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District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Act 20-328, Educator Evaluation Data Collection Emergency Amendment Act of 2014
- DC Council schedules a Public hearing on Bill 20-714, Sex Trafficking of Minors Prevention Amendment Act of 2014
- District Department of Transportation establishes guidelines for the operation of the DC Streetcar system
- Department of Health proposes outlines qualifying medical conditions for participation in the District's Medical Marijuana Program
- Department of Human Services proposes guidelines for sharing health and human services data between District agencies
- Office of the State Superintendent of Education announces funding availability for the Fiscal Year 2015 ESEA 21st Century Community Learning Centers Grant
- District Department of the Environment announces funding availability for the Lead Screening Summer Outreach Project

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-327

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To approve, on an emergency basis, Option Period Three of a Memorandum of Understanding with the Defense Logistics Agency, Defense Supply Center Philadelphia to continue to provide critical pharmaceuticals for participants in the District's HIV/AIDS Drug Assistance Program and other indigent care programs and to authorize payment for the services received and to be received under the Memorandum of Understanding.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Option Period Three of Memorandum of Understanding with the Defense Logistics Agency, Defense Supply Center Philadelphia Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202(a) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02(a)), the Council appoves Option Period Three of Memorandum of Understanding with the Defense Logistics Agency, Defense Supply Center Philadelphia to continue to provide critical pharmaceuticals for participants in the District's HIV/AIDS Drug Assistance Program and other indigent care programs and authorizes payment in the amount of $144,332,292.79 for services received and to be received under the memorandum of understanding.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-328

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend, on an emergency basis, the State Education Office Establishment Act of 2000 to authorize the collection of individual educator evaluation data by the Office of the State Superintendent of Education, and to exempt that data from public disclosure; and to amend the District of Columbia Administrative Procedure Act to exempt the educator evaluation data from public disclosure.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Educator Evaluation Data Collection Emergency Amendment Act of 2014".

Sec. 2. The State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2601 *et seq.*), is amended as follows:

(a) Section 3(b) (D.C. Official Code § 38-2602(b)) is amended as follows:

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

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

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

"(22) Collect individual educator evaluation data from educational institutions, LEAs, and eligible chartering authorities as needed to comply with the requirements of the Race to the Top grant, in a format designated by OSSE that shall, to the extent possible, protect the confidentiality of the identity of the individual educator.".

(b) A new section 7e is added to read as follows:

"Sec. 7e. Educator evaluations.

"(a) Individual educator evaluations and effectiveness ratings, observation, and value-added data collected or maintained by OSSE are not public records and shall not be subject to disclosure pursuant to section 202 of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-532).

"(b) Nothing in this section shall prohibit OSSE from:

"(1) Using educator evaluations or effectiveness ratings to fulfill existing requirements of a State educational agency under applicable federal or local law; or

"(2) Publicly disclosing aggregate reports and analyses regarding the results of educator evaluation data.

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

"(1) "Educator" means a principal, assistant principal, school teacher, assistant teacher, or a paraprofessional.

"(2) "Race to the Top" means the initiative established by the United States Department of Education that provides competitive grants to states, including the District of Columbia, to implement comprehensive and effective education reform.".

Sec. 3. Conforming amendment.

Section 204(a) of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)), is amended by adding a new paragraph (15) to read as follows:

"(15) Information exempt from disclosure pursuant to section 7e of the State Education Office Establishment Act of 2000, passed on 2nd reading on May 6, 2014 (Enrolled version of Bill 20-747).".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-329

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend, on an emergency basis, the Health Benefit Exchange Authority Establishment Act of 2011 to provide for the financial sustainability of the Health Benefit Exchange Authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Benefit Exchange Authority Financial Sustainability Emergency Amendment Act of 2014".

Sec. 2. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3171.01) is amended as follows:

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

"(3A) "Direct gross receipts" means all policy and membership fees and net premium receipts or consideration received in a calendar year on all health insurance carrier risks originating in or from the District of Columbia.".

(2) A new paragraph (8C) is added to read as follows:

"(8C) "Net premium receipts or consideration received" means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.".

(b) Section 4 (D.C. Official Code § 31-3171.03) is amended by adding a new subsection (f) to read as follows:

"(f)(1) The Authority shall annually assess, through a "Notice of Assessment," each health carrier doing business in the District with direct gross receipts of $50,000 or greater in the preceding calendar year an amount based on a percentage of its direct gross receipts for the preceding calendar year. These assessments shall be deposited in the Fund.

