program shall be originated by Approved Mortgage Lenders and serviced by Approved Mortgage Lenders or a Master servicer.

3808.2 Each Approved Mortgage Lender shall originate all Mortgage loans in accordance with the lender's then current standard underwriting policies, the standards of FNMA, FHA or FHLMC (or their respective successors), as applicable, and of the Agency or its designee.

3808.3 Each Approved Mortgage Lender or Master servicer shall service all Mortgage loans in accordance with the standards set by the Program documents.

3808.4 The standards for originating and servicing Mortgage loans may be modified from time to time by the Agency.

3808.5 The implementation of the Program may include the production and execution of certain Program documents, including, but not limited to, the following:

(a) Participating Mortgage Lender Single Family Program Agreement;

(b) Invitation to reserve funds; and

(c) Lender's manual.

3808.6 The Program documents shall be provided by the Agency and may be amended by the Agency from time to time. The Program documents shall be consulted in conjunction with the applicable provisions of this chapter to fully describe the Program and its procedures.

Section 3809 is amended to read as follows:

3809 AFFIRMATIVE MARKETING GOALS

3809.1 The Agency may establish a monitoring system to ensure that Approved Mortgage Lenders do the following:

(a) Conduct outreach efforts and inform members of the community of the availability of the Agency's funding or Mortgage loans, particularly those groups identified by the Agency as having a need for increased housing opportunities; and

(b) Make Mortgage loans to Eligible persons and families on a nondiscriminatory basis.

Section 3810 is inserted to read as follows:

3810 MORTGAGE LOANS: FEDERALLY ASSISTED

3810.1 When housing financed by a District of Columbia Housing Finance Agency (the "Agency") Mortgage loan is, in whole or in part, federally insured or otherwise directly or indirectly assisted by the federal government, the regulations of the federal government program pursuant to which that assistance is provided shall apply.

Section 3899 is amended to read as follows:

3899 DEFINITIONS

3899.1 When used in this chapter, unless defined herein, words and phrases shall have their common industry meaning ascribed:

Approved Mortgage Lender:

(a) The Agency, any bank, Mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan or federal credit union which maintains an office in the District, an FHA approved lender; or meets other requirements as set forth by the Board of Directors of the Agency; and

(b) Any insurance company that is authorized to do business in the District and meets the financial stability and sufficient net worth criteria established, from time to time, by the Agency.

Bonds - the bonds or other evidences of financial obligations of the Agency used to finance Mortgage loans.

Eligible person or family - one (1) or more persons or a family determined by the Agency to be of Low or Moderate-income who qualify for housing under the Program according to the requirements of the Program

documents as established by the Agency and whose Gross income does not exceed the percentages, set forth in the Act, of the median family income, as revised from time to time, for the SMSA in which the District is located.

Gross income - the income shown on the last filed federal income tax return(s) which reflects gross income (total income including deductions) as well as verification of current income by the lender.

Master Servicer – the servicer designated, by and on behalf of the Agency, to service Mortgage loans originated by the Agency, Approved Mortgage Lenders or the Master Servicer in accordance with the provisions of the Agency's Participating Mortgage Lender Single Family Program Agreement, servicing agreement, and the Program documents.

Mortgage - a Mortgage or deed of trust or any other owner-financing instrument as defined in § 102(n) of the Act, encumbering a Single-family residence located in the District and securing a Mortgage loan in the form and containing terms and provisions required in the applicable program documents and approved by the Agency pursuant to this Part.

Mortgage-backed securities - are asset-backed securities that represent a claim on the cash flows from Mortgage loans through a process known as securitization.

Mortgage loan - a loan to an Eligible person or family for the purposes of financing residential housing, committed by an Approved Mortgage Lender, pursuant to the applicable Program documents, which is evidenced by a Mortgage note secured by the related Mortgage and which the Agency purchases pursuant to a Participating Mortgage Lender Single Family Program Agreement with the Approved Mortgage Lender.

Mortgage note - a promissory note evidencing a Mortgage loan and secured by the related Mortgage in the form and containing terms required in the applicable Program documents and approved by the Agency.

Participating Mortgage Lender Single Family Program Agreement - an agreement between the Agency and an Approved Mortgage Lender, except where the Agency originates the loan, pursuant to which the Approved Mortgage Lender becomes a participant in the Program and in accordance with which Mortgage loans are originated, securitized, or purchased by the Agency, and serviced by the Approved Mortgage Lender or Master Servicer and which sets forth the requirements of the Act and this Participating Mortgage Lender Single Family Program Agreement .

Program - the Agency's single family mortgage program pursuant to which the Agency originates or purchases Mortgage loans, or Mortgage-backed securities from Approved Mortgage Lenders, including, but not limited to, refinancing loans and acquisition rehabilitation loans.

Program documents - any and all documents required by the Agency setting forth the terms and conditions under which the Agency shall originate or purchase Mortgage Loans from Approved Mortgage Lenders, or purchase Mortgage-backed securities from other entities.

Single-family residence - an owner-occupied single family residence, including a condominium and cooperative unit, that is located in the District and satisfies all the requirements of the Program documents.

SMSA - a Standard Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

Special Programs - means programs that the DCHFA may establish from time to time to set aside Mortgage loan capacity for specific purposes or specific borrowers.

Targeted area - a qualified census tract or an area of chronic economic distress located in the District within the meaning of Section 143(j) of the Internal Revenue Code of 1986, as amended, and applicable I.R.S. regulations, and any other areas that the Agency may, from time to time, designate.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

GT 2014-01, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND GENERAL SERVICE PROVISION NO. 4

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice pursuant to D.C. Official Code § 2-505 (2001) of its final rulemaking action approving the Application of Washington Gas Light Company ("WGL" or "Company") for authority to amend General Service Provision No. 4 of its tariff to implement Fee-Free Credit/Debit Card Service ("Card Service") for the Company's residential and small commercial customers in the District of Columbia.[1]

2. In its Application, the Company seeks approval of the Card Service, "which will eliminate the fee paid by the Company's residential and small commercial customers to a third-party processor for credit/debit card bill payments."[2] WGL proposes to make this service available to District of Columbia residential and small commercial customers at no cost. Currently, customers are charged $4.55 to pay their bills with a credit/debit card, which is paid directly to the third-party processor.[3] According to WGL, with this new service, these customers will avoid all fees when paying their WGL gas bills with a credit or debit card. In addition, the Company states that delinquent customers trying to pay arrearages will be eligible to pay by credit or debit card.[4] To effect these changes, WGL proposes to revise the following tariff page:

Washington Gas Light Company – District of Columbia, PSC of D.C. No. 3
First Revised Page No. 36A

3. The Commission issued a Notice of Proposed Rulemaking ("NOPR"), which was published in the *D.C. Register* on February 14, 2014, inviting public comment on the proposed tariff amendments.[5] No comments were filed in response to the NOPR. Subsequently, the Commission, at its regularly scheduled open meeting held on April 17, 2014, took final action to approve WGL's Application. The tariff revisions will become effective upon publication of this Notice of Final Rulemaking in the *D.C. Register*.

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1 *GT 2014-01, Application of Washington Gas Light Company for Authority to Amend General Service Provision No. 4* ("*GT 2014-01*"), filed February 4, 2014 ("WGL's Application).

2 WGL's Application at 1.

3 *Id.*

4 *Id.* at 1-2.

5 61 DCR 1312 (February 14, 2014).

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Behavioral Health ("the Department"), 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 12472 (September 6, 2013)), hereby gives notice of his intent to amend Chapter 73 (Department of Mental Health Peer Specialist Certification), of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments add new types of Peer Specialists, the "Certified Peer Specialist – Family" to include parents or legal guardians of children or youth who have received services from the public mental health system; "Certified Peer Specialist – Youth," adults who as youth received services to assist other parents and youth to successfully navigate the public mental health system; and "Certified Peer Specialist – Recovery," for adults with a history of substance abuse who are able to assist others with substance abuse issues. The delivery of mental health services and supports by certified peer specialists is an "evidence-based mental health model of care" recognized by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). These mental health services and supports are collectively referred to as "peer support services." Additional amendments include updating references from the Department of Mental Health to the Department of Behavioral Health, the successor agency, and including the requirement that applicants must be residents of the District of Columbia.

Certified peer specialists, working for the Department of Behavioral Health-certified community mental health providers will be authorized to provide Medicaid-reimbursable mental health rehabilitation services to mental health consumers, when working under the supervision of a mental health professional.

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

Chapter 73 (Department of Mental Health Peer Specialist Certification) of Subtitle A (Mental Health) of Title 22 (Health) of the DCMR is deleted in its entirety and replaced by the following:

CHAPTER 73 DEPARTMENT OF BEHAVIORAL HEALTH PEER SPECIALIST CERTIFICATION

7300 PURPOSE AND APPLICATION

7300.1 These rules establish the Department of Behavioral Health's (Department) requirements for training and certifying Peer Specialists ("Certified Peer Specialists"), who will be employed by Department-certified community mental health agencies to provide Medicaid reimbursable mental health rehabilitation

services (MHRS) and other mental health supports and services to adult and children and youth mental health consumers and their families under the supervision of a qualified mental health professional in the District of Columbia (District).

7300.2 Medicaid-reimbursable MHRS shall be provided in accordance with the requirements of the District's State Medicaid Plan, Chapter 34 of this subtitle, and the federal guidelines governing the provision of services by Certified Peer Specialists.

7300.3 Other mental health services and supports provided by Certified Peer Specialists to consumers or their families shall be provided in accordance with the requirements of this chapter, Chapter 34 of this subtitle, the consumer's treatment plan, and other applicable guidance, under the supervision of a qualified health care professional. Such services shall be reimbursed through local funds in accordance with the MHRS provider's Human Care Agreement (HCA).

7300.4 The MHRS and other mental health services and supports rendered by Certified Peer Specialists shall be referred to in this chapter as "Peer Support Services."

7300.5 Certified Peer Specialists, certified in accordance with this chapter, must also meet all MHRS non-licensed staff requirements as specified in Section 3410 in Chapter 34 of this subtitle in order to be employed as a Certified Peer Specialist by a Department-certified mental health provider.

7300.6 The purposes of training and certifying Peer Specialists are to:

(a) Ensure that Certified Peer Specialists receive the initial training and continuing education necessary to demonstrate minimum levels of competence in the provision of Peer Support Services;

(b) Ensure that Certified Peer Specialists receive supervision required to deliver mental health rehabilitation services in accordance with the requirements of federal and District law and the State Medicaid Plan; and

(c) Promote professional and ethical practice for Certified Peer Specialists by enforcing adherence to a code of ethics as set forth in Section 7306.

7300.7 These rules apply to individuals seeking certification as a Certified Peer Specialist, mental health providers who supervise or employ Certified Peer Specialists, and the Department.

7301 GENERAL PROVISIONS

7301.1 The Department's Office of Consumer and Family Affairs (OCFA) shall administer the certified peer specialist certification program (Certification Program).

7301.2 The Certification Program consists of structured training designed to provide applicants with the skills necessary to provide Peer Support Services. The training at a minimum includes the completion of seventy (70) hours of classroom work as described in Section 7307 and an eighty (80) hour supervised field practicum described in Section 7308.

7301.3 Applicants who desire to receive a specialty designation may be required to take additional training in accordance with the standards set by the Department.

7301.4 After successful completion of the classroom work and a field practicum, or appropriate waiver in accordance with Section 7305, an applicant shall take a written and oral examination. The OCFA shall develop the written and oral examination, which shall be administered in accordance with Section 7309.

7301. 5 Applicants who complete the required classroom work, field practicum and receive a passing score on the written and oral examination will be granted certification by the Department as a peer specialist (Certified Peer Specialist).

7301.6 The Department may offer a specialty designation for Certified Peer Specialists in accordance with the identified needs of the Department. Certified Peer Specialists may qualify for the specialty designation upon completion of the Certified Peer Specialist program, additional training, and any other requirements established by the Department. Specialty designations may include:

(a) Certified Peer Specialist – Family: an individual who is or has been a parent or legal guardian of a child or youth who is receiving or has received mental health services, and is able to provide services to children or youth and the parents or legal guardians currently receiving mental health services.

(b) Certified Peer Specialist – Youth: an individual who was a consumer of mental health services before the age of twenty-two (22), and is able to provide services to children or youth currently receiving mental health services.

(c) Certified Peer Specialist – Recovery: for those individuals with a history of substance abuse who are able to provide services to other individuals currently receiving services for substance abuse.

7301.7 The Department will provide notice to the public of upcoming training for Certified Peer Specialists, to include information on the application process and what, if any, specialty designations are being offered.

7302 PEER SPECIALIST CERTIFICATION COMMITTEE

7302.1 The Department shall establish a Peer Specialist Certification Committee (PSCC).

7302.2 The PSCC shall be comprised of nine (9) members. Four (4) of the members of PSCC shall be mental health consumers (Consumer Members), at least one (1) of whom must also be a Department employee. An additional two (2) of the members of the PSCC shall be parents or legal guardians of children or youth who were or currently are mental health consumers in the District. The remaining one third (1/3) or three (3) of the members of the PSCC shall be representatives from the mental health provider or advocacy communities (Public Members). All of the members of the PSCC must be residents of the District of Columbia.

7302.3 Each PSCC member shall be appointed by the Director of the Department or designee to serve for a three (3) year term.

7302.4 The nine (9) PSCC members shall be divided into three (3) membership classes, for purposes of ensuring that only one third (1/3) of the membership changes each year. Three (3) PSCC members shall be appointed to serve a one (1) year term (the "Class 1 members"); three (3) PSCC members shall be appointed to serve a two (2) year term (the "Class 2 members"); and three (3) PSCC members shall be appointed to serve a three (3) year term (the "Class 3 members"). There shall be at least one (1) Consumer Member in each membership class. At the expiration of the first term after the adoption of these rules, the Class 1 PSCC members shall serve three (3) year terms and Class 2 PSCC members shall serve three (3) year terms.

7302.5 Any PSCC member appointed to fill a vacancy shall be appointed only for the unexpired portion of that term. PSCC members may continue to serve beyond the end of their terms until they are reappointed or replaced.

7302.6 The PSCC shall select a presiding member at the beginning of each fiscal year. The presiding member shall:

(a) Be responsible for ensuring that the PSCC carries out its responsibilities with respect to the administration of the Certification Program;

(b) Convene periodic meetings of the PSCC to conduct the activities described in Subsection 7302.8 below; and

(c) Serve as the chairperson for each PSCC meeting.

7302.7 The OCFA shall provide administrative support to the PSCC. Administrative support shall include:

(a) Review of applications for the Certification Program to determine completeness;

(b) Documenting the proceedings at all PSCC meetings; and

(c) Documenting all recommendations to the Department regarding any of the PSCC activities described in Subsection 7302.8.

7302.8 The PSCC shall:

(a) Review all applications for participation in the Certification Program;

(b) Interview all candidates for the Certification Program;

(c) Select candidates to participate in the Certification Program;

(d) Review requests from applicants to waive some or all of the Certification Program requirements based upon prior training or experience;

(e) Approve or deny requests from applicants to waive some or all of the Certification Program requirements;

(f) Make recommendations to the Department about the training curriculum for the Certification Program training and subsequent amendments to the curriculum;

(g) Make recommendations to the Department about the field practicum for the Certification Program and subsequent changes to the protocol for conducting the field practicum;

(h) Make recommendations to the Department about appropriate continuing education courses for Certified Peer Specialists;

(i) Make recommendations to the Department about recertification or revocation of Peer Specialist Certification; and

(j) Establish by-laws reflecting its duties, authorities, composition, and manner of operations.

7302.9 Members of the PSCC shall serve voluntarily and without compensation.

7303 CORE COMPETENCIES

7303.1 The Department's peer specialist certification program is structured to provide participants with an opportunity to develop the following core competencies:

(a) Interpersonal skills;

(b) Practical assessment skills and fundamental knowledge of mental health and substance abuse disorders;

(c) Supporting skills to assist the consumer to develop skills identified in the approved treatment plan;

(d) Ability to document services provided including preparation of progress notes required by Subsection 3410.18 of Chapter 34 of this subtitle;

(e) Computer skills;

(f) Understanding the unique role of the peer, using self as a therapeutic presence;

(g) Ethics and Professionalism;

(h) Recovery and Wellness Recovery Action Planning (WRAP) or similar planning;

(i) Advocacy skills; and

(j) Cultural competency and sensitivity.

7303.2 Core competencies are developed through a combination of life experience, successful completion of required classroom work or the equivalent, and successful completion of the field practicum or the equivalent.

7304 PEER SPECIALIST QUALIFICATIONS

7304.1 Eligible applicants for the Peer Specialist Certification training shall:

(a) Be a District resident who is at least eighteen (18) years of age;

(b) Have at least a high school diploma or a general equivalency diploma (GED); and

(c) Be either

(1) A self-disclosed current or previous consumer of mental health services or
(2) Be a parent or legal guardian of a child or youth consumer who was or is currently a consumer of mental health services (for Certified Peer Specialist – Family); and

(d) Demonstrate either

(1) Personal recovery and ability to help others with their recovery; or

(2) An understanding of the public mental health system for a child or youth with serious emotional disturbance, and involvement with multiple public systems.

7305 APPLICATION PROCESS

7305.1 Applicants must submit a completed application to the OCFA in the format prescribed by the Department. The OCFA, in consultation with the PSCC shall announce when it is accepting applications. The application shall include:

(a) Evidence of education, which may include, but is not limited to a copy of a high school diploma, general equivalency diploma or a diploma, or a certificate from an accredited institution;

(b) Completed personal essay on the topic(s) identified in the application; and

(c) Two (2) personal references.

7305.2 The OCFA shall review each application for completeness. Incomplete applications shall be returned to the applicant.

7305.3 Applications deemed complete by the OCFA shall be forwarded to the PSCC for review.

7305.4 After review of the complete applications, the PSCC shall schedule personal interviews with each applicant that submitted a complete application.

7305.5 The PSCC shall select candidates for the Peer Specialist Certification program from the applicants based upon the completed application, written essay, personal references, and the personal interview. Each applicant shall receive written notice of selection or non-selection.

7305.6 An applicant may request a waiver of the requirement to complete any or all of the classroom work and the field practicum based upon prior coursework or certification as a peer specialist or equivalent granted by the Department or another jurisdiction, or based upon prior or current work experience. An applicant requesting a waiver shall include a waiver request with the application and written essay.

7305.7 A waiver request shall:

(a) Identify the core competency or competencies that the applicant already possesses;

(b) Include an explanation of the basis for the request to waive training relating to the core competency addressed by a particular course included

in the training curriculum or the work experience that is covered by the field practicum; and

(c) Provide documentation of prior training, or verification by an instructor or fellow participant, certification or work experience that is cited as the basis for the request to waive classroom work or the field practicum.

7305.8 Waiver requests shall be submitted to the PSCC for consideration as part of the application package. The PSCC shall determine if a full or partial waiver shall be granted. The decision regarding a waiver request will be addressed in the written notice of selection or non-selection provided to each candidate.

7305.9 Applicants for the Certified Peer Specialist – Family and Certified Peer Specialist – Youth Certification Programs shall successfully pass all background checks required for working with children prior to the start of the Peer Specialist Certification training.

7306 CODE OF ETHICS

7306.1 The Department has adopted a code of ethics for Certified Peer Specialists. Each Certified Peer Specialist is required to comply with the code of ethics and shall sign a copy of the code of ethics.

7306.2 The code of ethics includes the following principles, which are intended to guide Certified Peer Specialists in their various professional roles, relationships, and levels of responsibility. Certified Peer Specialists shall:

(a) Be responsible for helping fellow mental health consumers or fellow guardians or parents meet their own needs, wants, and goals in personal recovery or recovery of their children;

(b) Maintain high standards of personal conduct in a manner that fosters their own personal recovery, or recovery of their family member;

(c) Openly share with consumers and colleagues their personal recovery stories from mental illness or from involvement with a family member with mental illness and be able to identify and describe the supports that promote their personal recovery or the recovery of their family member;

(d) At all times, respect the rights and dignity of those they serve;

(e) Never intimidate, threaten, harass, or use undue influence, physical force or verbal abuse, or make unwarranted promises of benefits to the individuals they serve;

(f) Not practice, condone, facilitate or collaborate in any form of discrimination in violation of federal or District law;

(g) Respect the privacy and confidentiality of those they serve;

(h) Advocate for the full integration of consumers into the communities of their choice and promote their inherent value to those communities;

(i) Not enter into dual relationships or commitments that conflict with the interests of those they serve;

(j) Comply with the Department's policies regarding the protection of consumers from abuse or neglect;

(k) Not abuse substances;

(l) Not work at a mental health agency where they or their child, ward or other relative is receiving mental health services; and

(m) Not accept gifts of any value from consumers or family members of consumers they serve.

7307 REQUIRED CLASSROOM TRAINING

7307.1 All candidates must complete the seventy (70) hours of required classroom training. The required classroom training is delivered in modules by instructors designated by the Department or equivalent approved by the PSCC. Classroom training shall address the core competencies set forth in Section 7303.

7307.2 Instructors shall submit notice of successful completion of classroom training by a participant to OCFA.

7307.3 OCFA shall notify each candidate when all required classroom training is complete and the candidate is eligible to complete the field practicum.

7307.4 Candidates who have applied for and been accepted into a specialty designation program must complete, in addition to the required seventy (70) hours of classroom training, additional classroom training in accordance with the requirements set by the Department.

7308 FIELD PRACTICUM SUPERVISION AND ACTIVITIES

7308.1 Completion of the classroom work described in Section 7307 is a pre-requisite to participating in the eighty (80) hour field practicum, conducted in accordance with this section and with Department field practicum guidelines.

7308.2 The purpose of the field practicum is to provide candidates with an opportunity to apply the skills and knowledge acquired from the classroom work in a mental health service setting.

7308.3 The field practicum site shall be a certified Mental Health Rehabilitation Services (MHRS) provider. The field practicum site shall identify a qualified mental health practitioner to serve as the field practicum supervisor.

7308.4 The candidate's field practicum shall be supervised by a qualified mental health professional, who has completed peer specialist supervisory orientation offered by the Department.

7308.5 The field practicum supervisor shall:

(a) Ensure that the consumer(s) (and his or her family if appropriate) receiving peer support services delivered by the candidate during the field practicum has consented to the delivery of such services by a candidate for certification as a peer specialist;

(b) Ensure that peer support services delivered by the candidate during the field practicum are consistent with the Individualized Recovery Plan (IRP) or Individualized Plan of Care (IPC) for the consumer receiving the services; and

(c) Ensure that the candidate has an opportunity to participate in treatment planning and care coordination activities during the field practicum.

7308.6 The field practicum supervisor shall maintain a log of all supervisory meetings with a candidate in accordance with the OCFA's guidelines.

7308.7 The field practicum supervisor shall provide the following supervision to a candidate during the field practicum:

(a) A minimum of one (1) hour of face-to-face supervision with each candidate once a week with additional support as needed or requested;

(b) Establish the field practicum objectives and guidelines for the candidate within the first week of the practicum;

(c) Supervise the candidate throughout the field practicum overseeing the full range of field practice;

(d) Document all supervision activities in accordance with the OCFA's guidelines; and

(e) Maintain regular contact with the candidate and OCFA, as needed, relevant to progress in achieving field practicum objectives.

7308.8 During the field practicum, the candidate shall at a minimum complete the following:

(a) Orientation to the field practicum site and its policies and procedures regarding the delivery of services;

(b) Shadow a mental health staff during work with consumers on a significant activity, such as intake appointments, home visits, accompanying a consumer to court, medical appointments or related activities;

(c) Work directly with mental health consumers or the parent/legal guardian or foster parent, as applicable; and

(d) Participate as a full member of the interdisciplinary team providing services.

7308.9 After the candidate successfully completes the field practicum, the field practicum supervisor shall complete, sign, and submit the Practicum Verification Form to the OCFA within five (5) days.

7308.10 The field practicum supervisor shall communicate regularly with the OCFA during the field practicum and notify OCFA of any concerns about successful completion of the field practicum in advance. OCFA will work with the field practicum supervisor and the candidate to develop and implement interventions to address those concerns.

7308.11 The Field Practicum Supervisor shall notify OCFA, in writing, if the candidate fails to complete the field practicum.

7309 CERTIFICATION EXAMINATION

7309.1 Participants who have successfully completed the required classroom work and field practicum are eligible to take the certification examination. Participants who have received a full waiver of the classroom work and the field practicum are also eligible to take the certification examination.

7309.2 The OCFA shall administer the certification examination.

7309.3 A participant must achieve a total score of eighty five (85%) percent or better to pass the certification examination. The OCFA will notify participants of the results of the examination in writing within ten (10) days after the exam.

7309.4 Participants who do not pass the certification examination are eligible to re-take the examination within four (4) weeks after receipt of notice of failure from the OCFA.

7309.5 A participant who does not pass the certification examination after two (2) attempts may apply to complete some or all of the classroom work or the field

practicum again. If the application is granted, the participant must complete the additional training prior to taking the certification examination again.

7310 AWARDING OF PEER SPECIALIST CERTIFICATION

7310.1 The OCFA shall verify that applicants have:

(a) Successfully completed the required classroom work;

(b) Successfully completed a field practicum;

(c) Received a passing score on the certification examination; and

(d) Signed the Peer Specialist Code of Ethics.

7310.2 After verifying that an applicant has met the requirements of this chapter for certification as a mental health peer specialist, the OCFA shall issue certificates, signed by the Director of the Department to each Certified Peer Specialist as evidence of completion of the Certification Program.

7310.3 Those applicants who have completed the specialty designation shall receive a certificate with that designation (*e.g.* Certified Peer Specialist – Family).

7310.4 Certification as a Certified Peer Specialist shall be valid for two (2) years from the date of issuance.

7311 MAINTAINING CERTIFICATION AND CONTINUING EDUCATION

7311.1 Certified Peer Specialists shall complete at least twenty (20) hours of continuing education units (CEUs) within the two (2)-year certification period to maintain certification and be eligible for recertification.

7311.2 OCFA shall publish an annual list of approved classes, seminars, conferences, workshops, and other activities related to mental health and recovery that qualify as acceptable CEU's for Certified Peer Specialists. Other courses may qualify for CEU credit with prior approval from OCFA.

7311.3 Certified Peer Specialists shall report attendance at approved classes to the OCFA. The OCFA shall maintain records of CEUs for each Certified Peer Specialist.

7312 RECERTIFICATION PROCESS

7312.1 OCFA shall send a notice to each Certified Peer Specialist about the pending expiration of his or her certification at least one hundred twenty (120) days prior to expiration.

7312.2 A Certified Peer Specialist shall submit an application for recertification in the format approved by the Department to the OCFA at least sixty (60) days prior to the expiration of certification. The application for recertification shall include information about CEUs completed during the certification period.

7312.3 The OCFA shall submit the recertification application to the PSCC for review as set forth in Subsection 7302.8(i).

7312.4 The PSCC shall make a written recommendation to the OCFA regarding recertification of a Certified Peer Specialist. The OCFA shall make the final determination regarding recertification of a Certified Peer Specialist.

7312.5 The Department may decline to renew certification as a Certified Peer Specialist in the following circumstances:

(a) Violation of any principles of the code of ethics as set forth in Section 7306 above;

(b) Failure to provide evidence of completed CEUs as required by Subsection 7311.1 above;

(c) A determination that the individual is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal healthcare programs, or Federal procurement or non-procurement programs, or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7a but has not yet been excluded, debarred, suspended or otherwise declared ineligible; or

(d) Any other set of facts which, in the exercise of the Director's reasonable judgment, substantially interferes with the Certified Peer Specialist's ability to perform essential job functions.

7312.6 The OCFA shall provide written notice to the Certified Peer Specialist about renewal of certification. A copy of the notification shall be provided to any mental health services agency that employs the Certified Peer Specialist.

7312.7 Recertification as a Certified Peer Specialist shall be valid for two (2) years from the date of the written notification issued by the OCFA.

7312.8 If the PSCC recommends that the certification not be renewed, it will provide the basis for the recommendation to the OCFA in writing, including any documentary evidence. The OCFA shall, in turn, provide written notice to the Certified Peer Specialist that:

(a) A recommendation has been made to deny the recertification; and

(b) The basis for that recommendation, including any written documentation.

7312.9 The Certified Peer Specialist may provide a response in writing to the OCFA within fifteen (15) days of receipt of the written notice with any objections, including any supporting documentation, to the recommendation of non-renewal.

7312.10 The OCFA will issue its final decision on the recertification within fifteen (15) days after the date on which the Certified Peer Specialist's response was received or due, whichever is earlier. If the certification is not renewed, a copy of the notification shall be provided to any mental health services agency that employs the Certified Peer Specialist.

7312.11 If the OCFA's final decision is to deny recertification, the Certified Peer Specialist's certification will expire on the original date of expiration.

7312.12 The Certified Peer Specialist may appeal a decision not to renew his or her certification to the Director of the Department. All appeals shall be in writing and must be submitted within ten (10) business days of the OCFA issuing its decision.

7312.13 Filing an appeal with the Director will not extend a certification beyond the original date of expiration. If an appeal is filed and the Director determines that the certification should be renewed, the period of recertification will begin from the date of the expiration of the original certification (if already expired) or from the date of the decision, if the original certification has not expired.

7313 REVOCATION OF CERTIFICATION

7313.1 The Department may elect to revoke certification as a Certified Peer Specialist for the same circumstances stated in Subsection 7312.5, including:

(a) Violation of any principles of the code of ethics as set forth in Section 7306;

(b) Failure to provide evidence of completed CEUs as required by Subsection 7311.1;

(c) A determination that the individual is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal healthcare programs, or Federal procurement or non-procurement programs, or has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7a but has not yet been excluded, debarred, suspended or otherwise declared ineligible; or

(d) Any other set of facts which, in the exercise of the Director's reasonable judgment, substantially interferes with the Certified Peer Specialist's ability to perform essential job functions.

7313.2 The PSCC will make a written recommendation, including any documentary evidence regarding revocation to OCFA's Director.

7313.3 The OCFA shall provide written notice to the Certified Peer Specialist that:

(a) The PSCC has recommended his or her certification be revoked; and

(b) The basis for that recommendation, including any written documentation.

7313.4 The Certified Peer Specialist may provide a response in writing to the OCFA within thirty (30) days of receipt of the written notice with any objections, including any supporting documentation, to the recommendation for revocation.

7313.5 The OCFA will issue its final decision on the revocation in writing to the Certified Peer Specialist within thirty (30) days after the date on which the Certified Peer Specialist's response was received or due, whichever is earlier. If the certification is revoked, a copy of the notification shall be provided to any mental health services agency that employs the Certified Peer Specialist.

7313.6 Revocation shall be effective on the date of the OCFA decision.

7313.7 The Certified Peer Specialist may appeal the decision to revoke his or her certification to the Director of the Department. All appeals shall be in writing and must be submitted within ten (10) business days of the OCFA issuing its decision.

7313.8 If an appeal is filed and the Director determines that the certification is not to be revoked, the certification will be reinstated to the effective date of the revocation.

7314 CERTIFIED PEER SPECIALIST SUPERVISION

7314.1 Certified Peer Specialists shall participate on the treatment team and provide those components of MHRS identified in Chapter 34 of this subtitle as services that may be delivered by credentialed staff.

7314.2 A qualified practitioner shall provide clinical and administrative supervision to a Certified Peer Specialist. The qualified practitioner providing supervision shall be identified as a Peer Specialist Supervisor.

7314.3 The number of Certified Peer Specialists supervised by a Peer Specialist Supervisor shall be determined by each MHRS provider based upon the needs of the population served and program location. A full-time equivalent Peer Specialist Supervisor shall supervise no more than seven (7) full-time employees (FTE) peer specialists.

7314.4 Certified Peer Specialists shall receive at least six (6) hours of direct supervision and mentoring from the Peer Specialist Supervisor prior to working directly with consumers and before working off-site.

7314.5 Peer Specialist Supervisors shall maintain a log of supervisory meetings with each Certified Peer Specialist in accordance with the OCFA's guidelines.

7314.6 Peer Specialist Supervisors shall provide at least the following supervision to each Certified Peer Specialist:

(a) Conduct at least (1) one face to-face meeting for a minimum of one (1) hour with each Certified Peer Specialist per week for the purposes of providing clinical supervision;

(b) Provide additional supervision or supervisory meetings and support as needed or requested by the Certified Peer Specialist; and

(c) Ensure that the Certified Peer Specialist completes required training for maintenance of certification.

7314.7 The Peer Specialist Supervisor shall:

(a) Ensure that when Peer Support Services are identified as part of a consumer's Individualized Recovery Plan (IRP), the IRP:

(1) Specifies individualized goals and objectives pertinent to the consumer's recovery and community integration in language that is outcome oriented and measurable;

(2) Identifies interventions directed to achieving the individualized goals and objectives;

(3) Specifies the Certified Peer Specialist's role in relating to the consumer and involved others; and

(4) Identifies both the specific components of MHRS that will be provided by the Certified Peer Specialist, and the frequency of delivery;

(b) Ensure that the Certified Peer Specialist participates in treatment planning activities for consumers whose IRP's include or are expected to include Peer Support Services;

(c) Ensure that delivery of services is consistent with the requirements of the IRP; and

(d) Ensure that peer support services delivered by the certified peer specialist are coordinated with the other mental health services provided to the consumer.

7399 DEFINITIONS

7399.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Applicant – a person who has submitted an application to participate in the Peer Specialists Certification Program.

Candidate – an applicant whose application to participate in the Peer Specialists Certification Program has been approved.

Certification – a designation awarded by the Department of Behavioral Health to individuals who have successfully completed the requirements of the Peer Specialist Certification Program.

Certified Peer Specialists – peers who have completed the Peer Specialists Certification Program requirements and are approved to deliver Peer Support Services within the District's public mental health system.

District – District of Columbia.

Individualized Plan of Care or IPC -- the individualized plan of care for children and youth, which is the result of the Diagnostic/Assessment. The IPC is maintained by the consumer's CSA. The IPC includes the consumer's treatment goals, strengths, challenges, objectives, and interventions. The IPC is based on the consumer's identified needs as reflected by the Diagnostic/Assessment, the consumer's expressed needs, and referral information. The IPC shall include a statement of the specific, individualized objectives of each intervention, a description of the interventions, and specify the frequency, duration, and scope of each intervention activity. The IPC is the authorization of treatment, based on certification that the MHRS are medically necessary by the approving practitioner.

Individualized Recovery Plan or IRP - an individualized recovery plan for an adult consumer developed in accordance with the requirements of Chapter 34 of this subtitle. The IRP includes the consumer's treatment goals, strengths, challenges, objectives, and interventions. The IRP is based on the consumer's identified needs as reflected by the Diagnostic/Assessment of the consumer's expressed needs, and referral information.

Mental Health Provider - any entity, public or private, that is licensed or certified by the District of Columbia to provide mental health services or mental health supports or any entity, public or private, that has entered into an agreement with the Department to provide mental health services or mental health support.

Qualified Practitioner – includes (1) a psychiatrist; (ii) a psychologist; (iii) an independent clinical social worker; (iv) an advanced practice registered nurse; (v) a registered nurse; (vi) a licensed professional counselor; (vii) an independent social worker; and (viii) an addiction counselor.

Mental Health Rehabilitation Services or MHRS - rehabilitative or palliative mental health services administered by the Department and rendered by certified MHRS providers to eligible consumers who require such services intended for the maximum reduction of mental disability and restoration of a consumer to his or her best possible functional level.

Peers – individuals with psychiatric disabilities receiving or who have received mental health services.

Peer Support Services – MHRS that may be delivered by qualified credentialed staff but specifically delivered by Certified Peer Specialists.

Wellness Recovery Action Plan or WRAP – The Wellness Recovery Action Plan was developed by a group of people who experience mental health difficulties, and put into practice by Mary Ellen Copeland. It is a program of self- management and recovery, and it is unique to every individual who uses it. A WRAP is designed by the consumer and may involve selected supporters (family and friends) and health care providers to assist and support the consumer through the work on the plan.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Suzanne Fenzel, Deputy Director, Office of Strategic Planning, Policy and Evaluation, Department of Behavioral Health, at 64 New York Ave., N.E., 2nd Floor, Washington, D.C. 20002, or Suzanne.Fenzel@dc.gov. Copies of the proposed rules may be obtained from www.dmh.dc.gov or from the Department of Behavioral Health at the address above.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Sections 3(a) and 3(b) (11), (13), (15), and (17) of The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602 (a) and (b)(11), (b)(13), (b)(15), (b)(17), and 38-2602.01) (2012 Repl.)), hereby gives notice of his intent to adopt the following amendments to Section 2320 (General Educational Development (GED) Testing) of Chapter 23 (Curriculum and Testing) of Subtitle E (Original Title 5), Title 5 (Education), of the District of Columbia Municipal Regulations ("DCMR"), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the amendments contained within this Proposed Rulemaking are to effectuate a pilot program of the Office of the State Superintendent of Education ("OSSE") with the GED Testing Service to select the District of Columbia as the national GED jurisdiction, and to authorize OSSE to issue GED tests and credentials to a range of non-residents. During the eighteen (18) month pilot period, District residents will receive a discount on GED testing.

Section 2320 (General Educational Development (GED) Testing) of Chapter 23 (Curriculum and Testing), Title 5-E (Education, Original Title 5) is amended as follows:

Section 2320 of Chapter 23, Title 5-E is amended to delete each occurrence of the term "Superintendent" and to replace each deletion with the term "State Superintendent".

Section 2320 of Chapter 23, Title 5-E is amended to delete each occurrence of the term "Superintendent of Schools" and to replace each deletion with the term "State Superintendent".

Section 2320 of Chapter 23, Title 5-E is further amended to add a new Subsection to read as follows:

2320.18 Notwithstanding the criteria established for nonresidents in Subsection 2320.10 of this chapter, the State Superintendent may waive the residency requirements of Subsection 2320.9 of this chapter and provide GED testing and credentialing to nonresidents who are otherwise qualified under this chapter for a period not to exceed of eighteen (18) months after the effective date of this subsection. During the effective period of this subsection, the testing fee established in Subsection 2320.17(d) of this chapter shall be reduced to $15.00 for District residents. OSSE reserves the right to waive the testing fee in cases of demonstrated financial hardship.

Persons wishing to comment on this rule should submit their comments in writing to Office of the State Superintendent of Education, 810 First Street, NE, 9th Floor, Washington, D.C. 20002, Attention: Jamai Deuberry (phone number (202) 724-7756), Office of General Counsel, or to osse.publiccomment@dc.gov. All comments must be received no later than thirty (30) days after publication of this notice in the *D.C. Register.* Copies of this rulemaking may also be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (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 intent to adopt the following new Section 921 of Chapter 9 (Medicaid Program), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR), entitled "Lead Investigations for Medicaid-Eligible Children".

These proposed rules authorize Medicaid reimbursement to the D.C. Department of the Environment (DDOE) or its agents to conduct environmental investigations that determine the presence of lead in a child's primary residence when a medical diagnosis indicates an elevated blood level. This service is covered under the Medicaid State Plan and will be provided pursuant to the Early and Periodic, Screening, Diagnostic and Treatment benefit. This service will also support DDOE in its mission to reduce District children's exposure to lead contamination.

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

Chapter 9 (Medicaid Program), Title 29 (Public Welfare), of the District of Columbia Municipal Regulations (DCMR), is amended by adding the following new Section 921 to read as follows:

921 LEAD INVESTIGATIONS FOR MEDICAID-ELIGIBLE CHILDREN UNDER THE AGE OF TWENTY-ONE

921.1 Medicaid reimbursement shall be available to the D.C. Department of the Environment ("DDOE") or its agent(s) to conduct investigations that determine the source of lead contamination in the primary residence of Medicaid-eligible children under the age of twenty-one (21) who have been diagnosed with elevated blood lead levels.

921.2 Reimbursement for an environmental investigation to identify lead contamination shall be limited to reimbursement for one (1) investigation per home where a Medicaid-eligible child who has been diagnosed with an elevated blood level resides.

921.3 Reimbursement shall only be provided if the investigation was performed by a certified Lead Risk Assessor.

921.4 The cost of testing of environmental substances identified during the on-site investigation shall not be reimbursable under this section.

921.5 The reimbursement rate for an environmental investigation shall be $476.72 for one (1) visit which shall represent one (1) unit of service.

921.99 **DEFINITIONS**

For purposes of this section, the following terms shall have the meanings ascribed.

Risk Assessor – An individual who has been trained by an accredited training program and certified to conduct risk assessments (D.C. Official Code § 8-231.01 *et seq*).

Comments on the proposed rules shall be submitted in writing, via email at DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone at 202.442.8742, Attention: Claudia Schlosberg, J.D., Acting Senior Deputy Director/Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, 9th Floor South, Washington, DC, 20001 within thirty (30) day from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF THIRD PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (Pub. L. No. 109-356, § 201, 120 Stat. 2019; D.C. Official Code §§ 1-204.24a(c)(6) (2012 Repl.)); Section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306(a), 3-1322 and 3-1324 (2012 Repl.)); the District of Columbia Financial Responsibility and Management Assistance Authority Order, issued September 21, 1996; and the Office of the Chief Financial Officer Financial Management Control Order No. 96-22, issued November 18, 1996, hereby gives notice of his intent to amend Chapters 15 (Raffles) and 99 (Definitions) of Title 30 (Lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR).

Proposed regulations were published in a Notice of Proposed Rulemaking in the *D.C. Register* on November 22, 2013, at 60 DCR 16067. In response to public comments received, the proposed rulemaking was revised to expand its application to charitable foundations established by or affiliated with collegiate sports teams and to include the option for electronic raffles systems.

A Notice of Second Proposed Rulemaking was necessary to implement 50/50 Raffles conducted by charitable foundations established by or affiliated with professional sports teams. These rules were published the March 7, 2014 in the *D.C. Register* at 61 DCR 1965.

A Notice of Third Proposed Rulemaking was created in response to public comments received to allow ticket sellers to be paid an hourly wage; for the removal of the aggregate spending value on total prizes awarded per licensed organization; for an increase in the maximum number of events per season; and to clarify that the fee for electronic raffle sales units is a one-time fee. This Notice of Third Proposed Rulemaking supersedes the Notice of Second Proposed Rulemaking published March 7, 2014 at 61 DCR 1965.

The final rulemaking action shall not be taken in less than fifteen (15) days after the date of publication of this notice in the *D.C. Register*. This reduced period of review has been adopted for good cause, as required by D.C. Official Code § 2-505(a). The proposed rule provides a benefit to the public allowing District Charitable Organizations to raise funds for charities using raffles. The public has been afforded adequate time to respond to these rules, and the public will not be harmed by the reduced comment period.

Chapter 15 (RAFFLES) of Title 30 (LOTTERY AND CHARITABLE GAMES) of the DCMR is amended as follows:

Add Section 1509 to read as follows:

1509 50/50 RAFFLES CONDUCTED BY CHARITABLE FOUNDATIONS AFFILIATED WITH COLLEGIATE OR PROFESSIONAL SPORTS TEAMS

1509.1 The Agency may issue a 50/50 raffle license to a recognized and qualified charitable organization affiliated with a collegiate or professional sports team.

1509.2 Operation of 50/50 Raffles.

(a) The Agency shall require a non-refundable application fee for a 50/50 raffle license.

(b) The Agency may issue 50/50 raffle licenses for a single sporting event or game, or a period lasting the affiliated sports teams' season ("license period").

(c) A 50/50 raffle drawing may only take place during a single game or sporting event ("licensed event").

(d) The licensed organization shall complete all forms and provide all information to the Agency required under Chapter 12 of this title.

(e) 50/50 raffles are subject to all of the applicable requirements established by Chapters 12, 13, 15, and 17 of this title except where specifically indicated in this chapter.

(f) 50/50 raffles maybe conducted with two-part "admission-style" tickets traditionally used for 50/50 raffles or electronically using computer software and related equipment to sell tickets, account for sales, and facilitate the drawing of tickets to determine winners.

(g) A person may purchase one or more 50/50 raffle tickets at a licensed event.

(h) Each 50/50 raffle ticket purchased shall represent one entry in the drawing for a winner. The equipment used to conduct 50/50 raffles and the method of play shall ensure that each and every ticket to participate shall have an equal opportunity to be drawn as a winner.