"(2) The Authority shall adjust the assessment rate in each assessable year. The amount assessed shall not exceed reasonable projections regarding the amount necessary to support the operations of the Authority.

"(3) Each health carrier shall pay to the Authority the amount stated in the Notice of Assessment within 30 business days of receipt of the Notice of Assessment.

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"(4) Any failure to pay the assessment shall subject the health carrier to section 5 of the Insurance Regulatory Trust Fund Act of 1993, effective October 21, 1993 (D.C. Law 10-40; D.C. Official Code § 31-1204).".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-330

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To approve, on an emergency basis, Contract No. DCHBX-2013-0003 to provide technical information technology support services and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCHBX-2013-0003 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. DCHBX-2013-0003 with Enlightened, Inc., to provide technical information technology support services and authorizes payment in the total not-to-exceed amount of $1,800,000 for services received and to be received under that contract.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-331

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To approve, on an emergency basis, Contract No. DCHBX-2013-0003(b) to provide technical information technology support services and to authorize payment for the services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCHBX-2013-0003(b) Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. DCHBX-2013-0003(b) with New Light Technology, Inc. to provide technical information technology support services and authorizes payment in the total not-to-exceed amount of $2,184,000 for services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-332

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To approve, on an emergency basis, Modification No. 7 to Contract No. DHCF-2013-C-0003-A02 with AmeriHealth District of Columbia, Inc., to provide healthcare services to the District's Medicaid-eligible population enrolled in the District of Columbia Healthy Families Program and the DC Health Care Alliance Program and to authorize payment for the goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DHCF-2013-C-0003-A02 Modification Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. 7 to Contract No. DHCF-2013-C-0003-A02 with AmeriHealth District of Columbia, Inc., to provide healthcare services to the District's Medicaid-eligible population enrolled in the District of Columbia Healthy Families Program and the DC Health Care Alliance Program and authorizes payment in an amount not to exceed $737,041,491 for goods and services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-333

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend, on an emergency basis, due to Congressional review, section 47-1801.04 of the District of Columbia Official Code to clarify that the base year for cost-of-living adjustments related to the personal income tax standard deduction and exemption is 2011.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Cost-of-Living Adjustment Personal Income Tax Standard Deduction and Exemption Technical Clarification Second Congressional Review Emergency Act of 2014".

Sec. 2. Section 47-1801.04(11) of the District of Columbia Official Code is amended to read as follows:

" (11) (A) "Cost-of-living adjustment" means an amount, for any calendar year, equal to the dollar amount set forth in paragraph (44)(A) and (B) of this section or § 47-1806.02(f)(1)(A) and (i) multiplied by the difference between the Consumer Price Index for the preceding calendar year and the Consumer Price Index for the calendar year beginning January 1, 2011, divided by the Consumer Price Index for the calendar year beginning January 1, 2011.

"(B) For the purposes of this paragraph, the Consumer Price Index for any calendar year is the average of the Consumer Price Index for the Washington-Baltimore Metropolitan Statistical Area for all-urban consumers published by the Department of Labor, or any successor index, as of the close of the 12-month period ending on July 31 of such calendar year.".

Sec. 3. Applicability.

(a) Section 2 shall apply for taxable years beginning after December 31, 2010.

(b) This act shall apply as of May 21, 2014.

Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-334

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend, on an emergency basis, the District of Columbia Workers' Compensation Act of 1979 to match federal statute of limitations for private-sector employees who are injured at work.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Workers' Compensation Statute of Limitations Emergency Amendment Act of 2014".

Sec. 2. Section 36(b) of the District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980 (D.C. Law 3-77; D.C. Official Code § 32-1535(b)), is amended by adding a new sentence at the end to read as follows: "If the employer fails to commence an action against such third person within 90 days after the cause of action is assigned under this section, the right to bring the action shall revert to the person entitled to compensation.".

Sec. 3. Applicability.

This act applies to causes of action for negligence for which the 3-year statute of limitations has not expired.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-335

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend, on an emergency basis, the Health Benefit Exchange Authority Establishment Act of 2011 to promote meaningful choice, provide enhanced benefits, and build a competitive private insurance marketplace for the residents and small business owners of the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Better Prices, Better Quality, Better Choices for Health Coverage Emergency Amendment Act of 2014".