(i) The licensed organization's game rules shall state when the 50/50 raffle drawing shall take place.

(j) The 50/50 raffle drawing shall take place during the licensed event where the corresponding 50/50 raffle tickets are sold and must conclude before the end of the corresponding sporting event or game. If for some unforeseen reason (weather delay, power outage, emergency, or other

reasonably unforeseeable event), the licensed event is not completed on the day the licensed event's 50/50 raffle tickets are sold, the licensed event may be rescheduled and completed at another eligible sporting event or game provided no other licensed event is taking place at that event.

(k) The licensed organization's game rules shall determine the number of winners that will be chosen randomly from the 50/50 raffle tickets sold.

(l) The total prize amount of a 50/50 raffle drawing shall be 50% of the gross proceeds collected from the sale of the 50/50 raffle tickets.

(m) The remaining 50% of the gross proceeds collected from the sale of the 50/50 raffle tickets shall be dispersed for the lawful purpose stated in the license application.

(n) No more than one (1) 50/50 raffle drawing shall be conducted during a licensed event.

(o) 50/50 raffle tickets shall have consecutive numbers, and shall list the licensed organization's contact name and phone number so that the purchaser may check on winning numbers.

(p) All 50/50 raffle tickets shall be sold at a uniform price. The licensed organization may not change 50/50 raffle ticket prices during the licensed event.

(q) Winners need not be present at the 50/50 raffle draw. Each licensed organization shall post the winning raffle numbers on the affiliated team's website and the licensed organization's website.

(r) The licensed organization's 50/50 raffle rules, and each individual 50/50 raffle ticket, shall provide the name and phone number of the individual in charge of the licensed event. Each 50/50 raffle ticket shall state where and how a 50/50 raffle ticket holder may check for the winning number after the licensed event.

(s) Only United States currency shall be accepted by a licensed organization as payment for any raffle ticket.

(t) Persons selling 50/50 raffle tickets may be paid only via an hourly wage. Such persons shall not be provided additional compensation, incentives or bonuses based on amount of tickets sold. This section shall not apply to the system service provider.

(u) 50/50 raffle tickets may not be sold in advance of the licensed event.

(v) 50/50 raffle tickets may only be sold on the premises of the licensed event. The premises of the licensed event includes only areas where an event ticket is required for admission to view the event, and does not include event parking areas, sidewalks, streets, restaurants, shops, entertainment venues, or bars near or adjacent to the premises of the licensed event.

(w) No single 50/50 raffle drawing shall exceed the sum of $150,000.

(x) Subsections 1202.2 (l) and (n), Subsections 1204.14, 1502.1(c), (d) and (h), Subsection 1502.2, Subsection 1502.3, Subsection 1502.4, Subsection 1502.5, Subsection 1503.4, Subsection 1504.1, and Subsection 1504.2 of this title shall not apply to 50/50 raffles.

1509.3 Classes of 50/50 Raffle Licenses and Fees.

(a) Class A single licensed event raffle license: $500.00.

(b) Class B season raffle license:

$500.00 multiplied by the number of licensed events. There is a maximum of (51) licensed events per Class B season raffle license period and a limit of one (1) raffle draw per licensed event.

(c) Non-refundable application fee: $50.00.

(d) The Agency shall require a one-time fee of $200.00 fee from the licensed organization for each individual electronic raffle sales unit and electronic random number generator used to conduct an electronic 50/50 raffle. This $200.00 per electronic device fee shall be in addition to any licensing costs and does not include individual electronic raffle sales units that must be replaced due to changes in Agency regulations.

1509.4 Electronic 50/50 Raffles.

(a) An electronic raffle system may be used to sell and conduct a 50/50 Raffle. The electronic raffle system may include stationary and portable raffle sales unit(s) and an electronic random number generator(s).

(b) Electronic equipment used in a 50/50 raffle must be in compliance with § 1509.6 of this chapter.

(c) Electronic 50/50 raffle tickets may only be sold by a licensed organization at a licensed event.

(d) A licensed organization may use portable or wireless raffle sales unit(s) to sell tickets.

(e) A licensed organization may use an electronic random number generator(s) to select the winning entries.

1509.5 The following information shall be printed on electronic 50/50 raffle tickets:

(a) The name of licensed organization;

(b) The license identification number of the licensed organization;

(c) The location, date and time of the corresponding 50/50 raffle drawing;

(d) The consecutively printed serial number of the 50/50 raffle ticket;

(e) The price of the 50/50 raffle ticket;

(f) The list of prizes offered;

(g) The statement: "Ticket holders need not be present to win," and the contact information, including names, phone number, and electronic mail address, of the individual from the licensed organization responsible for prize disbursements; and

(h) Each 50/50 raffle ticket stub shall reflect the consecutively printed serial number of the 50/50 raffle ticket.

1509.6 Electronic 50/50 Raffle Equipment Standards.

(a) The electronic raffle system used must be certified by Gaming Laboratories International, Inc., or any other certifying entity recognized and approved by the Agency.

(b) The Agency is not responsible for any costs of certification or compliance with these regulations.

(c) Persons shall not sell, rent, or distribute electronic 50/50 raffle equipment or supplies to any person or organization other than a licensed organization for use during licensed events.

(d) Licensed organizations shall not sell, rent, distribute, or share electronic 50/50 raffle equipment.

1509.7 Electronic Accounting and Reporting.

(a) The Agency may audit the licensed organizations raffle records at any time.

(b) The licensed organization shall follow the system reporting requirements for Gaming Laboratories International, Inc., electronic raffle systems.

(c) For each electronic raffle conducted, the licensed organization shall generate and mail reports to the Agency containing the following information:

(1) Date and time of licensed event;

(2) Licensed organization running the event;

(3) Sales information (sales totals, refunds, etc.);

(4) Prize value awarded to participant;

(5) Prize distribution (total raffle sales vs. prize value awarded to participant);

(6) Refund totals by licensed event;

(7) Raffle Draw numbers-in-play count; and

(8) Winning number(s) drawn (including draw order, call time, and claim status).

(d) The licensed organization shall provide the following reports for any raffle upon Agency request:

(1) Exception Report - A report that includes system exception information, including but not limited to, changes to system parameters, corrections, overrides, and voids;

(2) Raffle Bearer Ticket Report - A report that includes a list of all raffle bearer tickets sold including all associated raffle draw numbers, selling price and raffle sales unit identifiers;

(3) Sales by Raffle Sales Unit - A report that includes a breakdown of each raffle sales unit's total sales (including raffle draw numbers sold) and any voided and misprinted tickets;

(4) Voided Draw Number Report - A report which includes a list of all draw numbers that have been voided including corresponding validations numbers;

(5) Raffle Sales Unit Event Log - A report listing all events recorded for each raffle sales unit, including the date and time and brief text description of the event and /or identifying code;

(6) Raffle Sales Unit Corruption Log - A report that lists all raffle sales unit's unable to be reconciled to the system, including the raffle sales unit identifier, raffle sales unit operator, and the money collected; and

(8) Any other report listed in the Electronic Accounting and Reporting Section of the Gaming Laboratories International, Inc., Electronic Raffle Systems Requirements but not listed above.

(e) Each one of the reports listed above is referenced by and shall have the same definition contained in the Electronic Accounting and Reporting Section of the Gaming Laboratories International, Inc., Electronic Raffle Systems Requirements.

AMEND CHAPTER 99, "DEFINITIONS"

Amend Subsection 9900.1 by inserting the following:

50/50 Raffle - A raffle where 50% of the gross proceeds of ticket sales are awarded to one or numerous persons buying tickets, and the remaining 50% of the gross proceeds are dispersed for the lawful purpose stated in the raffle application.

Electronic Raffle System - The computer software and related equipment used by 50/50 raffle licensees to sell tickets, account for sales, and facilitate the drawing of tickets to determine the winner(s).

Raffle Draw Numbers - Numbers provided to the 50/50 raffle ticket purchaser that may be selected as the winning number(s) for the 50/50 raffle draw.

Raffle Bearer Ticket - The electronic paper ticket that contains one or more draw numbers purchased.

Raffle Sales Unit - A portable or wireless device, a remote hardwired connected device, or a standalone cashier station that is used as a point of sale for electronic 50/50 raffle tickets.

Electronic Raffle System(s) Requirements– The standard(s) produced by a certifying entity for the purpose of providing independent test reports and certifications indicating the state of compliance of suppliers' devices and systems within the certification requirements.

Gaming Laboratories International, Inc. - A gaming industry certification laboratory headquartered in Lakewood, New Jersey, USA.

Sporting Event - An event that requires charged admission so individuals may view two or more persons participating in athletic competition for the entertainment of others and for the purpose of athletic achievement.

Sports Teams' Season - An annual time period that includes the preseason, regular season, and post season, from the playoffs through the finals or championship, of any sports team.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than fourteen (14) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Antar Johnson, Assistant General Counsel, Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020, or e-mailed to antar.johnson@dc.gov, or filed online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to authority set forth in D.C. Official Code § 47-2851.20 (2012 Repl.) and Section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §2-1801.04 (2012 Repl.)), and Mayor's Order 99-68, dated April 28,1999, hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 33 (Department of Consumer and Regulatory Affairs (DCRA) Infractions) of Title 16 (Consumers, Commercial Practices, and Civil Infractions), and to add a new Chapter 9 (Prohibition on Sale of Synthetic Drugs) to Title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations (DCMR).

This emergency rulemaking is necessary to bring enforcement regulations in line with Section 301 of the District of Columbia's Omnibus Criminal Code Amendments Act of 2012, effective June 19, 2013 (D.C. Law 19-320; 60 DCR 3390 (March 15, 2013)), which added synthetic drugs, such as synthetic marijuana and "bath salts", to the District of Columbia's schedule of controlled substances. This rulemaking supports various Federal Drug Enforcement Administration and Department of Justice regulations that make it illegal to buy, sell, or possess Schedule I controlled substances such as K2/Spice, synthetic drugs, or their equivalents because these substances pose an imminent hazard to public health, safety and welfare.

The emergency rulemaking provides enforcement penalties for businesses engaged in the sale, possession, or manufacture of synthetic drugs. The penalties would include business license suspensions and business license revocations.

This emergency rulemaking was adopted April 23, 2014, and will become effective April 25, 2014. The emergency rulemaking shall remain in effect for up to one hundred and twenty (120) days after adoption or until August 21, 2014, unless earlier superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

Pursuant to D.C. Official Code § 2-1801.04(a)(1), the Director shall submit the proposed changes to Title 16 of the DCMR to the Council of the District of Columbia.

The Director also gives notice of 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*.

A new Chapter 9 (Prohibition on Sale of Synthetic Drugs) is added to Title 17 (Business, Occupations, and Professions) of the DCMR to read as follows:

CHAPTER 9 PROHIBITION ON SALE OF SYNTHETIC DRUGS

900 SALE OF SYNTHETIC DRUGS PROHIBITED

900.1 No person doing business in the District of Columbia that has or is required to have a Basic Business License issued under D.C. Official Code § 47-2851.01 *et seq.*(2012 Repl. & 2013 Supp.) shall sell, offer for sale, allow the sale of, display for sale, possess, market, trade, barter, give, devise, or otherwise make or attempt to make available:

(a) Synthetic Drugs;

(b) Products packaged as common non-consumable products, which contain warning notices or age restrictions not typically found on products marketed for that purpose. For example, potpourri, incense, or bath salt packages that bear a warning label, including, but not limited to: "Not for purchase by minors", "Manufacturer and retailer are not responsible for misuse of this product", "Not for human consumption", "Must be 18 years or older to purchase", or equivalent language;

(c) Products containing notices on the packaging not typically found on products marketed for that purpose. For example, potpourri or shoe oil containing notices such as "Legal in 50 states", "100% legal blend", or language affirming conformance with specific state or federal statutes or regulations. Such notices may also include, but are not limited to, "does not contain any chemical compounds prohibited by law", "contains no prohibited chemicals", "product is in accordance with State and Federal laws", "legal herbal substance", "100% chemical free", "100% synthetic free", or equivalent language;

(d) Products whose package labeling suggests the user will achieve a high, euphoria, relaxation, mood enhancement, or a hallucinogenic effect, or that the product has other mind or body-altering effects on the consumer; or

(e) Products that have been enhanced with a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product, but mimics the effects of a controlled substance when the product, or the smoke from the burned product, is introduced into the human body and/or the product is topically applied to the human body.

901 EXEMPTIONS

901.1 The products prohibited for sale under this chapter shall not apply to:

(a) Any herbal or plant material containing synthetic chemicals or chemical compounds which:

(1) Require a prescription;

(2) Are approved by the Food and Drug Administration;

(3) Are dispensed in accordance with District and federal law; and/or

(4) Are subject to the jurisdiction of a federal entity.

(b) Any material containing synthetic chemicals or chemical compounds which:

(1) Require a prescription;

(2) Are approved by the Food and Drug Administration; and/or

(3) Are dispensed in accordance with District and federal law.

901.2 A business subject to § 100.1 that believes any of its products should not be subject to prohibition shall submit a request for an exemption on a form provided by the Department of Consumer and Regulatory Affairs (DCRA).

901.3 In its request for exemption, the business shall provide a basis for the exemption, including a description of the product(s) and an affirmation by the business licensee that, to the best of the business licensee's knowledge, the product(s) are not used by consumers to achieve a high, euphoria, relaxation, mood enhancement, hallucinogenic effect or other mind or body-altering effect.

901.4 If an exemption request is granted, DCRA:

(a) May conduct on-site inspections of the business; and

(b) Shall require the business licensee to maintain purchase and sales records for any products that have been issued an exemption, which the licensee shall provide upon request by any official from DCRA, the D.C. Metropolitan Police Department, or the D.C. Department of Health.

901.5 If DCRA denies an exemption request, the business licensee may submit to the DCRA Director or designee a request for reconsideration. The DCRA Director or designee shall have fifteen business (15) days to issue a written determination on the request for reconsideration.

901.6 In determining whether to issue an exemption under this section, DCRA may seek recommendations from the D.C. Metropolitan Police Department, the D.C. Department of Health, or other government agencies having expertise with synthetic drugs.

902 ENFORCEMENT

902.1 A credentialed DCRA investigator or inspector may, during regular business hours, enter and inspect the premises to determine whether the business is in compliance with this chapter.

902.2 Nothing in this chapter shall be construed as restricting the D.C. Metropolitan Police Department or the D.C. Department of Health from entering the premises of any business licensee, during regular business hours, and requiring the business to:

(a) Produce their business license for inspection; and

(b) Provide any additional information that is requested.

903 PROOF OF INTENT

903.1 Any reasonable evidence may be utilized to demonstrate that a product's marketed and/or intended use causes it to fit the definition of a synthetic drug including, but not limited to, any of the following evidentiary factors:

(a) The product is not suitable for its marketed use (such as a crystalline or powder product being marketed as "glass cleaner");

(b) The individual or business providing, distributing, displaying or selling the product does not typically provide, distribute, or sell products that are used for that product's marketed use (such as liquor stores, smoke shops, or gas/convenience stores selling "plant food");

(c) The product contains a warning label that is not typically present on products that are used for that product's marketed use including, but not limited to, "Not for human consumption", " Not for purchase by minors", "Must be 18 years or older to purchase", "100% legal blend", or similar statements;

(d) The product is significantly more expensive than products that are used for that product's marketed use. For example, 0.5 grams of a substance marketed as "glass cleaner" costing $50.00, 1 gram of potpourri costing $10.00, or 0.5 grams of incense costing $15.00;

(e) The product resembles an illicit street drug (such as cocaine, methamphetamine, marijuana, or schedule 1 narcotic); or

(f) The business licensee or any employee has been warned by DCRA or any law enforcement agency that the product or a similarly labeled product contains a synthetic drug.

904 REVOCATION OF BUSINESS LICENSE

904.1 Any business licensee violating this chapter shall receive a Notice of Infraction.

904.2 Following the issuance of a Notice of Infraction, DCRA may, at its discretion, also issue a notice of intent to revoke the licensee's basic business license.

904.3 Following an adjudication of a Notice of Infraction that is adverse to the business licensee, DCRA shall revoke the basic business license pursuant to D.C. Official Code § 47-2844(a-1)(1),and the licensee shall be ineligible to apply for a new basic business license for a substantially similar business for two (2) years.

999 DEFINITIONS

999.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Synthetic Drug – Any product possessed, provided, distributed, sold, and/or marketed with the intent that it be used as a recreational drug, such that its consumption or ingestion is intended to produce effects on the central nervous system or brain function to change perception, mood, consciousness, cognition and/or behavior in ways that are similar to the effects of marijuana, cocaine, amphetamines or Schedule 1 narcotics. Additionally, any chemically synthesized product (including products that contain both a chemically synthesized ingredient and herbal or plant material) possessed, provided, distributed, sold and/or marketed with the intent that the product produce effects substantially similar to the effects created by compounds banned by District or Federal synthetic drug laws or by the U.S. Drug Enforcement Administration pursuant to its authority under the Controlled Substances Act.

Title 16 (Consumers, Commercial Practices, and Civil Infractions), Chapter 33 (Department of Consumer and Regulatory Affairs (DCRA) Infractions), Section 3301 (Business and Professional Licensing Administration Infractions) of the DCMR is amended as follows:

Subsection 3301.1is amended by adding a new subparagraph (mm) to read as follows:

(mm) D.C. Official Code § 48-902.04 (schedule I synthetic drugs)

(nn) D.C Official Code § 48-902.08 (schedule III synthetic drugs)

A new Subsection 3301.5 is added to read as follows:

3301.5 Violation of any of the following provisions shall be a Class 1 infraction:

(a) D.C. Official Code § 48-902.04 (sell, offer for sale, allow the sale of, display for sale, possess, market, trade, barter, give, devise or otherwise make or attempt to make available synthetic drugs from schedule I).

(b) D.C. Official Code § 48-902.08 (sell, offer for sale, allow the sale of, display for sale, possess, market, trade, barter, give, devise or otherwise make or attempt to make available synthetic drugs from schedule III).

All persons desiring to comment on these emergency and final regulations should submit comments in writing to Matt Orlins, Legislative and Public Affairs Officer, Department of Consumer and Regulatory Affairs, 1100 4th Street, S.W., 5th Floor, Washington, D.C. 20024, or by e-mail to matt.orlins@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at dcra.dc.gov by going to the "About DCRA" tab, clicking "News Room", and clicking on "Rulemaking."

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(3) and (7), 14, 20, and 20g 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)(3), (c)(7), 50-313, 50-319, 50-329 (2012 Repl. & 2013 Supp.)), hereby gives notice of the adoption on an emergency basis of amendments to Chapters 4 (Taxicab Payment Services) and 5 (Taxicab Companies, Associations and Fleets) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These rules will: clarify the time period by which a payment service provider (PSP) must pay each taxicab company or independent owner with which the PSP is associated the portion of such PSP's revenue to which the taxicab company or independent owner is entitled; increase to one thousand dollars ($1,000) the fine for a PSP's failure to timely make such a payment; require taxicab companies that contract with PSPs to pay associated taxicab operators the portion of the revenue received from the PSP to which the operator is entitled within twenty-four (24) hours or one (1) business day of when the revenue is received by the taxicab company from the PSP; and establish fines of one thousand dollars ($1,000) for a taxicab company's failure to timely make such a payment and for failure to ensure that the passenger surcharge is collected and paid to the District for each trip.

These emergency and proposed rules are necessary because there is an immediate need to preserve and promote the safety and welfare of the District's taxicab industry, which is jeopardized by late, reduced, and denied payments to taxicab owners and operators that use the modern taximeter systems (MTSs) provided by payment service providers (PSPs). The failure to timely and fully pay all taxicab owners and operators the revenue generated through their use of MTSs prevents them from obtaining the protections contemplated by the Commission, in addition to negatively impacting residents and visitors by hindering the service improvements intended by the D.C. Council. Taxicab drivers, regardless of whether they rent or own their own vehicles, must timely receive the revenue to which they are entitled by using an MTS. Further, it is imperative that all regulated entities remit the passenger surcharge to the District consistent with this title, and ongoing violations of this rule necessitate an increased fine for further violations.

An emergency rulemaking was adopted on December 11, 2013, took effect immediately, and was published in the *D.C. Register* on December 20, 2013 at 60 DCR 17047 to remain in effect for sixty (60) days after the date of adoption. Further emergency rulemaking is therefore required in order to avoid the outcomes (stated above) and legal incongruities that would result while the proposed rules are under consideration. This emergency and proposed rulemaking was adopted by the Commission on March 12, 2014 and took effect immediately. The emergency rules shall remain in effect for one hundred twenty (120) days after the date of adoption (expiring July 9, 2014), unless earlier superseded by an amendment or repeal by the Commission, or the publication of a final rulemaking, whichever occurs first.

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

Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR is amended as follows:

Chapter 4, TAXICAB PAYMENT SERVICES, Section 411, PENALTIES, Subsection 411.2 is amended as follows:

Paragraph (c) is amended by striking the period at the end of the paragraph and inserting the phrase ", or" in its place.

New Paragraphs (d) and (e) are added to read as follows:

(d) A violation of § 408.13 by failing to pay each taxicab company or independent owner with which it is associated the portion of such PSP's revenue to which the taxicab company or independent owner is entitled within twenty-four (24) hours or one (1) business day of when such revenue is received by the PSP, or

(e) A violation of § 409.5 by failing to ensure that the passenger surcharge is collected and paid to the District for each trip consistent with this title.

Chapter 5, TAXICAB COMPANIES, ASSOCIATIONS AND FLEETS, Section 509 is amended to read as follows:

509 PROMPT PAYMENT TO TAXICAB OPERATORS

509.1 Except where a taxicab company and taxicab operator otherwise agree, each taxicab company that contracts with a payment service provider (PSP) for modern taximeter system (MTS) units in its associated vehicles shall pay each of its associated operators the portion of the revenue received from the PSP to which the associated operator is entitled within twenty-four (24) hours or one (1) business day of when the revenue is received by the taxicab company from the PSP.

509.2 A taxicab company shall be subject to a civil fine of one thousand dollars ($1,000) for the first violation of § 509.1, a civil fine of two thousand dollars ($2,000) for the second violation, and a civil fine of three thousand dollars ($3,000) for the third violation and each subsequent violation.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission**,** 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C.