Sec. 2. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3171.01) is amended as follows:

(1) New paragraphs (8A) and (8B) are added to read as follows:

"(8A) "Metal level" means the bronze, silver, gold, and platinum levels of coverage as defined in section 1302(d)(1) of the Federal Act.

"(8B) "Navigator" refers to the entities described in section 1311(i) of the Federal Act.".

(2) A new paragraph (18) is added to read as follows:

"(18) "Standardized plan" means a plan with defined benefits and cost sharing as determined by the executive board for the Authority.".

(b) Section 10 (D.C. Official Code § 31-3171.09) is amended as follows:

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

(A) Paragraph 5 is amended as follows:

(i) Subparagraph (B)(i) is amended by striking the phrase "at least one qualified health plan at the silver level and at least one plan at the gold level" and inserting the phrase "at least one qualified health plan at the bronze level, at least one qualified health plan at the silver level, and at least one qualified health plan at the gold level" in its place.

(ii) Subparagraph (D) is amended by striking the word "and" at the end.

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(iii) New subparagraphs (F), (G), and (H) are added to read as follows:

"(F) Provides accurate attestations as required in the initial certification process;

"(G) Offers one or more standardized plans that meet the criteria developed by the executive board for the Authority, at each metal level in which the carrier is participating, in addition to other plans the carrier may offer; and

"(H) Offers plans subject to the meaningful difference standard, as defined in section 4(ii) of Chapter 1 of the Affordable Exchanges Guidance, dated March 1, 2013, by the Centers for Consumer Information and Insurance Oversight at the Centers for Medicare and Medicaid Services in the U.S. Department of Health and Human Services, or as may be defined by the executive board for the Authority;".

(B) Paragraph (6) is amended by striking the word "or".

(C) Paragraph (7) is amended by striking the period at the end and inserting a semicolon in its place.

(D) New paragraphs (8), (9), and (10) are added to read as follows:

"(8) Comply with section 512 of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, approved October 3, 2008 (Pub. L. No. 110-343; 122 Stat. 3881), as applied to the Federal Act, including covering behavioral health inpatient and outpatient services for mental health and substance use disorders without day or visit limitations;

"(9) Provide a drug formulary that includes, at a minimum, the greater of either the number of drugs listed in each category and class found in the District's base-benchmark plan formulary, or the minimum number of drugs, by category and class, as established by the Center for Consumer Information and Insurance Oversight in the Centers for Medicare and Medicaid Services at the U.S. Department of Health and Human Services; and

"(10) Provide benefits identical to the essential health benefits benchmark plan, as defined in federal regulations promulgated pursuant to section 1302(a) of the Federal Act, as defined by the District without benefit substitution.".

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

(A) Paragraph (2) is amended by striking the word "or".

(B) Paragraph (3) is amended by striking the period at the end and inserting the phrase "; or" in its place.

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

"(4) On the basis of the number of qualified health plans being offered.".

(3) New subsections (g) and (h) are added to read as follows:

"(g) A qualified health plan may provide additional services that are not in the essential health benefits package required in subsection (a)(1) of this section, if the services are eligible for claims submission and reimbursement.

"(h) For the purposes of the essential health benefits benchmark plan, as defined in federal regulations promulgated pursuant to section 1302(a) of the Federal Act, the term "habilitative services" includes health care services that help a person keep, learn, or improve

skills and functioning for daily living, including applied behavioral analysis for the treatment of autism spectrum disorder.".

(c) New sections 10a and 10b are added to read as follows:

"Sec. 10a. Distribution of individual and small group health benefit plans.

"(a) A carrier that offers individual or small group health benefit plans shall offer such plans solely through the American Health Benefit Exchange, as established pursuant to section 5(a), subject to the following transition provisions:

"(1) Individual health benefit plans with plan years beginning on or after January 1, 2014, shall be offered solely through the American Health Benefit Exchange;

"(2) On or after January 1, 2014, small group health benefit plans offered to any small business that was not insured as of December 31, 2013,shall be offered and issued solely through the American Health Benefit Exchange;

"(3) Small group health benefit plans offered to or renewed by any small business that was insured as of December 31, 2013, may be issued or renewed during calendar year 2014 through existing distribution channels with the same carrier or a new carrier, except that such plans shall meet the qualifications for certification of a qualified health plan as provided in section 10; and

"(4) Unless the Council acts by October 1, 2014 to change the date that all small group health plans shall be offered, issued, or renewed through the American Health Benefit Exchange, on or after January 1, 2015, all small group health benefit plans shall be offered and issued or renewed solely through the American Health Benefit Exchange.