20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-078
April 14, 2014

SUBJECT: Appointment – District of Columbia Child Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule, approved December 24, 1973 (87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.)), and in accordance with section 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective Oct. 3, 2001, D.C. Law 14-28; D.C. Official Code § 4-1371.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **JELANI FREEMAN,** who was nominated by the Mayor on September 18, 2013, and approved by the Council pursuant to Resolution 20-0440 on April 8, 2014, is appointed to the District of Columbia Child Fatality Review Committee, as a community representative member, for term to end three years from the date of appointment.

2. **ROGER A. MITCHELL, Jr., M.D., FASCP,** is appointed as a member of the District of Columbia Child Fatality Review Committee, representing the Office of the Chief Medical Examiner, and shall serve in that capacity at the pleasure of the Mayor.

3. **EFFECTIVE DATE:** This Order shall be effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-079
April 15, 2014

SUBJECT: Delegation of Authority to the Director of the Department of General Services to execute a Lease Agreement for the Hamilton School

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and section 1(c) of An Act To grant additional powers to the Commissioners of the District of Columbia, and for other purposes **("Act")**, approved December 20, 1944, 58 Stat. 821, D.C. Official Code § 1-301.01(c), it is hereby **ORDERED** that:

1. The Director of the Department of General Services is delegated the authority vested in the Mayor pursuant to, the Act, to execute a lease agreement between the District of Columbia and KIPP DC for a portion of certain real property, as specified in the lease, located at 1401 Brentwood Parkway, NE, most commonly known as the Hamilton School and more specifically designated for tax and assessment purposes as Square 129, Lot 57 ("Property"), and all other documents necessary to effectuate the lease of the Property, including, but not limited to, a memorandum of ground lease and a real property recordation and tax form.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-080
April 15, 2014

SUBJECT: Appointments – Not-for-Profit Hospital Corporation Board of Directors

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 5115 of the Not-for-Profit Hospital Corporation Establishment Amendment Act of 2011, effective September 14, 2011, D.C. Law 19-21, D.C. Official Code § 44-951.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **H. PATRICK SWYGERT**, who was nominated by the Mayor on January 22, 2014 and was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0624 on March 22, 2014, is appointed as a member of the Not-for-Profit Hospital Corporation Board of Directors ("Board"), replacing Margo Bailey, to complete the remainder of an unexpired term to end July 9, 2016.

2. **DR. JULIANNE M. MALVEAUX**, who was nominated by the Mayor on January 22, 2014 and was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0625 on March 22, 2014, is appointed as a member of the Board, replacing Frederick Perry, to complete the remainder of an unexpired term to end July 9, 2015.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-081
April 15, 2014

SUBJECT: Appointment – Real Property Tax Appeals Commission for the District of Columbia

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 2(b)(3) of the Real Property Tax Appeals Commission Establishment Act of 2010, effective April 8, 2011, D.C. Law 18-363, D.C. Official Code § 47-825.01a (2012 Repl. and 2013 Supp.), it is hereby **ORDERED** that:

1. **JOHN N. OLLIVIERRA**, who was nominated by the Mayor on February 3, 2014, and approved by the Council of the District of Columbia, pursuant to Resolution 20-0448, on April 8, 2014, is appointed as a part-time member of the Real Property Tax Appeals Commission for the District of Columbia for a term to end April 30, 2018.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray
VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-082
April 17, 2014

SUBJECT: Delegation of Authority to the Office of the Chief Medical Examiner to enter into, request, or provide assistance under, mutual aid agreements with localities within the National Capital Region and/or the Federal Government

ORIGINATING AGENCY: Office of the Chief Medical Examiner

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6 and 11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6 and 11) (2012 Repl.), and all federal or District authority which vests in me the authority, on behalf of the District of Columbia, to enter into, request, or provide assistance under, any mutual aid agreement, it is hereby **ORDERED** that:

1. The Chief Medical Examiner (**CMO**) of the Office of the Chief Medical Examiner (**OCME**), and such subordinates as he or she may designate, are hereby authorized to enter into, request, or provide assistance under, mutual aid agreements with localities within the National Capital Region and/or the Federal Government for the purpose of research, education, toxicology services, and mass fatality management, related to the determination of the cause and manner of death.

2. Except for those circumstances described in section 3, the authority delegated pursuant to section 1 is limited to mutual aid agreements that create no current financial obligation for the District, or create no financial obligation for the District in anticipation of an appropriation, as determined by the General Counsel of OCME, after consultation with the Office of the Attorney General and the Office of the Chief Financial Officer.

3. The CMO may enter into mutual aid agreements described in section 1 which create financial obligations for the District; provided that the General Counsel of OCME determines that there is clear legal and budgetary authority to do so, after legal sufficiency review by the Legal Counsel Division of the Office of the Attorney General and budgetary authority review by the Office of the Chief Financial Officer.

4. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CEASE & DESIST AGENDA (LIQUOR STORE)

THURSDAY, May 1, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be issuing Orders to Cease & Desist to the following Licensees for the reasons outlined below.

ABRA-000042 - **Dakota Liquors**- Retail – Liquor Store- A - 5510 3RD ST NE
[Licensee did not make 3rd Year Payment.]

ABRA-017108 - **S & P Wine & Liquors**- Retail - Liquor Store- A - 2316 PENNSYLVANIA AVE, SE
[Licensee did not make 3rd Year Payment.]

ABRA- 024362 - **Uptown Wine and Spirits** - Retail - Liquor Store- A - 4704 14TH ST, NW
[Licensee did not make 3rd Year Payment.]

ABRA- 024362 - **Alabama Express**- Retail - Liquor Store- A - 2846 ALABAMA AVE, SE
[Licensee did not make 3rd Year Payment.]

ABRA- 060595 - **H Street Liquor**- Retail - Liquor Store- A - 303 H ST, NE
[Licensee did not make 2nd and 3rd Year Payments.]

ABRA- 073063 - **Good Libation**- Retail - Liquor Store- A - 1201 5TH ST, NW
[Licensee did not make 3rd Year Payment.]

ABRA- 079744 - **Potenza Wine Store**- Retail - Liquor Store- A - 1426 H ST, NW
[Licensee did not make 3rd Year Payment.]

ABRA- 085968 - **Cavalier Wine and Liquors**- Retail - Liquor Store- A - 3515 14TH ST, NW
[Licensee did not make 3rd Year Payment.]

ABRA- 087410 - **The Local Vine Cellar Wine & Spirits**- Retail - Liquor Store- A - 1001 PENNSYLVANIA AVE, NW [Licensee did not make 3rd Year Payment.]

ABRA- 089439 - **Dove House Liquors**- Retail - Liquor Store- A - 1905 9TH ST, NW [Licensee did not make 3rd Year Payment.]

ABRA- 089900 - **To Be Determined**- Retail - Liquor Store- 1710 CONNECTICUT AVE, NW [Licensee did not make 3rd Year Payment.]

ABRA- 090448 - **West End Market**- Retail - Liquor Store- 2424 PENNSYLVANIA AVE NW [Licensee did not make Transfer Fee Payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CEASE & DESIST AGENDA (CLUB)

THURSDAY, May 1, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be issuing Orders to Cease & Desist to the following Licensees for the reasons outlined below.

ABRA-001324 – **Capital Yacht Club** – C- Club - 1000 WATER ST, SW [Licensee did not make 2nd Year Payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA (HOTEL)

THURSDAY, May 1, 2014 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board is requested to approve the following license cancellations for the reasons outlined below.

ABRA-001247- ***Channel Inn Hotel-Pier 7 Restaurant*** -Retailer CH, 650 WATER ST, SW [Licensee has submitted a letter stating they have closed and no longer operating as of March 31, 2014; Licensee did not make 2nd Year Payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA (RESTAURANT)

THURSDAY, May 1, 2014 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be cancelling the following licenses for the reasons outlined below.

ABRA-060095- ***Froggy Bottom Pub*** -Retailer CR, 2142 PENNSYLVANIA AVE, NW
[Licensing has been notified by applicant that the business has been closed since 2013; Licensee did not make 2nd Year Payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CEASE & DESIST AGENDA (RESTAURANT)

THURSDAY, May 1, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be issuing Orders to Cease & Desist to the following Licensee for the reasons outlined below.

ABRA-007374 – **Mixtec**- CR - 1792 COLUMBIA RD, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 008469 – **Luigi's Restaurant**- CR - 1132 19TH ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 009229 – **Phillips Flagship**- CR - 900 WATER ST, SW
[Licensee did not make 2nd Year Payment.]

ABRA- 020102 – **Awash**- CR - 2218 - 2220 18TH ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 021207 – **B Smith's**- CR - 50 MASSACHUSETTS AVE, NE UNIT M
[Licensee did not make 2nd Year Payment.]

ABRA- 024748 – **Cafe Soleil**- CR - 839 17TH ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 026671 – **Creme Cafe & Lounge**- CR - 1322 U ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 060263 – **Palena**- CR - 3529 CONNECTICUT AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 060301 – **Burma Restaurant**- CR - 740 6TH ST NW B
[Licensee did not make 2nd Year Payment.]

ABRA- 060536 – **Sodexho @Intelsat**- CR - 3400 INTERNATIONAL DR, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 060754 – **Panache**- CR - 1725 DESALES ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 060762 – **Dalchinni/Le Mirch**- CR - 1736 CONNECTICUT AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 071293 – **Kanlaya Thai Cuisine**- CR - 740 6TH ST, NW A
[Licensee did not make 2nd Year Payment.]

ABRA- 071593 – **My Brother's Place**- CR - 237 2ND ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 071793 – **The Ugly Mug Dining Saloon**- CR - 723 8TH ST, SE
[Licensee did not make 2nd Year Payment.]

ABRA- 072201 – **Dino**- CR - 3433 CONNECTICUT AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 076754 – **Pi**- CR - 2309 18TH ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 077562 – **Moroni & Brothers Pizza Restaurant**- CR - 4811 GEORGIA AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 080839 – **Birch & Barley/Churchkey**- CR - 1337 14TH ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 081175 – **Saigon Bistro**- CR - 2153 - 2155 P ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 082446 – **Kababji**- CR - 1351 CONNECTICUT AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 085719 – **Neisha Thai**- CR - 4445 WISCONSIN AVE, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 087031 – **Elisir Restaurant**- CR - 427 11th ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 089019 – **Merkato Ethiopian Restaurant**- CR - 1909 9TH ST NW
[Licensee did not make 2nd Year Payment.]

ABRA- 089631 – **Takeateasy**- CR - 1990 M ST NW
[Licensee did not make 2nd Year Payment.]

ABRA- 089715 – **Rinconcito Tex-Mex Restaurant**- CR - 1326 PARK RD NW
[Licensee did not make 2nd Year Payment.]

ABRA- 089823 – **Axum Restaurant**- CR - 1934 9th ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 090431 – **Thaaja Indian Food Bar**- CR - 1305 2ND STREET, NE
[Licensee did not make 2nd Year Payment.]

ABRA- 090806 – **Centeno's Restaurant**- CR - 827 KENNEDY ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 091148 – **Kapnos**- CR - 827 1315 W ST, NW
[Licensee did not make 2nd Year Payment.]

ABRA- 092662– **Chupacabra**- CR - 822 H ST, NE
[Licensee did not make 2nd Year Payment.]

ABRA- 092662– **Masai Mara Restaurant & Lounge**- CR - 1200 Kennedy Street, NW
[Enforcement confirmed that the Licensee is Out of Business and no longer operating due to US Marshall Service serving an eviction notice.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CEASE & DESIST AGENDA (MULTIPURPOSE)

THURSDAY, May 1, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

The Board will be issuing Orders to Cease & Desist to the following Licensees for the reasons outlined below.

ABRA- 060573 - **International Spy Museum/Zola**- Retail – Multipurpose - C - 800 F ST, NW [Licensee did not make 2nd Year Payment.]

ABRA- 085207 - **Atlas Performing Arts Center**- Retail – Multipurpose - C - 1333 H ST NE [Licensee did not make 2nd Year Payment.]

ABRA- 087074 - **The Dunes**- Retail – Multipurpose - C - 1400 - 1402 MERIDIAN PL, NW [Licensee did not make 2nd Year Payment.]

ABRA- 087627 - **Spectrum**- Retail – Multipurpose - C - 1299 PENNSYLVANIA AVE, NW [Licensee did not make 2nd Year Payment.]

ABRA- 089601 - **VeraCruz**- Retail – Multipurpose - C - 2106-08 VERMONT AVENUE, NW, 2nd Fl [Licensee did not make 2nd Year Payment.]

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

THURSDAY, MAY 1, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 1, 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-CC-00024 The Fairfax at Embassy Row, 2100 MASSACHUSETTS AVE NW Retailer C Hotel, License#: ABRA-074721

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2. Case#14-CMP-00106 Comet Pizza, 5037 CONNECTICUT AVE NW Retailer C Restaurant, License#: ABRA-074897

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3. Case#14-CMP-00107 Twelve Restaurant & Lounge, 1123 - 1125 H ST NE Retailer C Tavern, License#: ABRA-076366

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4. Case#14-CC-00023 Courtyard By Marriott, 140 L ST SE Retailer C Hotel, License#: ABRA-074495

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5. Case#14-CC-00021 Bayou, 2519 PENNSYLVANIA AVE NW Retailer C Tavern, License#: ABRA-078057

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6. Case#14-CC-00018 Daily Grill, 1200 18TH ST NW Retailer C Restaurant, License#: ABRA-024105

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7. Case#14-CC-00025 Magic Gourd Restaurant, 528 23RD ST NW Retailer C Restaurant, License#: ABRA-001015

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8. Case#14-CMP-00131 Stonefish Restaurant and Lounge, 1050 17TH ST NW B Retailer C Restaurant, License#: ABRA-014073

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9. Case#14-CC-00017 Public Bar, 1214 A 18TH ST NW A Retailer C Tavern, License#: ABRA-081238

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10. Case#14-AUD-00022 WA-ZO-BIA, 618 T ST NW Retailer C Restaurant, License#: ABRA-079306

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11. Case#14-CMP-00088(a) Ming's, 617 H ST NW Retailer C Restaurant, License#: ABRA-083415

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12. Case#14-CC-00022 Il Canale, 1063 31ST ST NW Retailer C Restaurant, License#: ABRA-083707

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13. Case#14-CC-00019 Brother's Liquors, 1140 FLORIDA AVE NE Retailer A Retail - Liquor Store, License#: ABRA-084857

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14. Case#14-CMP-00108 Neisha Thai, 4445 WISCONSIN AVE NW Retailer C Restaurant, License#: ABRA-085719

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15. Case#14-CMP-00105 NEW TOWN KITCHEN AND LOUNGE, 1336 U ST NW Retailer C Tavern, License#: ABRA-093095

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16. Case#14-CMP-00119 NEW TOWN KITCHEN AND LOUNGE, 1336 U ST NW Retailer C Tavern, License#: ABRA-093095

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17. Case#14-CMP-00132 Cambria Suites Washington City Market, 899 O ST NW Retailer C Hotel, License#: ABRA-094523

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

THURSDAY, MAY 1, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Complaint, dated April 15, 2014 from Carl Messineo. ***Macon-DC,*** 5520 Connecticut Avenue NW, Retailer CR, Lic#: 93939.

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2. Review of Complaint, dated April 15, 2014 from Janet Shenk. ***Macon-DC,*** 5520 Connecticut Avenue NW, Retailer CR, Lic#: 93939.

   _____

3. Review of Notice and Opportunity to Cure, dated April 15, 2014 from Aileen Johnson and Sarah Goldfrank Protestants. ***New Town Kitchen and Lounge,*** 1336 U Street NW, Retailer CT, Lic#: 93095.

   _____

4. Review of Settlement Agreement dated April 21, 2014 between ANC 2C and Top Shelf LLC. ***Penn Quarter Sports Tavern,*** 639 Indiana Avenue NW, Retailer CR, Lic#: 76039.

   _____

5. Review of one (1) requests from E & J Gallo to provide retailers with products valued at more than $50 and less than $500.

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*** 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, MAY 1, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Request for Change in Seating Capacity designation. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 1B. SMD 1B02. ***Cloud,*** 1919 19th Street NW, Retailer CT, License No. 093572.

   _____

2. Review Application for New Retailer 25% Class B license. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 1B. SMD 1B03. ***City Corner,*** 2601 Sherman Avenue NW, Retailer B, License No. 094857.

   _____

3. Review Application Requesting Change of Hours for Summer Garden. ***Approved Hours of Operation, Alcoholic Beverage Sales and Consumption of Summer Garden:*** Sunday-Thursday 10am to 11pm. Friday and Saturday 10am to 12am. ***Proposed Hours of Operation, Alcoholic Beverage Sales and Consumption of Summer Garden:*** Sunday-Thursday 10am to 2am. Friday and Saturday 10am to 3am. No outstanding fines/citations. No Conflict with Settlement Agreement. ANC 6A. SMD 6A01. ***Little Miss Whiskey's Golden Dollar***, 1104 H Street NW, Retailer CT, License No. 079090.

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4. Review Application Request to Change of Hours of Live Entertainment. ***Approved Hours of Live Entertainment***: Thursday 8:30pm to 12:30am, Friday and Saturday 10pm to 2am. ***Proposed Hours of Live Entertainment***: Sunday and Wednesday 7:30pm to 10pm; Thursday 8:30pm to 12:30am; Friday and Saturday 10pm to 2am. No outstanding fines/citations. No Settlement Agreement. ANC 3C. SMD 3C03. ***Zoo Bar Cafe***, 3000 Connecticut Avenue NW, Retailer CR, License No. 060391

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5. Review Application for New Retailer Class C Restaurant License in Georgetown Historic District Moratorium Zone. ANC 2E. SMD 2E03. ***AN & JM LLC,*** 1513 Wisconsin Avenue NW, Retailer CR, License No. TBD

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6. Review Application for New Retailer Class C Restaurant License in Georgetown Historic District Moratorium Zone. ANC 2E. SMD 2E03. ***FR & LH LLC***, 1515 Wisconsin Avenue NW, Retailer CR, License No. TBD.

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7. Review Application for New Retailer Class C Restaurant License in Georgetown Historic District Moratorium Zone. ANC 2E. SMD 2E05. ***Georgetown Restaurant Partners LTD***, 3150 M Street NW, Retailer CR, License No. TBD.

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8. Review Application for New Retailer Class C Restaurant License in Georgetown Historic District Moratorium Zone. ANC 2E. SMD 2E05. ***Yummi Crawfish & Seafood Restaurant LLC t/a Yummi Crawfish,*** 1529 Wisconsin Avenue NW, Retailer CR License No. 084987 (Puro Café).

CENTER CITY PUBLIC CHARTER SCHOOLS

NOTICE: FOR PROPOSALS TO CONDUCT THE ANNUAL AUDIT FOR THE 2013-2014 SCHOOL YEAR

Center City Public Charter Schools in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals to conduct the Annual Financial Audit and A-133 Audit as well as prepare Forms 990 and 5500.

Qualifications: Auditors must be on the PCSB's Approved Auditors List. Providers must state their credentials, provide appropriate licenses and specify a timeline to conduct the audit so that Center City Public Charter Schools is in compliance with PCSB's regulations.

Proposals shall be received no later than 5:00 P.M., May 15, 2014.

Proposals should be sent to:

Cristine Doran
Director of Finance and Facilities
Center City Public Charter Schools
cdoran@centercitypcs.org

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

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

AGENDA

May 6, 2014
9:00 A.M.

1) Meeting Call to Order

2) Attendees

3) Comments from the Public

4) Minutes: Review draft of 10 March 2014

5) Old Business

6) New Business

7) Pursuant to § 2-575(13) the Board will enter executive session to review application(s) for licensure.

8) Action on applications discussed in executive session

9) Adjournment

Next Scheduled Meeting – Tuesday, 3 June 2014
Location: 1100 4th Street SW, Conference Room E300

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Barber and Cosmetology

1100 4th Street SW, Room E300
Washington, DC 20024

Meeting Agenda

May 5, 2014
10:00 a.m.

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

Next Scheduled Board Meeting – June 2, 2014.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

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

Meeting Agenda

May 1, 2014
11:00 A.M.

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

CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

Board of Industrial Trades

1100 4th Street SW, Room 300 A/B
Washington, DC 20024

AGENDA

May 20, 2014
1:00 P.M -3:30 P.M.

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of the Agenda

IV. Acknowledgment of Adoption of the Minutes

V. Report from the Chairperson
a) DCMR updates

VI. New Business

a) Reciprocity with other Jurisdictions
b) Development of new examinations

VII. Opportunity for Public Comments

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

a) Review of applications
b) Recommendations from committee meetings to ratify

IX. Resumption of Public Meeting
X. Adjournment

Next Scheduled Board Meeting: June 17, 2014 @ 1:00 PM – 3:30 PM, Room 300A/B
1100 4th Street, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

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

AGENDA

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May 21, 2014
10:00 A.M.

1. Call to Order – 10:00 a.m.

2. Attendance (Start of Public Session) – 10:30 a.m.

3. Executive Session (Closed to the Public) – 10:00 – 10:30 a.m.

   A. Legal Committee Recommendations
   B. Legal Counsel Report
   C. Application Review

4. Comments from the Public

5. Minutes - Draft, April 23, 2013

6. Recommendations

   A. Review - Applications for Licensure
   B. Legal Committee Report
   C. Education Committee Report
   D. Budget Report
   E. 2014 Calendar
   F. Correspondence

7. Old Business

8. New Business

9. Adjourn

Next Scheduled Regular Meeting, June 18, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

D.C. BOXING AND WRESTLING COMMISSION

1100 4th Street SW-Suite E500, SW
Washington, DC. 20024
MAY 13, 2014
7:00 P.M.
Website: http://www.pearsonvue.com/dc/boxing_wrestling/

AGENDA

CALL TO ORDER & ROLL CALL

COMMENTS FROM THE PUBLIC & GUEST INTRODUCTIONS

REVIEW OF MINUTES

- Approval of Minutes

UPCOMING EVENTS

1. May 31, 2014 Promoter: April Hairston featuring Ty Barnett at the Washington Convention Center
2. June 21, 2014 Promoter: Headbangers
3. June 23, 2014 Promoter WWE at the Verizon Center
4. September 13, 2014 Dr. McKnight Amateur Event
5. November 13, 2014Pro-Boxing Fight Night at the Washington Hilton Hotel: Fight For Children
6.

OLD BUSINESS

1. DC Gym Assessment Status: Tuesday & Thursday
2.

NEW BUSINESS

1. Upcoming Amateur Events
2.

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS JUNE 10, 2014

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

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

May 2014

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	6	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	21	8:30 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	RECESS	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	5	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	13	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	1	10:00am-2:00 pm
Daniel Burton	Board of Professional Engineering	RECESS	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	13	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	20	1:00 pm-4:00 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

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

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

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

AGENDA
May 13, 2014

1. Call to Order - 1:30 p.m.

2. Executive Session (Closed to the Public) – 9:30 -10:30 a.m.

   A. Legal Committee Recommendations
   B. Review – Applications for Licensure
   C. Legal Counsel Report

3. Attendance (Start of Public Session) –10:30 a.m.

4. Comments from the Public

5. Minutes - Draft, April 15, 2014

6. Recommendations

   A. Review - Applications for Licensure
   B. Legal Committee Report
   C. Education Committee Report
   D. Budget Report
   E. 2014 Calendar
   F. Correspondence

7. Old Business

   Non-Employee IDs

8. New Business

   A. Report - Historic Preservation Seminars – May 9, 2014
   B. Discussion – Commission Newsletter
   C. Proposed Commission-sponsored Seminars – Summer 2014
   D. CLEAR Training – June 2, 2014 – Sumner School

Agenda – Real Estate Commission
Page Two

9. Adjourn

Next Scheduled Regular Meeting, June 10, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR QUALIFICATIONS

Renovation of Full Service School Kitchen
Architectural Services

Project Summary
Your firm is invited to submit qualifications to provide architectural services necessary to provide expertise in the design of the renovation of a space to be used for a full service school kitchen at the school campus located at 3400 Wheeler Road SE, Washington, DC 20032, with an estimated total cost of $650,000.00.

Date and Location Submittal is Due: Friday, May 9, 2014 by 5:00 p.m.
For submittal requirements, send request to the attention of Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL
NOTICE OF REQUEST FOR PROPOSALS
Renovation of Full Service School Kitchen
Pre-Construction Services & General Contractor Services

Project Summary
Your firm is invited to submit a proposal to provide pre-construction general contractor services for the renovation of a space to be used for a full service school kitchen at the school campus located at 3400 Wheeler Road SE, Washington, DC 20032, with an estimated total construction cost, including architect's fees, equipment, and related costs, of $650,000.00.

1. **Date and Location Submittal is Due: Friday, May 9, 2014 by 5:00 p.m.**
2. **For submittal requirements, send request to the attention of Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org.**

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR QUALIFICATIONS

Professional Educational Consulting Services

Project Summary
Your firm is invited to submit qualifications to provide professional educational consulting services, including leadership coaching, instructional coaching, strategic planning support, support in the development of systems and protocols, and other related activities as agreed upon by Eagle Academy PCS and the Consultant.

Date and Location Submittal is Due: Friday, May 9, 2014 by 5:00 p.m.

For submittal requirements, send request to the attention of Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org.

EAGLE ACADEMY PUBLIC CHARTER SCHOOL

NOTICE OF REQUEST FOR QUALIFICATIONS

Professional Educational Consulting Services

Project Summary
Your firm is invited to submit qualifications to provide professional educational consulting services to support Eagle Academy Public Charter School's OSSE – SOAR Increasing Academic Quality for Charter Schools Program as specified in the grant application. Team Qualifications include extensive experience and expertise in ECH SPED. For a complete list of requirements, submit a request to **Mayra Martinez-Fernandez, mmartinez@eagleacademypcs.org by Friday, May 2, 2014 by 5:00 p.m.**

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 air quality permit #6066-R2 to operate one (1) 60 kW natural gas fired emergency generator set at the Cellco Partnership (DBA Verizon Wireless) property located at 1375 E Street NE Washington DC. The contact person for the facility is Pat Coby at (301)512-2464.

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments postmarked after May 26, 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 air quality permit #6068-R2 to operate one (1) 60 kW diesel-fired emergency generator set at the Cellco Partnership (DBA Verizon Wireless) property located at 3621 Benning Road NE, Washington DC. The contact person for the facility is Pat Coby at (301)512-2464.

The permit application and supporting documentation, along with the draft permit are all available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments postmarked after May 26, 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 #6375-R1 to the National Park Service to operate a non-auto body spray paint booth at the National Mall and Memorial Parks Brentwood Maintenance Facility located at 515 New York Avenue NE, Washington DC 20242. The contact person is Joseph Salvatore, Chief, Division of Facility Management at (202) 245-4492.

The application to operate and the draft permit are all available for public inspection at AQD and copies may be made between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a public hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington DC 20002

No written comments or hearing requests postmarked after May 26, 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 – Unredacted - 1165-001

VIA EMAIL

April 17, 2014

Mr. Todd A. Douglas

Dear Mr. Douglas:

This responds to your April 9, 2014, email, by which you request advice concerning whether you can respond to a Department of General Services ("DGS") Request for Proposals ("RFP") given that you worked at DGS until February 14, 2014. 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, responding to the DGS RFP and performing services for DGS if you are awarded the contract would be permissible.

You state that when you worked at DGS, you were a Realty Officer, and that your job responsibilities included those services listed in the RFP, including strategic planning, tenant representation, and legal support and coordination of solicitations for space. You are in the process of identifying a commercial real estate firm and a legal firm to partner with and believe that your knowledge of District government makes you qualified to perform the work specified in the RFP. You also state that you anticipate working not only on new issues that arise from matters you worked on as a DGS employee, but probably the *very same* issues and matters as well. In other words, the government would be outsourcing to you some of the same work you did as a government employee.

Post–Employment Restrictions

Although the District has in place post-employment rules, they are not meant to prevent District employees from working in the private sector after their government service ends or to be so restrictive as to make following the post-employment rules impossible. There are, however, certain requirements you must follow.[1]

A former District employee is prohibited, for one year, from having any transactions with the employee's agency that are **intended to influence the agency** in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest. Specifically, 6B DCMR § 1811.10 provides:

[1] The discussion of post-employment restrictions that follows is based on 6B DCMR Chapter 18, which was revised and became effective on April 11, 2014.

> A former employee (other than a special government employee who serves for fewer than one-hundred and thirty (130) days in a calendar year) shall be prohibited for one (1) year from having any transactions with the former agency intended to influence the agency in connection with any particular government matter pending before the agency or in which it has a direct and substantial interest, whether or not such matter involves a specific party.[2]

Therefore, you, as a former District employee, are prohibited for one year from the date of your separation from service, February 14, 2014, from having any transactions with DGS that are intended to influence DGS on any particular government matter pending before DGS or in which DGS has a direct and substantial interest. This prohibition applies regardless of whether the particular government matter involves a specific party and regardless of whether you participated in or had responsibility for that particular matter when you were a DGS employee. In addition, this prohibition applies to matters that first arose after you left District service, as long as they concern a particular government matter that was pending before DGS when you worked there or in which DGS has a direct and substantial interest. Although the term "direct and substantial interest" is undefined in 6B DCMR Chapter 18, it is clear that easily identified matters such as contracts, leases, and particular projects such as an agency's relocation project or an agency's strategic plan are included in the term.

Similarly, 6B DCMR § 1811.3 provides:

> A former government employee shall be permanently prohibited from knowingly acting as an attorney, agent, or representative in any formal or informal appearance before an agency as to a particular matter involving a specific party[3] if the employee participated personally and substantially in that matter as a government employee.[4]

This section seeks permanently to ban representational work for any matter involving a specific party that you worked on while in the government's employ.

Notwithstanding what may seem like a blanket prohibition for dealing with your previous agency on a temporary or permanent basis, I interpret 6B DCMR §§ 1811.10, 1811.11, 1811.3, and 1811.4 to refer instead to matters in which the former employee is representing a person or entity whose interests are or may become adverse to those of the District. For example, if you were proposing to represent a client/potential lessee, in a

[2] 6B DCMR § 1811.11 states that the "restriction in Subsection 1811.10 of this section is intended to prohibit the possible use of personal influence based on past government affiliations to facilitate the transaction of business. Therefore, the restriction shall apply without regard to whether the former employee had participated in, or had responsibility for, the particular matter, and shall include matters which first arise after the employee leaves government service."

[3] Particular government matter involving a specific party is defined is 6B DCMR Chapter 18 as, "any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the District government is a party or has a direct and substantial interest, and which has application to one (1) or more specifically identified persons or entities."

[4] Similarly, 6B DCMR § 1811.4 provides that "[a] former government employee shall be permanently prohibited from making any oral or written communication to an agency with the intent to influence that agency on behalf of another as to a particular government matter involving a specific party if the employee participated personally and substantially in that matter as a government employee."

particular matter, such as a lease, in which the District, as the lessor, has a direct and substantial interest, you would be prohibited from having any transactions with DGS that are intended to influence DGS, for one year from the date of your separation from District service. Similarly, you would be prohibited permanently from formal or informal appearances before DGS, as well as oral or written communications to DGS.

You, however, informed the member of my staff with whom you spoke, that the District, in putting out the RFP, seeks to contract with a person or entity that will *represent the District and assist it* with various real estate services. Specifically, the Scope of Work in the Request for Proposals, Solicitation Number: DCAM-14-NC-0121, provides:

> The Department anticipates that the selected Real Estate Consultant will assist the Department with the management of the District's real estate portfolio by providing the specific real estate consulting services as more specifically described herein. (p.4.)

As such, the District would be your client and you would be both representing the District and acting on its behalf. It is not enough to say that your interests and the District's align. Instead, you actually must represent the District's interests, and only the District's interests, for you to avoid violating 6B DCMR §§ 1811.10, 1811.11, 1811.3, and 1811.4. To ensure that your work under the contract will involve representing the District's interests and only the District's interests, there must be a specific written agreement in place that states that your services are representational.[5] In that situation, you would not be prohibited from having transactions with DGS, having formal or informal appearances before DGS, or having oral or written communications with DGS.

It is important to note, however, that to comply with 6B DCMR §§ 1811.10, 1811.11, 1811.3, and 1811.4, you would have to make sure that you do not represent the private entity that holds the contract with the District, or any other person or entity, in any negotiations with DGS.[6] For example, you would be prohibited from handling matters such as contract negotiations and fee renegotiations. Similarly, you would be prohibited from calling a DGS employee to request an extension, or sending an email complaining about a payment delay and requesting prompter payment. In those situations, you would not be representing the District government. Instead you would be representing the interests of another person or entity before your former employer, DGS, which is prohibited.[7]

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[5] It is important to note, however, that simply because a former government employee is performing services on behalf of the government pursuant to a contract with the government, this does not mean that the former government employee "shares an identity of interests" with the government (U.S. Office of Government Ethics, "Letter to a Former Government Attorney," 82 x 16, November 5, 1982). *See also* U.S. Office of Government Ethics, "Letter to a Designated Agency Ethics Official," 08 x 7, March 28, 2008, which explains that just because the former employee's activity furthers the government's interests does not mean that the former employee is acting on behalf of the government. There must be "a specific agreement to provide representational services to the [government]" *Id* at 2.

[6] *See* U.S. Office of Government Ethics, "Letter to a Former Government Attorney," 82 x 16, November 5, 1982.

[7] *See* U.S. Office of Government Ethics, "Letter to a Former Government Attorney," 82 x 16, November 5, 1982, which states: "[y]ou may not, pursuant to our interpretation, represent your firm on such matters as contract negotiations, fee negotiations, and requests for additional personnel (and thus money for the firm), or on matters involving any questions of the competence of the services provided by the firm. If you did so, you would be acting as an agent of the firm in matters where there is controversy arising out of the business relationship between [the agency] and the firm. On the other hand, once your firm is hired, you may in the normal course of providing the litigation services required under the contract, contact [the agency], and discuss further strategy. In these instances, there is no element of intent to influence or controversy concerning the business relationship on your part. It is simply the flow of information necessary to carry out the contract." (p. 4.)

As a best practice, I recommend that if you obtain the contract with DGS, you work with DGS to do the following:

1) Include in the contract documents a confidentiality clause[8] indicating that the contracting entity and its employees shall keep all information obtained through the performance of the contract confidential, shall not use such information in connection with any other matters, and shall not disclose any such information to any other person or entity, in accordance with District and federal laws governing the confidentiality of records; and

2) Include in the contract documents a written statement by a DGS official that DGS is aware that you previously worked there and whether you worked on a particular matter involving a specific party as a DGS employee that you will work on pursuant to your contract with DGS. The written statement also should include a determination, through DGS's own analysis, that the District is your client and your performance of services will involve you representing the District's interests and only the District's interests and that you will not represent any interests that are or may become adverse to the District's.[9]

Accordingly, you are not prohibited from obtaining a contract with DGS to provide services where you will represent DGS's interests, as long as you do not improperly reveal any confidential information you learned as a District employee and do not represent the private entity that holds the contract with DGS, or any other person or entity, in any negotiations with DGS where your interests or the private entity's interests are or may become adverse to the District's interests.

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 also are advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

[8] I note that confidentiality clauses are not uncommon and that such a clause already may be included in the RFP.
[9] BEGA already has confirmed with the Office of Contracting and Procurement ("OCP") that this is acceptable and that, if provided to OCP, the written statement will be maintained in the contract files.

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

1165-001

DEPARTMENT OF HEALTH

HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
April 30, 2014

On April 30, 2014 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 10:30 am to 11:30 am to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 2:00 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Jacqueline A. Watson, DO, MBA, (202) 724-8755.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2978,	
Complainant,	PERB Case No. 08-U-47
	Opinion No. 1456
v.	
	Motion for Reconsideration
District of Columbia Department of Health,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The instant matter stems from an Unfair Labor Practice Complaint ("Complaint") filed by the Complainant American Federation of Government Employees, Local 2978 ("AFGE" or "Union") against the Respondent District of Columbia Department of Health ("DOH" or "Agency") for alleged violations of sections 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Personnel Act ("CMPA"). The matter was submitted to an unfair labor practice hearing, and in Slip Op. No. 1256, the Board adopted the Hearing Examiner's conclusion that the Agency committed an unfair labor practice and ordered the Agency to reinstate Grievant Robert Mayfield. (Slip Op. No. 1256 at p. 11-12). Additionally, the Board instructed the Union to submit "a verified statement as to the appropriate amount for a make whole remedy, i.e. back pay." *Id.* at 12. The Agency was instructed to provide a response to the verified statement, at which point the Board would issue a supplemental order ruling on the appropriate remedy. *Id.*

In subsequent exchanges between the parties, the Union and Agency disagreed over interest on the back pay award, and the manner in which annual leave hours must be restored to

Mr. Mayfield. On October 31, 2013, the Board issued Slip Op. No. 1443, ordering the parties to brief the following issues: (1) whether the Agency must pay interest on Mr. Mayfield's back pay award, and if so, at what rate; and (2) whether Mr. Mayfield's accrued annual leave must be restored via "restored hours" or as a lump sum payout? Pursuant to the briefing schedule outlined in Slip Op. No. 1443, the Union's brief was filed on November 27, 2013, and the Agency's Amended Reply Brief was filed on December 30, 2013.

On February 25, 2014, the Board issued Slip Op. No. 1454, ordering Mr. Mayfield be paid interest on his back pay award at a rate of four percent per annum, and denying AFGE's request for a lump sum payout of Mr. Mayfield's accrued leave hours. Slip Op. No. 1454 at 6. On March 7, 2014, AFGE filed a Motion for Reconsideration ("MFR"), asking the Board to reconsider its denial of the lump sum payout. (MFR at 1). On March 14, 2014, DOH filed an Opposition to the MFR ("Opposition"), objecting to AFGE's calculation of Mr. Mayfield's accrued leave, and contending that Mr. Mayfield is not entitled to a lump sum payout and could still utilize most of his restored leave in calendar year 2014. (Opposition at 2-4).

The MRF and Opposition are now before the Board for disposition.

II. Discussion

In its MFR, AFGE requests that the Board reverse its decision in Slip Op. No. 1454 because "the denial of cash compensation for 679 hours of accrued leave is inequitable and will effectively cause Mr. Mayfield to forfeit the vast majority of those hours." (MFR at 1). AFGE then asked the Board to establish a briefing schedule. *Id.*

In response, DOH first noted that AFGE incorrectly referred to 679 hours of restored leave, when the actual number was 436 hours restored leave and 240 hours placed into Mr. Mayfield's regular annual leave bank. (Opposition at 2). Next, DOH rejects AFGE's argument that it would be inequitable to refuse Mr. Mayfield a lump sum payout for his restored leave, stating that "what is truly inequitable is that [DPM subsection 1239.2] allowed Mr. Mayfield two years to use his restored leave and he appears to have either neglected and/or refused to utilize <u>any</u> of this restored leave since he was reinstated." (Opposition at 3; emphasis in original). DOH notes that in calendar year 2014, Mr. Mayfield used 246 hours of annual leave from his regular leave bank, and "[t]he fact that Mr. Mayfield chose not to use any of his restored leave in 2013 was his choice and his alone, and the Board should therefore not now reverse its February 25, 2014, decision regarding this issue." (Opposition at 3-4). Finally, DOH states that Mr. Mayfield could still use all or most of his restored leave in calendar year 2014. (Opposition at 4).

In Slip Op. No. 1454, the Board concluded that nothing in the chapter of the D.C. Municipal Regulations pertaining to back pay for District personnel, 6-B DCMR § 1149.2, required that annual leave be restored as a lump-sum payout instead of as restored leave. Slip Op. No. 1454 at p. 6. Additionally, the Board noted that in its brief, AFGE cited to no cases in which the Board *sua sponte* ordered a lump-sum payout for restored annual leave hours, nor was the Board aware of such precedent. *Id.* at p. 5.

Similarly, in its MFR, AFGE fails to provide any authority which compels the reversal of the Board's decision in Slip Op. No. 1454. Instead, AFGE's argument amounts to no more than

a disagreement with the Board's underlying decision. *See University of the District of Columbia Faculty Ass'n/NEA v. University of the District of Columbia*, 59 D.C. Reg. 6013, Slip Op. No. 1004 at p. 7, PERB Case No. 09-U-26 (2009). The Board has repeatedly held that "a motion for reconsideration cannot be based upon mere disagreement with its initial decision." *AFGE Local 2725 v. D.C. Dep't of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, 59 D.C. Reg. 5041, Slip Op. No. 969, PERB Case Nos. 06-U-43 and 02-A-05 (2003); *see also D.C. Dep't of Human Services v. Fraternal Order of Police/Dep't of Human Services Labor Committee*, 52 D.C. Reg. 1623, Slip Op. No. 717, PERB Case Nos. 02-A-04 and 02-A-05 (2003); D.C. *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 49 D.C. Reg. 8960, Slip Op. No. 680, PERB Case No. 01-A-02 (2002). Therefore, AFGE's MFR is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. AFGE's Motion for Reconsideration is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 2, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-47 was transmitted via File & ServeXpress to the following parties on this the 2nd day of April, 2014.

Ms. Nancy B. Stone, Esq.
Woodley & McGillivary
1101 Vermont Ave., NW
Ste. 1000
Washington, DC 20005

FILE & SERVEXPRESS

Mr. Andrew Gerst, Esq.
DC OLRCB
441 4th St., NW
Ste. 820 North
Washington, D.C. 20001

FILE & SERVEXPRESS

/s/ Erin E. Wilcox

Erin E. Wilcox, Esq.
Attorney-Advisor

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2978,	
Complainant,	PERB Case No. 09-U-62
v.	Opinion No. 1457
District of Columbia Office of the Chief Medical Examiner,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

The instant case arises from an Unfair Labor Practice Complaint ("Complaint") filed by the American Federation of Government Employees ("Complainant" or "Union") against the D.C. Office of the Chief Medical Examiner ("Respondent" or "Agency") for alleged violations of D.C. Official Code § 1-617.04(a)(1), (3), and (5) of the Comprehensive Merit Personnel Act ("CMPA"). A hearing was held on September 8, 2011, and in her subsequent Report and Recommendation ("Report"), Hearing Examiner Gloria Johnson determined that the Agency violated D.C. Official Code § 1-617.04(a)(1), (3), and (5) by retaliatory conduct resulting in the termination of the Grievant. (Report at 38). In Slip Op. No. 1348, the Board affirmed the Report in part, and remanded to the Hearing Examiner the question of whether the Agency presented sufficient evidence of a legitimate business reason for the employment action against Grievant Muhammad Abdul-Saboor ("Grievant"). Slip Op. No. 1348 at p. 7-9.

The Hearing Examiner issued a Report and Recommendation on remand ("Remand Report"), finding that the Agency violated D.C. Official Code § 1-617.04(a)(1), (3), and (5) by retaliatory conduct resulting in the Grievant's termination, and that the Agency lacked a legitimate business reason for terminating the Grievant. (Remand Report at 20-21). On August 22, 2013, the Respondent filed exceptions to the Remand Report ("Remand Exceptions"), contending that the Hearing Examiner's conclusions were irrational and unsupported by the

record. (Remand Exceptions at 4). The Union opposed the Agency's exceptions ("Remand Opposition"), calling the Agency exceptions "nothing more than argument that the Hearing Examiner should have interpreted the [Agency's] evidence differently and more favorably to the Agency." (Remand Opposition at 2).

The Remand Report, Remand Exceptions, and Remand Opposition are before the Board for disposition.