"(b) The requirements of this section shall not apply to grandfathered health plans as defined in section 1251 of the Federal Act.

"Sec. 10b. Sale, solicitation, and negotiation by insurance producers.

"(a) An insurance producer that is licensed in the District and authorized by the Commissioner to sell, solicit, or negotiate health insurance pursuant to the Producer Licensing Act of 2002, effective March 27, 2003 (D.C. Law 14-264; D.C. Official Code § 31-1131.02 *et seq.*), may sell any qualified health plan offered in the American Health Benefit Exchange, after satisfactorily completing training developed and provided by the Authority.

"(b) An insurance producer shall be compensated directly by a health carrier for the sale of a qualified health plan offered in the American Health Benefit Exchange.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

ENROLLED ORIGINAL

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-336

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend the Health Benefit Exchange Authority Establishment Act of 2011 to promote meaningful choice, provide enhanced benefits, and build a competitive private insurance marketplace for the residents and small business owners of the District of Columbia by not limiting the number of qualified health plans in the exchange, requiring plans at different metal levels, standardizing at least one plan option at each metal level to promote meaningful choice, creating one large marketplace, and defining habilitative services.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Better Prices, Better Quality, Better Choices for Health Coverage Amendment Act of 2014".

Sec. 2. The Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-3171.01) is amended as follows:

(1) New paragraphs (8A) and (8B) are added to read as follows:

"(8A) "Metal level" means the bronze, silver, gold, and platinum levels of coverage as defined in section 1302(d)(1) of the Federal Act.

"(8B) "Navigator" refers to the entities described in section 1311(i) of the Federal Act.".

(2) A new paragraph (18) is added to read as follows:

"(18) "Standardized plan" means a plan with defined benefits and cost sharing as determined by the executive board for the Authority.".

(b) Section 10 (D.C. Official Code § 31-3171.09) is amended as follows:

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

(A) Paragraph 5 is amended as follows:

(i) Subparagraph (B)(i) is amended by striking the phrase "at least one qualified health plan at the silver level and at least one plan at the gold level" and inserting the phrase "at least one qualified health plan at the bronze level, at least one qualified health plan at the silver level, and at least one qualified health plan at the gold level" in its place.

(ii) Subparagraph (D) is amended by striking the word "and" at the

ENROLLED ORIGINAL

end.

(iii) New subparagraphs (F), (G), and (H) are added to read as follows:

"(F) Provides accurate attestations as required in the initial certification process;

"(G) Offers one or more standardized plans that meet the criteria developed by the executive board for the Authority, at each metal level in which the carrier is participating, in addition to other plans the carrier may offer; and

"(H) Offers plans subject to the meaningful difference standard, as defined in section 4(ii) of Chapter 1 of the Affordable Exchanges Guidance, dated March 1, 2013, by the Centers for Consumer Information and Insurance Oversight at the Centers for Medicare and Medicaid Services in the U.S. Department of Health and Human Services, or as may be defined by the executive board for the Authority;".

(B) Paragraph (6) is amended by striking the word "and".

(C) Paragraph (7) is amended by striking the period at the end and inserting a semicolon in its place.

(D) New paragraphs (8), (9), and (10) are added to read as follows:

"(8) Comply with section 512 of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, approved October 3, 2008 (Pub. L. No. 110-343; 122 Stat. 3881), as applied to the Federal Act, including covering behavioral health inpatient and outpatient services for mental health and substance use disorders without day or visit limitations;

"(9) Provide a drug formulary that includes, at a minimum, the greater of either the number of drugs listed in each category and class found in the District's base-benchmark plan formulary, or the minimum number of drugs, by category and class, as established by the Center for Consumer Information and Insurance Oversight in the Centers for Medicare and Medicaid Services at the U.S. Department of Health and Human Services; and

"(10) Provide benefits identical to the essential health benefits benchmark plan, as defined in federal regulations promulgated pursuant to section 1302(a) of the Federal Act, as defined by the District without benefit substitution.".