II. PROCEDURAL HISTORY

A. Slip Op. No. 1348

As stated by the Board in Slip Op. No. 1348, the Hearing Examiner found the following facts in her Report:

> Grievant was the only employee member of AFGE Local 2978 employed at the Agency. On November 19, 2008, Grievant received an admonition for allegedly refusing to drive a friend of the Chief Medical Examiner to Walter Reed Hospital after this friend gave a lecture to Agency staff.
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> On March 19, 2009, the Grievant and his union representative met with his first line supervisor, Management Services Officer Peggy Fogg (in person), and Chief of Staff Beverly Fields (telephonically).
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> Both the Grievant and his representative maintain that the purpose of the meeting was to attempt to, *inter alia*, informally resolve a grievance and discuss issues regarding a grievance alleging Grievant was working outside of his position description.
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> An e-mail from Beverly Fields to Union Local President Robert Mayfield dated April 9, 2009, confirms that there was a discussion of the grievance on March 19. It states in relevant part "...the agency responded only on the date the grievance was filed (March 19, 2009), stating that the grievance was untimely and relief requested was denied. The Union clearly understood the oral response as you, Mr. Mayfield, stated that based on our response, you would take the matter to arbitration."
>
> Ms. Fields also stated in an e-mail that "[d]uring the [March 19th] discussion, you stated that the employee had a grievance regarding working outside of his position description. I informed you orally at that time that any grievance regarding this issue was

> untimely... [t]he agency's oral response during the March 19, 2009, meeting was a denial of the grievance itself."
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> Joint Exhibit 1 bears a date stamp March 19, 2009, and is directed to Peggy J. Fogg. It purports to be a step one grievance challenging both the issuance of an illegal admonition as well as the requirement that the Grievant work outside his position description in violation of the collective bargaining agreement.
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> On April 13, 2009, [the Agency] denied the grievance as untimely. On April 23, 2009, [the Union] filed an amended grievance.
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> By letter dated May 21, 2009, Chief Medical Examiner Pierre-Louis denied Grievant's grievance as flawed, untimely, and without merit.
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> By notice dated August 28, 2009, [Grievant] was advised that effective September 30, 2009, he would be separated from service as Fleet Management Specialist CS-2101-07, pursuant to a reduction in force in the competitive area of Office of the Chief Medical Examiner, competitive level DS-2101-07-01-N.
>
> Grievant's August 28, 2009, RIF notice, signed by Chief Medical Examiner Marie-Lydia Y. Pierre-Louis, M.D., indicated it was delivered by Peggy Fogg to the employee, who purportedly refused to sign.
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> On September 10, 2009, Local 2978 filed an unfair labor practice complaint challenging the reduction in force as retaliation for the Grievant having engaged in the protected act of filing and pursuing a grievance, and subsequent statements made in a March 19, 2009, meeting with Agency managers, Grievant, and his union representative, Robert Mayfield, who also serves as President of AFGE Local 2978.
>
> On September 10, 2009, the Union filed an unfair labor practice complaint. On September 30, 2009, the Agency answered the complaint and denied the allegations.

(Slip Op. No. 1348 at p. 2-3; citing Report at 2-5). In her Report, the Hearing Examiner determined that the dispositive issues were: (1) did the Agency engage in an unfair labor practice in violation of D.C. Official Code § 1-617.04(a)(1),(3), and (5) by interfering, restraining, intimidating, or retaliating against the Grievant for having engaged in protected activity; (2) is the Agency insulated from liability by its articulated legitimate business reason for imposing its RIF of the Grievant's position, because it would have taken the employment action anyways,

regardless of the protected union activity; (3) if not, what is the appropriate remedy? (Slip Op. No. 1348 at p. 4).

The Board noted that to determine whether the Agency violated D.C. Official Code § 1-617.04(a)(1), (3), or (5) by interfering, restraining, intimidating, or retaliating against an employee for engaging in a protected activity, the hearing examiner applied the test articulated by the National Labor Relations Board ("NLRB") in *Wright Line, Inc. v. Lamoureux*, 251 N.L.R.B. 1083, 1089 (1980), *enforced* 622 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).[1] Under *Wright Line*, a complainant has the burden to establish a *prima facie* showing that an employee's protected union activity was the motivating factor in the employer's decision to discharge him. *Id.* at 1090. To establish a *prima facie* case of a violation, the union must show that the employee (1) engaged in protected union activity; (2) the employer knew about the employee's protected union activity; (3) there was anti-union animus or retaliatory animus by the employer; and (4) as a result, the employer took an adverse employment action against the employee. *Doctors Council of the District of Columbia v. D.C. Commission on Mental Health Services*, 47 D.C. Reg. 7568, Slip Op. No. 636 at p. 3, PERB Case No. 99-U-06 (2000); *see also D.C. Nurses Association v. D.C. Health and Hospitals Public Benefit Corporation*, 46 D.C. Reg. 6271, Slip Op. No. 583, PERB Case No. 98-U-07 (1999). The employer's employment decision must be analyzed according to the totality of the circumstances, including the history of anti-union animus, the timing of the employment action, and disparate treatment. *Doctors Council*, Slip Op. No. 636 at 3.

If the complaint establishes a *prima facie* case of a violation, the employer may rebut the inference by establishing, by a preponderance of the evidence, that the employment action would have occurred regardless of the protected union activity. *Wright Line*, 251 N.L.R.B. at 1089. The employer must show that it had a legitimate business reason for the employment action, and that it would have initiated the employment action even in the absence of protected union activity. *Wright Line*, 251 N.L.R.B. at 1089; *D.C. Nurses Association*, Slip Op. No. 583.

The Board affirmed the Hearing Examiner's conclusions that: (1) the Grievant was engaged in protected union activity when he pursued a grievance against the Agency for requiring him to perform work outside of his job description; (2) the Agency was aware of this protected union activity; and (3) anti-union animus and retaliatory animus existed on the part of the Agency. (Slip Op. No. 1348 at p. 5). However, the Board stopped short of affirming the Hearing Examiner's conclusion that the Agency's anti-union animus was the basis for RIF-ing the Grievant because it found that the Hearing Examiner's reasoning for her conclusion that the Agency's legitimate business reason was pretextual was unclear. *Id.* at 7-8. The Report stated that "there is no legitimate business reason for the statements made in the March 19 grievance meeting – no way to take back the chilling effect and potential loss of confidence those illegal statements made on March 19." *Id*; citing Report at 28. While the March 19 statements

[1] The Board has previously adopted the NLRB's reasoning in *Wright Line*. *See Bagenstose v. D.C. Public Schools*, 38 D.C. Reg. 4154, Slip Op. No. 270, PERB Case Nos. 88-U-33 and 88-U-34 (1991); *Ware v. D.C. Department of Consumer and Regulatory Affairs*, 46 D.C. Reg. 3367, Slip Op. No. 571, PERB Case No. 96-U-21 (1998).

represent a separate unfair labor practice violation of intimidation and undermining the Union[2], the issue in the *Wright Line* burden-shifting analysis is whether the Agency demonstrated a legitimate business reason for the employment action (i.e.: the RIF). *Id*; citing *Rodriguez v. D.C. Metropolitan Police Department*, Slip Op. No. 954, PERB Case No. 06-U-38 (July 8, 2010); *Fraternal Order of Police/Department of Corrections Labor Committee v. D.C. Department of Corrections*, Slip Op. No. 888, PERB Case Nos. 03-U-15 and 04-U-03 (September 30, 2009).

In Slip Op. No. 1348, the Board affirmed the Hearing Examiner's determination that the Union made a *prima facie* showing that the Grievant's RIF was the result of anti-union and retaliatory animus. *Id.* at p. 8. However, the Board noted that the burden then shifted to the Agency, which produced evidence that although anti-union and retaliatory animus existed, the Grievant was RIF-ed for economic reasons, and that it was then up to the Hearing Examiner to analyze the evidence of the Agency's legitimate business reason to determine if it balanced the Union's *prima facie* showing. *Id.* The Board found that the Hearing Examiner's Report included no analysis of the Agency's evidence of its legitimate business reason for taking the employment action against the Grievant, and remanded that question back to the Hearing Examiner. *Id.*

B. Remand Report

In the Remand Report, the Hearing Examiner considers the Agency's allegation that its legitimate business reason for including the Grievant as part of the RIF was "budgetary restraints." (Remand Report at 6). The Hearing Examiner notes the Agency's contention that she omitted certain pieces of evidence from her factual findings, and failed to consider "critical evidence" regarding the Agency's legitimate business reasons for the RIF. *Id.* The omitted evidence was:

> (1) On June 25, 2009, a second gap closing measure was imposed; (2) [The Agency] had one week to cut its budget by another 10%; (3) In the first round of budget cuts, [the Agency] had eliminated all vacant positions; (4) In round two the Agency was forced to cut nonessential employees; and (5) Prior to the imposition of round two, the Agency had no intention of conducting a RIF or eliminating [the Grievant's] position.

Id. The Hearing Examiner contended that "irrespective of the fact that a detailed discussion (focusing on each of the five (5) above enumerated items) was not set forth evaluating each one individually," she did consider each of the Agency's allegations. *Id.*

The Hearing Examiner first considered Agency Exhibit 1, which was a series of e-mails introduced at the hearing to show that the Agency was notified of a need to further reduce its

[2] In Slip Op. No. 1348 the Board concluded that the Agency violated the CMPA by making statements that threatened and undermined the Union. *Id.* at 8-9. The Agency did not contest this determination in its Exceptions or Remand Exceptions.

budget. (Remand Report at 7). The Hearing Examiner "did not assign substantial weight to the Agency's evidence or elevate the information contained in this exhibit to the level that merited their being considered as one or more of her findings of fact." *Id.* The Hearing Examiner goes on to state that when Agency Exhibit 1, which she describes as a "string of unauthenticated emails commencing June 2009" and "introduced to show [the Agency] was notified in June 2009 to make an addition 10% cut to fill the gap in 2010," was accepted into evidence, she admitted it over the Union's objection that it was "double hearsay." *Id.* The Hearing Examiner notes that she:

> explained on the record that she had decided to admit the hearsay evidence (string of emails) for whatever limited value she deemed appropriate to assign it during her evaluation; regarding whether there was a violation of the statute. At no time did the Examiner state she accepted the document for the truth of the hearsay information stated therein; nor did she infer or assert that she considered Agency Exhibit 1 to have a sufficiently high level of competence so as to merit it being considered to contain competent substantiated statements that she would adopt as a finding of fact.

(Remand Report at 8). In addition to the e-mails in Agency Exhibit 1, the Hearing Examiner considered the testimony of two Agency managers "who not only were directly involved in making the RIF decision; but also had interacted in a non-neutral, challenged manner with the Grievant and/or his Union." *Id.* The Hearing Examiner concluded that the e-mails in Agency Exhibit 1 and the testimony were "not corroborated or substantiated by any credible, neutral, independent source," and that she found them not to be credible. *Id.* Further, the Hearing Examiner noted that no "substantiating budget or financial information was authenticated and entered in evidence at the hearing." (Remand Report at 8-9).

Next, the Hearing Examiner discussed her evaluation of the direct testimony of the Agency's director, Dr. Pierre-Louis, that she had initially tried to eliminate vacant positions, but the second "gap closing measure" had required her to include the Grievant and three other positions in the RIF, and that prior to the second "gap closing measure" there had been no intention to RIF the Grievant's position. (Remand Report at 9). The Hearing Examiner concluded that "it was not substantiated on the record that the Agency only had one week to cut the budget by ten (10%) percent," and that the Agency failed to submit into evidence "signed authenticated notices" advising them of the need to further reduce its budget, "nor documents made in the normal course of business, i.e., substantiated for example by testimony of the keeper of the record or the generator of the correspondence/reduction notice." (Remand Report at 9-10). Further, the Hearing Examiner found that there was "no corroborating testimony from a person who issued the alleged, 'cut the budget in one week notice.'" (Remand Report at 10). The Hearing Examiner went on to conclude that she considered the Agency's legitimate business reason, but did not adopt it "as an authenticated finding of fact" because "[n]o one who generated that order or imposed such a requirement on the Agency (to cut the budget further in one week) was called to testify at the hearing," "[n]o signed authenticated document was submitted in the record from such a person in the Mayor's Office or Budget Office," "[b]udget

information was marked as Agency Exhibit 4, but not admitted into evidence," and that the only evidence of the Agency's budget was the "bare assertions of the proponents of the challenged act; *i.e.*, the two people who actively made the decision to RIF the Grievant." *Id.*

The Hearing Examiner then moved to her consideration of the burden shifting portion of the *Wright Line* test. (Remand Report at 11). The Hearing Examiner stated that she considered and evaluated the Agency's legitimate business reason, as set forth in both documentary and testimonial evidence, and noted that it was required to balance, not outweigh, the Union's *prima facie* case of retaliation. (Remand Report at 13-14). The Hearing Examiner concluded that the Agency's legitimate business reason does not balance the Union's *prima facie* case because the Agency "did not produce credible substantiated evidence to balance the evidence submitted by the Union." (Remand Report at 14). Instead, the Hearing Examiner found that "the preponderance of the evidence shows that the Grievant's position was targeted by the RIF," as shown by "attempts to make good on a threat" to the Grievant, that the Agency Director was "angered and embarrassed" when the Grievant would not drive her friend to Walter Reed Hospital, and when an Agency supervisor was "disrespectful of the Union" on the March 19 phone call. (Remand Report at 15-16).

In a section entitled "No Prior History of Problems," the Hearing Examiner discussed the Agency's contention (presumably in its exceptions to her original Report and Recommendation, as this allegation was not raised in the Agency's Remand Exceptions), that there was no history of prior anti-union animus. (Remand Report at 16). The Hearing Examiner states that she had the opportunity to "observe the parties' demeanor and evaluate their overall responses, reactions and retractions," and that she found that "the reported events were sufficient to override the purported business related reason for [the Grievant's] removal from [Agency] rolls." (Remand Report at 17). The Hearing Examiner goes on to state that the totality of the circumstances:

> provides substantial evidence that Ms. Fields threatened to RIF [the Grievant], if he insisted on pursuing his grievance, wherein he legitimately challenged a condition of his employment, i.e. being asked to chauffer bodies that were not deceased. Statutory rights were violated when she not only threatened to RIF him, but also when he encountered discouragement precipitated by Ms. Field's having challenged (in his presence) the representational authority of the certified exclusive Union. The Examiner found there was clearly an atmosphere of not only disrespect for the Union (which represented only one employee within the Agency's walls), but also there was anti-union animus that provided the foundation for the Agency's action. This was not confined to two isolated matters. Rather, it permeated the events challenged in the complaint and apparently continued beyond the March 19 meeting and August 28, 2009 RIF notice, to also encompass the matter of [the Agency's] reported failure to notify the Union before issuing the notice to the Local 2978 member-employee of the imminent RIF.

(Remand Report at 18). The Hearing Examiner went on to state that she agreed with the Union's contention that the Agency's "failure to notify Local 2978 – as opposed to the Union's notice coming (to the Union) from the employee-member serves to erode the perception of the Union's effectiveness and discourages Union membership," as well as making the Union appear ineffective. *Id.*

In the next section of the Remand Report, titled "Audit Evidence," the Hearing Examiner disagrees with the Agency's argument that its request for an audit nullifies the Union's assertion that the RIF was motivated by the filing of the grievance. (Remand Report at 18). However, she noted that her conclusion "does not evaluate whether the RIF was properly conducted, or whether the audit cancellation was connected to the challenged RIF decision," but is mentioned "to provide insight into the totality of the circumstances." (Remand Report at 19).

Finally, in a section entitled "Motivation and Pretext," the Hearing Examiner states:

> The Board has acknowledged that the determination regarding motivation is indeed a difficult task. However, based on the totality of the circumstances and for reasons set forth above, the Examiner finds [the Agency's] stated business related reasons for the Grievant's termination/RIF were not sufficient to balance the scale; i.e., did not "balance" the Union's *prima facie* showing. The Hearing Examiner finds that there is no showing on the record that this particular position would have had to be cut; absent Grievant's protected Union activity. As the Union points out – [the Agency's Director] admittedly had recently engaged in aggressive efforts to secure this newly reclassified position and have [the Grievant] return to the Agency. It is unlikely that within such a short period of time, the duties diminished to 50% of his assigned tasks in a newly reclassified position description. The timing is suspect. His refusal to act as her personal chauffer and his challenge regarding this duty by filing a grievance, precipitated the problem. The momentum shifted with the March 19 grievance meeting. The Agency manager's credibility problem also is placed on the scales during the Hearing Examiner's evaluation of its articulated business reason(s) for [the Grievant's] termination. There was substantial evidence to show his selection for the reduction in force was a violation of the CMPA.

(Remand Report at 19-20). As such, the Hearing Examiner concluded that the Agency's legitimate business reason did not balance the Union's *prima facie* case, and that the Agency violated the CMPA by threatening the Grievant with termination and undermining the Union in his presence. (Remand Report at 20-21).

C. Agency's Remand Exceptions

In its Remand Exceptions, the Agency contends that the Hearing Examiner's finding that "it was not substantiated on the record that the Agency only had one week to cut the budget by ten percent" should be rejected, and that the Hearing Examiner's finding that the Agency lacked a legitimate business reason for the RIF "because the evidence submitted was unauthenticated" is irrational and unsupported by the evidence of this case. (Remand Exceptions at 4). The Agency asserts that it submitted documentary and testimonial evidence clearly showing that the Agency, along with several other District agencies, was required to cut its budget by ten percent within one week. *Id.* In support of this allegation, the Agency notes that its evidence of budgetary constraints consisted of an e-mail, documents from the Office of the Mayor approving the RIF, and testimony from the Agency's Chief of Staff and Director. *Id.* The June 25, 2009, e-mail was sent to all agency directors from the Office of the City Administrator, and directed the agency directors "to identify 10 percent cut for FY 2010 by next Tuesday," and that the proposed reductions were due by June 30, 2009." *Id*; citing Remand Exceptions Ex. 1. While the Hearing Examiner determined that the e-mail was not authenticated, the Agency contends that the e-mail was authenticated by the Agency director, who testified that she received the e-mail and had firsthand knowledge that the e-mail was what it purported to be. (Remand Exceptions at 5).[3] The Agency states that the Union did not present any evidence challenging that the Agency had until June 30 to reduce its budget, nor does the record contain contradictory evidence, and thus the Agency's e-mail evidence is undisputed. *Id.*

The Agency contends that "[i]n the face of clear and undisputed evidence, the Hearing Examiner clings to her determination that the Agency did not have to cut its budget," and as such, "did not have a legitimate business purpose for engaging in a RIF." (Remand Exceptions at 5-6). The Agency finds the Hearing Examiner's conclusion questionable "because, according to her, she admitted evidence into the record that is unauthenticated." (Remand Exceptions at 6). The Agency notes that at the hearing, the Union's attorney stated "I don't have any dispute about [the e-mail's] authenticity," and questions why the Hearing Examiner disputed the authenticity of the e-mail when the Union did not. *Id*; *citing* Tr. 42.

As for the Hearing Examiner's assertion that information on the Agency's budget was never admitted into evidence at the hearing and caused the Hearing Examiner to discount the Agency's evidence of its budgetary constraints, the Agency points to a statement by the Hearing Examiner at the hearing that:

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[3] In support of its contention that the e-mail was authenticated, the Agency cites to Federal Rule of Evidence 901, which states in relevant part:

> (a) To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that *the item is what the proponent claims it is*.
>
> (b) Examples. The following are examples... of evidence that satisfies the requirement: (1) *Testimony of a Witness with Knowledge*. Testimony that an item is what it is claimed to be.

(Remand Exceptions at 5) (emphasis in original).

> It's highly unlikely that I'm going to look at a lot of information about why there was a RIF. It's highly unlikely that I'm going to look at a lot of information about the financial aspects or the personnel aspects of a RIF. I have to look at a certain amount of it because of the fact that the alleged violation happened when someone was exercising their right to be represented in a grievance related procedure in which they indicate in their complaint that the threat was I will RIF you...And I understand that your legitimate defense is you're articulating a nondiscriminatory or non-violating reason why he was; and to that extent, I must allow the agency to defend itself but I am not going to get reams of paper about your budget and all of this. I will take an overview of information. So that's why I am allowing you to do that.

(Remand Exceptions at 6-7; citing Tr. 114-115). The Agency asserts that the Hearing Examiner "cannot rely upon the fact that other evidence was not submitted into the record when she stated that she would not read or consider it," and notes that the budget information was a public document that could be accessed online. (Remand Exceptions at 7).

Additionally, the Agency alleges that during the hearing, as it sought to establish evidence of its budgetary constraints, the Hearing Examiner stated "I have to...allow some information in because they're going to beat the bull on the head with all kinds of information to show that it was legitimate. We spend more time arguing about not letting them in and then having the *arbitrator not look at it* than to just let them put it in *and not have the arbitrator look at it*. Either way, I don't look at it. So, let's go; let's move." (Remand Exceptions at 6, n. 2; citing Tr. at 113) (emphasis added by Respondent). The Agency contends that these statements indicate bias and a lack of objectivity by the Hearing Examiner, and that the Hearing Examiner admitted evidence into the record which she knew she would not consider. (Remand Exceptions at 6, n. 2). The Agency "reasserts its claim that it did not get a fair hearing," and references its exceptions to the original Report[4]. *Id.*

The Agency further alleges that the Hearing Examiner's reliance on the Union's objection to the e-mails as hearsay should not be dispositive because the e-mail speaks for itself. (Remand Exceptions at 7). The Agency asserts that the Union's objection does not make the evidence unauthenticated or competing, and that the Agency presented unopposed testimonial evidence regarding the e-mail and other budgetary mandates. *Id.* The Agency states that the

[4] In footnote 5 of its exceptions to the original Report, the Agency stated:

> It should go without saying that the Respondent is entitled to a fair hearing. The purpose of the hearing and the R&R is to present an objective set of facts and recommendations for the Board to consider. Under the above facts, it is difficult to ignore the appearance of an unusually strong tendency of the R&R to favor [the Union's] position. The decision is so slanted that critical facts were ignored and not even considered in the R&R. Not to mention, the [Hearing Examiner's] assertion that this case is a *pro se* violation of the § 1-617.04(a)(1) of the CMPA. This is a legal fiction as no such violation exists.

evidence showing it was required to cut another ten percent of its budget is "critical" and "undisputed" evidence, and that to find otherwise "eliminates the Agency's legitimate business reason for engaging in the RIF." *Id.* The Agency asserts that the Hearing Examiner's findings are contrary to the evidence in the record and she failed to sufficiently analyze the evidence of a legitimate business reason for the employment action against the Grievant. (Remand Exceptions at 7-8).

D. Union's Remand Opposition

In its Remand Opposition, the Union characterizes the Agency's Remand Exceptions as "nothing more than argument that the Hearing Examiner should have interpreted the [Agency's] evidence differently and more favorably to the Agency." (Remand Opposition at 2). The Union states that the Agency points to nothing in the hearing transcript showing that it preserved its objections for review by the Board, and that "on the penultimate question of its motive simply repeats that it did not act unlawfully despite the Hearing Examiner specifically found shows otherwise, evidence that the [Agency] does not contest and in some case concedes." *Id.* The Union contends that even if the Hearing Examiner had given credence to the Agency's evidence regarding the budget cuts, "it has no effect on the question of why the [Agency] decided to address the budget cut by running a RIF in which it selected [the Grievant] for separation." *Id.*

First, the Union contends that the Hearing Examiner properly concluded that the motivation behind the RIF was unlawful retaliation against the Grievant for exercising his right to raise complaints about his working conditions through the grievance procedure. (Remand Opposition at 5). The Union asserts that the Agency's evidence regarding its legitimate business reason "shows only that the [Agency] had a budget to meet and was asked by the Mayor to develop steps the Agency could take to stay within its budget," and that the evidence "did not require a RIF, nor did it require that a RIF be run immediately." *Id.* Further, the Union contends that the "evidence which the Hearing Examiner revisits and on which the [Agency] bases its Exceptions does not speak in any way to who and how the critical decision – the one which the Union contends and the Hearing Examiner concludes was made for an unlawful reason – was made." (Remand Opposition at 6). As such, the Union urges the Board to defer to the Hearing Examiner's "lengthy review of the full record evidence" that led to her conclusion that the Agency violated the CMPA. *Id.*

The Union asserts that it is clear from the Agency's evidence that the decision of how to meet the budgetary constraints, particularly the decision to do so through Grievant's RIF, were made by the Agency Director and her chief of staff "just after the Chief of Staff explicitly threatened [the Grievant] with a RIF if he filed a grievance." (Remand Opposition at 7). The Union states that the Hearing Examiner does not question the reality of the budgetary constraints, but rather that the Agency was "directed by the Mayor or had no other option than to run a RIF," and specifically to RIF the Grievant. *Id.* The Union asserts that the Hearing Examiner properly found that the evidence of the budget cuts alone is not enough to explain why the Agency ran a RIF and selected the Grievant to be separated, and that "[r]eams of documents showing budget cuts and constraints do not prove that a RIF was directed and dictated from outside the [Agency], or that it was the [Agency's] only option." *Id.* The Union finds no reason to question the

Hearing Examiner's disbelief that notwithstanding the budget constraints faced by the Agency, the Agency had no choice but to RIF the Grievant. (Remand Opposition at 8).

Additionally, the Union asks the Board to bear in mind that in its Remand Exceptions, the Agency "concedes that it unlawfully threatened and coerced [the Grievant] and the Union with a RIF in the face-to-face exchanges with the [Agency's] Chief of Staff shortly before the RIF was ordered by the [Agency's Director]." (Remand Opposition at 8). The Union notes that these acts were particularly convincing to the Hearing Examiner, and that the Hearing Examiner noted evidence that the Agency Director admitted at the hearing that she had personally lobbied for the creation of the Grievant's position two years prior, and "the palpable anger of the [Agency's Director] towards [the Grievant] over him asking for directions one time when he was driving the [Director's] friend, and her sense that the [Director] became vindictive after that." (Remand Opposition at 8-9). The Union states that the Hearing Examiner also noted her "unfavorable sense of the testimony" of the Chief of Staff when she "tried to dodge on the stand" that she had threatened the Grievant if he persisted in complaining about his working conditions. (Remand Opposition at 9). The Union contends that this evidence is more relevant and probative of the Agency's motivation for the RIF of the Grievant than the Agency's evidence of its budgetary constraints. *Id.*

Finally, the Union asserts that it is aware of no basis for the Agency's claim of bias on the part of the Hearing Examiner, and assures the Board that it neither saw nor is aware of any evidence of this bias. (Remand Opposition at 10).

III. Discussion

A. Standard of Review

The Board will adopt the findings and conclusions of a hearing examiner so long as they are reasonable, supported by the record, and consistent with Board precedent. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 11371, Slip Op. No. 1302 at p. 18, PERB Case Nos. 07-U-09, 08-U-13, and 08-U-16 (2012). Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the hearing examiner. *Hoggard v. D.C. Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at p. 3, PERB Case No. 95-U-20 (1996).

B. Allegations of Hearing Examiner Bias

Board Rule 557.1 provides: "A hearing examiner...shall withdraw from proceedings whenever that person has a conflict of interest." The Agency asserts that the Hearing Examiner exhibited bias and a lack of objectivity during the unfair labor practice hearing, evidenced by certain statements from the Hearing Examiner, as well as allegations from its original Exceptions that the original Report showed an "unusually strong tendency" to favor the Union's position, and was "so slanted that critical facts were ignored and not even considered" in the original Report. (Remand Exceptions at 6-7; Exceptions at 7, fn. 5).

Here, the Respondent has not alleged that the Hearing Examiner had a conflict of interest, nor was a motion to disqualify the Hearing Examiner brought during or after the unfair labor practice hearing. The mere assertion that the Hearing Examiner expressed or implied hostility to the Agency's position is insufficient to disqualify her as the Hearing Examiner, or to sustain an allegation of bias. *See American Federation of Government Employees, Local 631 v. D.C. Office of Zoning, et al.*, Slip Op. No. 1103 at p. 4-6, PERB Case Nos. 04-UM-01 an 04-UM-02 (March 16, 2011). Likewise, none of the examples cited by the Agency establish that the Hearing Examiner's temperament or opinions expressed during the hearing or in her Report precluded the Agency from being afforded a fair hearing. *See District of Columbia Nurses Ass'n v. District of Columbia Health and Hospitals Public Benefit Corp.*, 46 D.C. Reg. 245, Slip Op. No. 560 at p. 1, fn. 2, PERB Case No. 97-U-16 (1998); *see also Pratt v. D.C. Dep't of Administrative Services*, 43 D.C. Reg. 1490, Slip Op. No. 457, PERB Case No. 95-U-06 (1995) (A party is not deprived of a fundamentally fair hearing, nor is an entire decision tainted, when each party has been provided an adequate opportunity to present its evidence and arguments.). Therefore, the Agency's allegations of Hearing Examiner bias are dismissed.

C. *Wright Line's* Burden-Shifting Analysis

In Slip Op. No. 1348, the Board agreed with the Hearing Examiner that the Union made a *prima facie* showing that the Grievant's RIF was the result of anti-union and retaliatory animus. (Slip Op. No. 1348 at p. 8). Specifically, the Board found that the Union showed that the Grievant engaged in protected union activity, the Agency was aware of the Grievant's protected union activity, there was anti-union animus or retaliatory animus by the Agency, and as a result, the Agency took an adverse employment action against the Grievant. *Id.* at p. 4.

Once the Union established a *prima facie* case of retaliation, the burden shifted to the employer to rebut the inference of retaliation by showing, by a preponderance of the evidence, that the RIF would have occurred regardless of the protected union activity. *Id.* The Board noted that based upon its precedent, "the burden shifts to the employer to produce evidence of a non-prohibited reason for the action against the employee. This burden, however, does not place on the employer the onus of proving that the unfair labor practice did not occur." *Id.* at 7-8; citing *FOP/DOC Labor Committee*, Slip Op. No. 888 at p. 4. It was the responsibility of the Hearing Examiner to analyze the evidence of the Agency's legitimate business reason to determine if the Agency produced evidence "to balance, not [necessarily] to outweigh, the evidence" presented by the Union. Slip Op. No. 1348 at p. 8; citing *FOP/DOC Labor Committee*, Slip Op. No. 888 at p. 4.

The Hearing Examiner states that she examined the evidence submitted by the Agency regarding the budgetary concerns necessitating the RIF of the Grievant ("Agency Exhibit 1"). (Remand Report at 7-11). According to the Hearing Examiner, this evidence consisted of "a series of emails introduced to show [the Agency] was notified of the need to further reduce its budget; to fill the gap in 2010." (Remand Report at 7). The Hearing Examiner noted that she admitted the evidence over the Union's repeated objections that the e-mails constituted "double hearsay," but that "[a]t no time did the Examiner state she accepted the document for the truth of the hearsay information stated therein; nor did she infer or assert that she considered Agency

Exhibit 1 to have a sufficiently high level of competence so as to merit it being considered to contain competent substantiated statements that she would adopt as a finding of fact." (Remand Report at 7-8). In addition to Agency Exhibit 1, the Hearing Examiner considered the testimony of two Agency managers whom she described as individuals who "not only were directly involved in making the RIF decision[,] but also had interacted in a non-neutral, challenged manner with the Grievant and/or his Union." (Remand Report at 8). The Hearing Examiner concluded that the testimony and Agency Exhibit 1 was not corroborated or substantiated by any credible, neutral, or independent source, and that she did not assign substantial weight to the evidence. *Id.* She also found it noteworthy that the Agency did not introduce substantiating budget or financial information into evidence at the hearing. (Remand Report at 8-9).

In the instant case, the Agency disagrees with the Hearing Examiner's decision to discount the probative value of the evidence in Agency Exhibit 1, and her finding that the testimony of the Agency officials regarding the Agency's legitimate business reason was not credible. (Remand Exceptions at 7-8). A hearing examiner has the authority to determine the probative value of evidence and draw reasonable inferences from that evidence. *See Hoggard*, Slip Op. No. 496 at p. 3 (Issues concerning the probative value of evidence are reserved to the Hearing Examiner.); *see also Hatton v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995). The Board routinely rejects challenges to a hearing examiner's findings based on competing evidence, the probative weight accorded to evidence, and credibility resolutions. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 59 D.C. Reg. 11371, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (2012); *see also American Federation of Government Employees, Local 2741 v. D.C. Dep't of Recreation and Parks*, 46 D.C. Reg. 6502, Slip Op. No. 558, PERB Case No. 98-U-16 (1999). The Hearing Examiner determined that the Agency's evidence on its legitimate business reason was not "credible substantiated evidence that merited the Examiner elevating it to a level that she was constrained to assign substantial weight and adopt as her own finding of fact." (Remand Report at 8). Pursuant to the precedent cited above, the Agency's challenge to the Hearing Examiner's findings based on the probative weight of evidence and credibility resolutions must be rejected.

Additionally, the Agency challenges the Hearing Examiner's determination that the e-mails comprising Agency Exhibit 1 were unauthenticated. (Remand Exceptions at 4-6). Board Rule 550.16 states: "In all hearings before Hearing Examiners, strict compliance with the rules of evidence applied by the courts shall not be required. The Hearing Examiner shall admit and consider proffered evidence that possesses probative value. Evidence that is cumulative or repetitious may be excluded." The Board affords hearing examiners "many powers and much latitude" to conduct hearings, and that latitude extends to the rules of evidence during an unfair labor practice hearing. *See International Association of Firefighters, Local 36 v. D.C. Dep't of Fire and Emergency Medical Services*, 50 D.C. Reg. 5041, Slip Op. No. 696 at p. 2, fn. 9, PERB Case No. 00-U-28 (2002). Consistent with this latitude, the Board will not second-guess the Hearing Examiner's finding that the e-mails in Agency Exhibit 1 were unauthenticated.

Finally, the Agency contends that the Hearing Examiner cannot rely upon the fact that evidence of the Agency's budget was not submitted into the record when she stated during the

hearing that she would not consider or read it. (Remand Exceptions at 6-7). At the hearing, the Hearing Examiner stated:

> It's highly unlikely that I'm going to look at a lot of information about why there was a RIF. It's highly unlikely that I'm going to look at a lot of information about the financial aspects or the personnel aspects of a RIF. I have to look at a certain amount of it because of the fact that the alleged violation happened when someone was exercising their right to be represented in a grievance related procedure in which they indicate in their complaint that the threat was I will RIF you... And I understand that your legitimate defense is you're articulating a nondiscriminatory or non-violating reason why he was; and to that extent, I must allow the agency to defend itself but I am not going to get reams of paper about your budget and all of this. I will take an overview of information. So that's why I am allowing you to do that.

(Tr. 114-115). Despite the Hearing Examiner's implication that to do so would be futile, there is no evidence in the transcript that the Agency attempted to admit evidence of its budget into the record, or that the Hearing Examiner refused to accept such a proffer. Accordingly, the Board must deny this exception.

Based upon her evaluation of the Agency's evidence and testimony regarding its legitimate business reason for the Grievant's RIF, the Hearing Examiner determined that the Agency's evidence failed to balance the Union's *prima facie* showing. (Remand Report at 12-16). Examining the motivation of the Agency officials involved in the case, the Hearing Examiner determined that the preponderance of the evidence showed that the Grievant's position was targeted, and that the Agency's actions illustrated anti-union animus which "permeated the events challenged in the complaint and apparently continued beyond the March 19 meeting and August 28, 2009, RIF notice." (Remand Report at 15, 18). After examining the relationship between the Grievant and the Agency officials involved in the RIF, as well as the timing of the RIF, the Hearing Examiner concluded that the Agency had failed to prove that the Grievant's position had to be cut, absent the Grievant's protected union activity. (Remand Report at 19-20). The Board finds that the Hearing Examiner's conclusions are reasonable, supported by the record, and consistent with Board precedent. See *Wright Line*, 251 N.L.R.B. at 1089; *D.C. Nurses Association*, Slip Op. No. 583 at 1; *Doctors Council*, Slip Op. No. 636 at 3.

D. Remedy

The Hearing Examiner recommended that the Board find that the Agency violated D.C. Official Code § 1-617.04(a)(1), (3), or (5) by interfering, restraining, intimidating, or retaliating against an employee for engaging in a protected activity, and ordered a notice posting. (Remand Report at 21). The Board adopts this recommendation. The Hearing Examiner notes that because the Grievant's position was eliminated, she "is not certain to what position [the Grievant] can be placed, if any, for a make whole remedy," and recommended that the parties

submit written proposed remedies. *Id.* Accordingly, the parties will brief the question of an appropriate make whole remedy within thirty (30) days of the issuance of this Decision and Order. The Board will then issue a supplemental ruling on the matter of an appropriate make whole remedy.

ORDER

1. The Hearing Examiner's Remand Report and Recommendation is affirmed.

2. The District of Columbia Office of the Chief Medical Examiner shall cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by D.C. Official Code § 617.04(a)(1), (3), and (5) by retaliating against employees for engaging in protected activity.

3. The District of Columbia Office of the Chief Medical Examiner shall conspicuously post, within ten (10) days from the issuance of this Decision and Order, the attached Notice where notices to employees are normally posted. The Notice shall remain posted for thirty (30) consecutive days.

4. The District of Columbia Office of the Chief Medical Examiner shall notify the Public Employee Relations Board in writing within fourteen (14) days from the issuance of this Decision and Order that the Notice has been posted accordingly.

5. The parties will submit simultaneous briefs addressing an appropriate make whole remedy. The briefs must be filed no later than 11:59 p.m. on May 2, 2014, via the Board's File & ServeXpress electronic filing system.

6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 2, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 09-U-62 was transmitted to the following parties on this the 2nd day of April, 2014.

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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA OFFICE OF THE CHIEF MEDICAL EXAMINER ("OCME"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1457, PERB CASE NO. 09-U-62 (April 2, 2014).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered OCME to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1), (3), and (5) by the actions and conduct set forth in Slip Opinion No. 1457.

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA") by retaliating against employees for engaging in protected activity.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

District of Columbia Office of the Chief Medial Examiner

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 2, 2014

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 14-A-03
v.	Opinion No. 1458
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner District of Columbia Metropolitan Police Department ("Petitioner" or "MPD") filed the above-captioned Arbitration Review Request ("Request"), seeking review of Arbitrator Michael Murphy's Arbitration Award ("Award"). Petitioner asserts that the Arbitrator was without authority or exceeded his jurisdiction in granting an Award which reversed Grievant Andre Powell's termination and reinstated him with full back pay. (Request at 6).

Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee filed an Opposition to the Arbitration Review Request ("Opposition"), denying the Petitioner's allegations and contending that MPD failed to state a ground upon which the Board may modify the Award. (Opposition at 3). The Request and Opposition are now before the Board for disposition.

II. Discussion

A. Award

a. Findings of fact

The Arbitrator found that the material facts in this matter were not in dispute. (Award at 1). The Arbitrator found that in September 2004, the Grievant challenged a speeding ticket received in the DC area by claiming that he had been on official police business at the time he received the ticket and producing an MPD daily activity form to corroborate his claim. *Id.* When it was discovered that the Grievant had lied about being on official police business at the time of the speeding ticket, he was issued a Notice of Intent to Remove. *Id.* The Grievant agreed to a settlement providing for a 45-day suspension without pay in lieu of termination, but this agreement was set aside by the Assistant Chief of Police, and the Grievant was notified that he would be terminated effective February 4, 2005. *Id.*

The termination advanced to arbitration, and on January 9, 2006, an arbitrator ordered the Grievant reinstated with back pay for the reason that MPD had violated the so-called "55-day Rule." (Award at 2). MPD appealed the arbitrator's ruling to PERB, which ruled against MPD on April 20, 2007. (Award at 3; Slip Op. No. 1348).

Prior to the Board's decision, the Grievant was stopped for speeding in Georgia on February 5, 2007. (Award at 3). During the stop, the Grievant mentioned his police background to the Georgia officer in the hopes that he would not be issued a speeding ticket. *Id.* The Grievant was "obviously a bit put out that no break was forthcoming. In so many words he suggested that if the situation were reversed, the least he, as a DC officer, would do is call Georgia to clarify the situation." *Id.* This interaction and the Grievant's Georgia driver's license caused the Georgia officer to check with the MPD, who informed him that the Grievant was not currently an active MPD officer. *Id.* The Grievant was subsequently arrested in Georgia for the crime of impersonating a police officer. *Id.*

Despite the Board's April 20, 2007, ruling upholding the Grievant's reinstatement to MPD, the Grievant was not reinstated until after he filed an enforcement petition in October 2007. (Award at 4). MPD then notified the Grievant that he would be reinstated effective March 3, 2008. *Id.* As a part of the reinstatement process, the Grievant disclosed his Georgia arrest for impersonating a police officer. *Id.* The Grievant was placed on administrative leave with pay while the Georgia arrest was under review. *Id.* On April 1, 2008, the Georgia authorities dismissed their case against the Grievant. *Id.* On June 2, 2008, the Grievant receive a Notice of Proposed Adverse Action from MPD. (Award at 5). The charges in the Notice of Proposed Adverse Action were sustained following an MPD Trial Board hearing, and the Trial Board recommended his removal. *Id.* On October 22, 2008, the Grievant's appeal of the Trial Board's recommendation was denied by the Chief of Police, and the matter proceeded to arbitration. *Id.* Instead of holding a hearing, the Arbitrator reviewed arbitration briefs, the record of the Trial Board hearing, and other exhibits provided by the parties. *Id.*

b. Analysis

The Arbitrator was asked to determine whether the Grievant was terminated for cause, and if not, what the appropriate remedy should be. (Award at 5). The Arbitrator noted that "[c]omponent parts of this question" included: (1) Whether sufficient evidence existed to support the alleged charges; (2) Whether MPD's conduct violated due process; and (3) Whether termination was an appropriate remedy. *Id.* The charges against the Grievant were:

> Charge No. 1: Violation of General Order Series 120, Number 21, part A-7 which provides:
> "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction." This misconduct is further defined as cause in the District Personnel Manual, Chapter 16, § 1603.4.
>
> Specification No. 1:
>
> In that on March 1, 2007, you were arrested for Impersonating an Officer by Newton County, Georgia Sheriff's Office, in violation of Georgia Code 16-10-23.
>
> Charge No. 2: Violation of General Order Series 120.21, Attachment A Part A-25, which reads:
> "Any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."
>
> Specification No. 1:
>
> In that on February 5, 2007, you were stopped by a sworn law enforcement officer of the Newton County, Georgia Sheriff's Office for traffic offenses. At that time you identified yourself as a sworn law enforcement officer.

(Award at 6). The Arbitrator determined that the case resolved around whether substantial evidence existed to sustain either of the two charges against the Grievant, and concluded that MPD had not met its burden of proof on either charge. (Award at 12).

After reviewing the videotape of the Grievant's traffic stop, the Arbitrator noted that the Grievant initially mentioned an affiliation with MPD, then went to state (with some indistinguishable pauses):

actions and comments during the Georgia traffic stop. (Award at 20). Thus, the Arbitrator stated that his "independent analysis of the traffic stop itself is also an important component of the determinations set forth" in his Award. *Id.* The Arbitrator further contends that arbitrators are not a "rubber stamp" for Trial Board credibility conclusions, and that the Trial Board's credibility findings lack substantial evidence. *Id.* The Arbitrator concluded that "[t]he Georgia authorities did not find any criminal conduct, the [A]rbitrator did not find any evidence of criminal conduct, and the non-criminal conduct of the [G]rievant does not by a preponderance of the evidence establish conduct unbecoming an officer or likely to besmirch the reputation of the force." *Id.*

After overturning the Trial Board's findings, the Arbitrator ordered the Grievant to be reinstated with full back pay and benefits, without any loss of seniority. (Award at 21).

B. MPD's Position on Appeal

MPD asserts that the Award exceeded the Arbitrator's authority because the Arbitrator disregarded the proper appellate standard of review. (Request at 6-7). Specifically, MPD contends that the Arbitrator examined the evidence on a *de novo* basis, improperly weighed the Trial Board's determination of the evidence against his own factual determinations, and erroneously rejected the Trial Board's credibility findings. (Request at 7).

In its Request, MPD includes a more detailed description of the Georgia traffic stop than is provided by the Arbitrator in the Award. MPD states:

> On February 5, 2007, Grievant was stopped by Sergeant Randy Downs in Newton County, Georgia, for speeding. Sergeant Downs approached Grievant, explained the reason for the stop and asked for identification. When questioned whether he lived in Georgia, Grievant replied that he had just bought a house in Georgia, but he was still living in DC. He then explicitly stated "I am a...DC officer...DC officer up there." Sergeant Downs asked for additional information, but Grievant replied that he did not have any. Sergeant Downs inquired where Grievant was employed because he did not believe that Grievant was a DC officer since he had a Georgia driver's license. Grievant stated that he was currently with the DC Police Department, but he was waiting to be called back to work because he had some problems in the department. As Grievant was signing the citation, he retorted "no courtesy down here in Georgia, huh? You come up to police week in DC anytime?" Sergeant Downs responded in the negative and Grievant replied "well, that's probably why." Sergeant Downs then remarked that Grievant did not have any identification that would prove he was a police officer. In response, Grievant argued that he would have attempted to verify Downs' place of employment had he pulled Downs over instead. Sergeant Downs

> reiterated that the citation did not mean Grievant was guilty of speeding and sent him on his way.

(Request at 3-4; internal citations to Trial Board R. omitted).

First, MPD contends that as an appellate tribunal, the Arbitrator was limited to determining whether there was substantial evidence in the record such that a reasonable person would have come to the same conclusion as the Trial Board. (Request at 7). Instead, the Arbitrator reviewed the Trial Board record *de novo* and rejected the Trial Board's decision because, based upon the Arbitrator's own review of the videotape, he believed that the Grievant's explanation regarding his status with MPD was ambiguous. (Request at 7-8).

MPD states that the Trial Board found that the Grievant identified himself as a DC police officer and asked for courtesy, and notes that it was uncontested that the Board did not issue its Decision and Order regarding the Grievant's first termination until more than two months after the traffic stop. (Request at 8; citing Trial Board R. at 35; 373-4). MPD contends that the Grievant's employment status with MPD was still in legal dispute at the time of the traffic stop, and that the Grievant admitted at the Trial Board hearing that he knew he was not employed with MPD at the time of the stop. (Request at 8; citing Trial Board R. at 201, 374). MPD asserts that "[b]ased upon the evidence and Grievant's own admission, the [Trial Board] found that Grievant falsely represented himself as a police officer when he stated 'I am a DC officer,'" and that the Trial Board's decision is thus based on substantial evidence in the record. (Request at 8).

Second, MPD alleges that even if there are alternative interpretations of the Grievant's traffic stop, the "mere fact that there may be substantial evidence to support a contrary conclusion reached by the tribunal does not establish that the tribunal's findings of fact were inadequate or erroneous." (Request at 9). MPD states that the Arbitrator reversed the Trial Board's decision because he disagreed with its conclusion regarding the Grievant's statements to the Georgia officer, "[d]espite conceding that the audio-video tape was less than clear" and that he had to review the tape multiple times to distinguish the conversation . *Id.* MPD asserts that a reviewing court is not entitled to reverse a decision simply because it is convinced it would have weighed the evidence differently had it been sitting as the trier of fact. *Id*; citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-4 (1985).

MPD notes that unlike the Arbitrator, the Trial Board gave more weight to the Grievant's initial statement of "I'm a D.C. officer" than his later explanation. (Request at 10). The Trial Board found that:

> The February 5, 2007, traffic stop...captures [Grievant] state to Sergeant Downs that he was a DC police officer. [Grievant] later stated he was on "admin" leave. After asking for some credentials that would identify [Grievant] as a police officer, [Grievant] stated that it was in his other car.

> [Grievant] did not take full responsibility for his actions as was evidenced by his testimony before the [Trial Board]. [Grievant] stated during testimony that he told Sergeant Downs that he was not on the Department. However, the video clearly shows [Grievant] identifying himself as a DC police officer. [Grievant] testified before the [Trial Board] that he told Sergeant Downs he was not on the Department. That statement was not captured on the police video.

(Request at 10; citing Trial Board R. at 374). MPD states that while the Arbitrator may have disagreed with the Trial Board regarding the weight of the Grievant's explanations, the Trial Board's decision "cannot be clearly erroneous when it is undisputed that Grievant explicitly stated that he was a police officer." (Request at 10). Further, MPD argues that the Grievant's subsequent comments that his police credentials were in his other car, as well as his statement that he would have attempted to verify the Georgia officer's place of employment had he pulled over the Georgia officer, clearly indicate the Grievant's intent to convey that he was currently an MPD officer at the time of the traffic stop. *Id.*

Finally, MPD contends that the Arbitrator improperly rejected the Trial Board's credibility determinations regarding the Grievant's testimony that he was trying to represent himself as "merely affiliated" with MPD. (Request at 10-11). MPD states that the Trial Board found that the videotape did not capture such a statement, and thus determined that the Grievant was not credible when he testified at the Trial Board hearing regarding his intentions during the traffic stop. (Request at 11). MPD notes that the D.C. Court of Appeals has "long emphasized the importance of credibility evaluations by the individual who sees the witness 'first-hand.'" *Id*; citing *Stevens Chevrolet, Inc. v. Comm'n on Human Rights*, 498 A.2d 546, 549-50 (D.C. 1985). MPD asserts that the Trial Board had the opportunity to hear the Grievant's testimony and cross-examine him during the hearing, and that an appellate tribunal must therefore defer to the Trial Board's determination based upon first-hand observations instead of disregarding those determinations because the Arbitrator was "in the unique position" of being able to review a videotape of the traffic stop. (Request at 11).

C. FOP's Position on Appeal

In its Opposition, FOP first argues that the Arbitrator's review of the Trial Board record was proper, and that the Award complies with the authority granted to him by the language of the parties' collective bargaining agreement ("CBA"). (Opposition at 3-4). FOP states that an arbitrator's contractual authority may be found in Article 19 E, Section 5 Number 4 of the parties' CBA:

> The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration.

(Opposition at 3). FOP also cites Article 12, Section 1, Subpart (b), which states: "Discipline may be imposed only for cause as authorized in D.C. Official Code § 1-616.51." *Id.* Based upon these CBA provisions, FOP argues that the Arbitrator was required to determine whether the Grievant had been disciplined for cause, and that "MPD's real complaint is that it is displeased with the result that was reached by Arbitrator Murphy after he engaged in the just 'cause' analysis." (Opposition at 4). FOP contends that mere disagreement with an arbitrator's ruling is not a basis upon which the Board may set aside an arbitration award. *Id.*

FOP concedes that MPD correctly identified the substantial evidence standard as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Opposition at 4-5). However, FOP states that MPD failed to include that the D.C. Court of Appeals "has held that evidence is not substantial if it is so 'highly questionable in the light of common experience and knowledge' that it [is] unworthy of belief.'" (Opposition at 5; citing *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1160 (1989). FOP asserts that the Arbitrator properly identified the "highly questionable" nature of the Trial Board's guilty findings, and thus his decision to overturn the Trial Board's conclusion was proper[1]. (Opposition at 5). FOP notes that the Arbitrator identified "several highly questionable actions" by the Trial Board, which established that the Trial Board's decision was not supported by substantial evidence, specifically failing to take the Grievant's entire conversation in context, illogically concluding that the Grievant attempted to state he was an active DC police officer when he gave the Georgia officer a Georgia driver's license, and failing to take into account MPD's animus against the Grievant stemming from the previous arbitration decision. (Opposition at 6).

Next, FOP contends that the Arbitrator's application of the record evidence is consistent with law. (Opposition at 6-7). Specifically, FOP states that the essence of MPD's Request is a challenge to the Arbitrator's evaluation of whether substantial evidence existed to sustain the Trial Board's decision, and reiterates that this is not a proper challenge to the Arbitrator's authority. (Opposition at 6). FOP notes that the parties bargained for the Arbitrator's analysis when they negotiated Article 19 of their CBA, and that the Arbitrator's analysis and decision on substantial evidence is exactly what the CBA requires. (Opposition at 7).

FOP discounts MPD's reliance on *Anderson*, arguing that while *Anderson* stands for the proposition that "where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous," in the instant case the existence of the videotape leaves only one permissible view of the evidence. (Opposition at 7-8; citing *Anderson*, 470 U.S. at 575). FOP asserts that due to bias against the Grievant, the Trial Board "ignored and manipulated the evidence in order to terminate him again from the Department," which was "highly improper and clearly erroneous as a matter of law." (Opposition at 8). FOP states that since the Arbitrator's decision "simply addresses these departmental errors," the Award is in accordance with law and should not be disturbed. *Id.*

[1] FOP contends that "[w]hile MPD only claims to file a challenge to the arbitrator's authority, its arguments read as though it is really challenging whether Arbitrator Murphy's decision violates law and public policy." (Opposition at 5, fn. 1). FOP calls this an "inappropriate and improper method in which to challenge an arbitrator's decision," and states that the Request should be dismissed. *Id.*

Finally, FOP argues that the Arbitrator's credibility assessments are proper due to the existence of the Georgia traffic stop videotape. (Opposition at 9-10). FOP asserts that MPD's Request ignores the fact that no credibility determinations are necessary because the videotape "captures exactly what was stated during the traffic stop," and substantial evidence does not support the Trial Board's credibility determinations. (Opposition at 9). FOP contends that the Award draws its essence from the parties' CBA, and that the Board may not substitute its own interpretation of the CBA for that of the Arbitrator. (Opposition at 10).

D. Analysis

a. Whether the Arbitrator was without or exceeded his jurisdiction

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) If "the arbitrator was without, or exceeded his or her jurisdiction"; (2) If "the award on its face is contrary to law and public policy"; or (3) If the award "was procured by fraud, collusion or other similar and unlawful means." D.C. Official Code § 1-605.02(6) (2001).

MPD asserts that the Arbitrator exceeded his jurisdiction by disregarding the proper appellate standard of review. (Request at 6-7). An arbitrator's authority is derived from the parties' CBA, and any applicable statutory and regulatory provisions. *D.C. Dep't of Public Works v. AFSCME, Local 2901*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). To determine whether an arbitrator has exceeded his or her jurisdiction and was without authority to render an award, the Board considers "whether the Award draws its essence from the collective bargaining agreement." *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 59 D.C. Reg. 3959, Slip Op. No. 925 at p. 7, PERB Case No. 08-A-01 (2010) (quoting *D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987)). The Board follows the U.S. Court of Appeals for the Sixth Circuit's guidance on what it means for an award to "draw its essence" from a collective bargaining agreement:

> Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator 'arguably construing or applying the contract?' So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made 'serious,' 'improvident' or 'silly' errors in resolving the merits of the dispute.

Michigan Family Resources, Inc. v. SEIU Local 517M, 475 F.3d 746, 753 (6th Cir. 2007). As the court noted in *Michigan Family Resources*, "[t]his view of the 'arguably construing' inquiry will no doubt permit only the most egregious awards to be vacated. But it is a view that respects the parties' decision to hire their own judge to resolve their disputes, a view that respects the finality clause in most arbitration agreements...and a view whose imperfections can be remedied

by selecting [different] arbitrators." 475 F.3d at 753-4. The Board has concurred with this view, stating that by submitting a matter to arbitration, "the parties agreed to be bound by the Arbitrator's interpretation of the parties' agreement and related rules/and or regulations, as well as his evidentiary findings and conclusions upon which the decision is based." *University of the District of Columbia v. University of the District of Columbia Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).

In the instant case, the Arbitrator's authority derives from Article 19E, Section 5, Number 4 of the parties' CBA, which states: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration." (Opposition Attachment 1). Article 12, Section 1, Subsection (b) states: "Discipline may be imposed only for cause as authorized in D.C. Official Code § 1-616.51." *Id.* The Arbitrator arguably construed the CBA when he examined the record of this case to determine that there was no substantial evidence to sustain the Grievant's termination, and thus the Grievant was not disciplined for cause. (Award at 12, 21). The Board finds nothing in the record to suggest that fraud, a conflict of interest, or dishonesty impacted the Award or the arbitral process. The parties do not dispute that the CBA committed this grievance to arbitration, and that the Arbitrator was mutually selected to resolve the dispute. *See Michigan Family Resources,* 475 F.3d at 754.

Additionally, the Award bears the hallmarks of interpretation: the Arbitrator refers to and analyzes the parties' positions, and at no point appears to do anything other than attempt to reach a good-faith interpretation of the CBA. (Award at 15-20); *See D.C. Child and Family Services Agency v. AFSCME, District Council 20, Local 2401*, 60 D.C. Reg. 15060, Slip Op. No. 1025 at p. 6, PERB Case No. 08-A-07 (2010). The Award is not "so untethered from the [CBA] that it casts doubt on whether he was engaged in interpretation, as opposed to the implementation of his 'own brand of industrial justice.'" *Michigan Family Resources*, 475 F.3d at 754. Instead, MPD's allegations amount to a disagreement with the Arbitrator's conclusion that substantial evidence did not exist to uphold the Grievant's termination, and this does not present a statutory basis for reversing the Award. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. Metropolitan Police Dep't*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).

b. Whether the Award is contrary to law and public policy

As FOP points out in its Opposition, "[w]hile MPD only claims to file a challenge to the arbitrator's authority, its arguments read as though it is really challenging whether Arbitrator Murphy's decision violates law and public policy." (Opposition at 5, fn. 1). Indeed, MPD's contentions that the Arbitrator used the wrong standard of review, improperly weighed the Trial Board's determination of the evidence against his own factual determinations, and erroneously rejected the Trial Board's credibility determinations may lend themselves to an argument that the Award "on its face is contrary to law and public policy." (Request at 7); D.C. Official Code § 1-605.02(6) (2001). In order to "effectuate the purposes and provisions of the CMPA," the Board will consider MPD's arguments under this framework as well. Board Rule 501.1.

The Board's review of an arbitration award on the basis of law and public policy is an extremely narrow exception to the rule that reviewing bodies must defer to an arbitrator's ruling. *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 60 D.C. Reg. 9201, Slip Op. No. 1390 at p. 8, PERB Case No. 12-A-07 (2013). "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *MPD*, Slip Op. No. 925 (quoting *American Postal Workers Union v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986)). A petitioner must demonstrate that an arbitration award compels the violation of an explicit, well-defined public policy grounded in law or legal precedent. *See United Paperworkers Int'l Union v. Misco*, 484 U.S. 29 (1987). Moreover, the violation must be so significant that the law or public policy "mandates that the Arbitrator arrive at a different result." *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). Further, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Id.*

First, MPD asserts that the Arbitrator examined the evidence on a *de novo* basis, instead of limiting himself to "determining whether there was substantial evidence in the record such that a reasonable person would have come to the same conclusion as the [Trial Board]." (Request at 7). In support of this contention, MPD cites to *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985). The Board finds *Stokes* inapplicable to the instant case. In *Stokes*, the D.C. Office of Employee Appeals ("OEA") reinstated an employee who had been terminated by the D.C. Dep't of Corrections. The OEA's decision was appealed to the D.C. Superior Court, who reversed the OEA's decision, and the reversal was upheld by the D.C. Court of Appeals. *Stokes*, 502 A.2d at 1007. In *Stokes*, the D.C. Court of Appeals held that while the CMPA does not define the standards by which the OEA is to review final agency decisions, "it is self-evident from both the statute and its legislative history that the OEA is not to substitute its judgment for that of the agency." 502 A.2d at 1010. As an initial matter, the OEA is a separate and independent agency from the Public Employee Relations Board, with different statutory authority[2]. *See D.C. Office of the Chief Financial Officer v. AFSCME District Council 20, Local 2776*, 60 D.C. Reg. 7218, Slip Op. No. 1386 at p. 4, PERB Case No. 12-A-06 (2013). Further, in *Stokes*, the termination decision was made by the employer and appealed to the OEA; in the instant case, the termination decision was made by the employer and appealed to an arbitrator through the parties' negotiated grievance procedure. *Stokes*, 502 A.2d at 1007; Award at 5. Thus, *Stokes* does not mandate that the Arbitrator arrive at a different result, nor has MPD articulated an explicit, well-defined policy grounded in law and legal precedent requiring the Board to modify or reverse the Award. *See MPD*, Slip Op. no. 633 at p. 2.

On a related note, MPD also contends that during his *de novo* review of the evidence, the Arbitrator improperly reversed the Trial Board's decision because he disagreed with the Trial Board's conclusion regarding the Grievant's statements to the Georgia officer. (Request at 9). FOP calls this argument "nothing more than a mere disagreement with the Arbitrator's decision." (Opposition at 7). While MPD cites to *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564,

[2] For example, the OEA is empowered to review final agency decisions affecting, *inter alia*, performance ratings, adverse actions, and employee grievance. *See* D.C. Official Code §§ 1-606.1, 1-606.3 (2011).

574 (1985) for its proposition that "[w]here there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous," FOP contends that "[g]iven that there is a complete videotape of the affected traffic stop...we are in the unique position to be able to see that there really is only one permissible view of the evidence." (Request at 9; Opposition at 7-8).

Anderson is clearly distinguishable from the instant case, primarily because the Trial Board is not a trial court, and the Arbitrator is not an appellate court. In *Anderson*, the U.S. Supreme Court discussed the general principles governing the exercise of an appellate court's power to overturn findings of a district court under the "clearly erroneous" standard set forth in Federal Rule of Civil Procedure 52(a). 470 U.S. at 573. As the Court noted:

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that if it had been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

Id. at 573-4 (internal citations omitted). Federal Rule of Civil Procedure 52(a) does not apply to Trial Board or arbitration proceedings under the parties' CBA, which states that "[t]he hearing on the grievance or appeal shall be informal." Article 19E, Section 5, Number 3; Opposition Attachment 1. Further, the parties' CBA specifically states that in cases where a Trial Board hearing has been held and the matter advanced to arbitration through the negotiated grievance procedure, "the appellate tribunal has the authority to review the evidentiary ruling of the Departmental Hearing Panel." Article 12, Section 8; Opposition Attachment 1. MPD has cited no law or public policy supporting its contention that an arbitration hearing is equivalent to a judicial court of appeal. MPD disagrees with the Arbitrator's evidentiary conclusions, and the Board will not modify or amend the Award based upon this disagreement. *See MPD*, Slip Op. no. 633 at p. 2.

Finally, MPD asserts that the Arbitrator improperly rejected the Trial Board's credibility determinations after reviewing the traffic stop videotape. (Request at 11). In support of this contention, MPD cites to *Stevens Chevrolet, Inc. v. Commission on Human Rights*, 498 A.2d 546, 549 (D.C. 1985), in which the D.C. Court of Appeals discussed the importance of credibility determinations made by a first-hand witness to the testimony. (Request at 9-10). However, the fact remains that the Trial Board and arbitration process are part of the negotiated grievance procedure in the parties' CBA, and is not directly comparable to the judicial or administrative adjudication system. MPD's analogy is too tenuous, and MPD has cited no "applicable law or definite public policy that mandates that the Arbitrator arrive at a different result." *MPD*, Slip Op. No. 633 at p. 2.

MPD has failed to demonstrate that the Arbitrator exceeded his authority, or that the Award compels the violation of an explicit, well-defined public policy grounded in law or legal

precedent, which mandates that the Arbitrator arrive at a different result. *See Misco*, 484 U.S. 29; *MPD*, Slip Op. No. 633 at p. 2. Therefore, the Arbitration Review Request is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 2, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-A-03 was transmitted via File & ServeXpress to the following parties on this the 2nd day of April, 2014.

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/s/ Erin E. Wilcox

Erin E. Wilcox, Esq.
Attorney-Advisor

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Two Rivers Pubic Charter School is receiving bids for exterior masonry repair work on its masonry and brick front facade and south side alley of the elementary school in northeast Washington, DC. The work is to address cracks, loose mortar, and flawed joints that have caused building leaks. The work will include (1) rout and seal at concrete beams (approx. 120 linear feet), (2) tuck pointing (approx. 880 square feet), (3) expansion joints at concrete beams to brick and sidewalk to store front joints (approx. 1,120 linear feet), (4) wet glazing (glass-to-metal joints) (approx. 1,820 linear feet), and (5) window caulking (approx. 600 linear feet). Additionally, the exterior masonry will need to be repainted. The project is to begin June 19, 2014 and be completed on or before June 27, 2014. Additional preference points given to Certified Business Enterprises with the DC Department of Small and Local Business Development. For Additional Information and Statement of Work and RFP, email Doug Hollis at procurement@tworiverspcs.org. Phone calls are discouraged. Deadline for submission is May 5, 2014, at 5:00 pm.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

REGULAR MEETING OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The regular meeting of the Board of Trustees of the University of the District of Columbia will be held on Tuesday, April 29, 2014 at 5:00 p.m. 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. Approval of Minutes – March 27, 2014

III. Report of the Chairperson

IV. Report of the President

V. Election of Officers (May 15, 2014 – May 15, 2015)
- a. Chairperson
- b. Vice-Chairperson
- c. Secretary
- d. Treasurer

VI. Committee Reports
- a. Executive – Dr. Crider
- b. Committee of the Whole – Dr. Crider
- c. Academic Affairs – Dr. Curry
- d. Budget and Finance – Mr. Felton
- e. Audit, Administration and Governance – Mr. Shelton
- f. Student Affairs – General Schwartz
  - i. Communications Task Force – Mr. Isaacs
- g. Community College – Mr. Dyke
- h. Facilities – Mr. Bell

VII. Unfinished Business

VIII. New Business

IX. Closing Remarks

Adjournment

Expected Meeting Closure
In accordance with Section 2-575 (b) (10) of the D. C. Code, the Board of Trustees hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance, evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, May 1, 2014 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

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

DRAFT AGENDA

1.	**Call to Order**	Board Chairman
2.	**Roll Call**	Board Secretary
3.	**Approval of April 3, 2014 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

OFFICE ON WOMEN'S POLICY AND INITIATIVES

DISTRICT OF COLUMBIA COMMISSION FOR WOMEN

NOTICE OF PUBLIC MEETING

Thursday, May 1, 2014
6:45 PM – 8:45 PM

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Room 301
Washington, DC 20004

The District of Columbia Commission for Women will hold its monthly meeting on Thursday, May1, 2014 at 6:45 p.m. The meeting will be held at the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 301, Washington, DC 20004.

For additional information, please contact Terese Lowery, Executive Director at (202) 724-7690 or women@dc.gov.

DRAFT AGENDA

I. **Call to Order**

II. **Discussion on Break-Out Sessions, upcoming Fall Policy Conference and Listening Sessions**

III. **Questions, Comments and Concerns**

IV. **Adjournment**

*Please note that this is a draft agenda and subject to change.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18739 of Charles B. Mathias, pursuant to 11 DCMR § 3104.1, for a special exception for a two story rear addition to a one-family row dwelling under section 223, not meeting the court requirements under section 406 in the R-3 District at premises 2803 Dumbarton Street, N.W. (Square 1240, Lot 868).

HEARING DATE(S): April 15, 2014
DECISION DATE: April 15, 2014

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E submitted a letter in support of the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application. The Department of Transportation submitted a report not objecting to the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 9 – Plans) be **GRANTED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath and Michael G. Turnbull to Approve. S. Kathryn Allen not present not voting.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: April 15, 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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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