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

(A) Paragraph (2) is amended by striking the word "or".

(B) Paragraph (3) is amended by striking the period at the end and inserting the phrase "; or" in its place.

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

"(4) On the basis of the number of qualified health plans being offered.".

(3) New subsections (g) and (h) are added to read as follows:

"(g) A qualified health plan may provide additional services that are not in the essential health benefits package required in subsection (a)(1) of this section, if the services are eligible for claims submission and reimbursement.

"(h) For the purposes of the essential health benefits benchmark plan, as defined in

federal regulations promulgated pursuant to section 1302(a) of the Federal Act, the term "habilitative services" includes health care services that help a person keep, learn, or improve skills and functioning for daily living, including applied behavioral analysis for the treatment of autism spectrum disorder.".

(c) New sections 10a and 10b are added to read as follows:

"Sec. 10a. Distribution of individual and small group health benefit plans.

"(a) A carrier that offers individual or small group health benefit plans shall offer such plans solely through the American Health Benefit Exchange, as established pursuant to section 5(a), subject to the following transition provisions:

"(1) Individual health benefit plans with plan years beginning on or after January 1, 2014, shall be offered solely through the American Health Benefit Exchange;

"(2) On or after January 1, 2014, small group health benefit plans offered to any small business that was not insured as of December 31, 2013,shall be offered and issued solely through the American Health Benefit Exchange;

"(3) Small group health benefit plans offered to or renewed by any small business that was insured as of December 31, 2013, may be issued or renewed during calendar year 2014 through existing distribution channels with the same carrier or a new carrier, except that such plans shall meet the qualifications for certification of a qualified health plan as provided in section 10; and

"(4) Unless the Council acts by October 1, 2014 to change the date that all small group health plans shall be offered, issued, or renewed through the American Health Benefit Exchange, on or after January 1, 2015, all small group health benefit plans shall be offered and issued or renewed solely through the American Health Benefit Exchange.

"(b) The requirements of this section shall not apply to grandfathered health plans as defined in section 1251 of the Federal Act.

"Sec. 10b. Sale, solicitation, and negotiation by insurance producers.

"(a) An insurance producer that is licensed in the District and authorized by the Commissioner to sell, solicit, or negotiate health insurance pursuant to the Producer Licensing Act of 2002, effective March 27, 2003 (D.C. Law 14-264; D.C. Official Code § 31-1131.02 *et seq.*), may sell any qualified health plan offered in the American Health Benefit Exchange, after satisfactorily completing training developed and provided by the Authority.

"(b) An insurance producer shall be compensated directly by a health carrier for the sale of a qualified health plan offered in the American Health Benefit Exchange.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-337

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To amend the Transportation Infrastructure Improvements GARVEE Bond Financing Act of 2009 to include the financing of the replacement and realignment of the Frederick Douglass Memorial Bridge as a qualified transportation project for GARVEE Bonds supported by grants to be received from the Federal Highway Administration.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Infrastructure Improvements GARVEE Bond Financing Amendment Act of 2014".

Sec. 2. The Transportation Infrastructure Improvements GARVEE Bond Financing Act of 2009, effective September 23, 2009 (D.C. Law 18–54; D.C. Official Code § 9–107.51 *et seq.*), is amended as follows:

(a) Section 2(16) (D.C. Official Code § 9-107.51(16)) is amended to read as follows:

"(16) "Qualified Transportation Project" means the following projects that meet the eligibility requirements of the Federal Highway Administration as permissible transportation expenditures under Title 23 of the Code of Federal Regulations:

"(A) The project to replace the twin 11th Street Bridges over the Anacostia River and to improve the interchanges at either end, including adding missing movements to and from the north onto the Anacostia Freeway; and

"(B) The project to replace and realign the aging Frederick Douglass Memorial Bridge and build new interchanges between the bridge and Suitland Parkway, the bridge and Potomac Avenue, S.W., Suitland Parkway and Interstate 295, and Suitland Parkway and Martin Luther King, Jr. Avenue.".

(b) Section 3(a)(1) (D.C. Official Code § 9-107.52(a)(1)) is amended by striking the phrase "shall not exceed $200 million" and inserting the phrase "shall not exceed $430 million" in its place.

Sec. 3. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-338

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 22, 2014

To symbolically designate the public alley in Square 365, bounded by 9th and 10th Streets, N.W., and P and Q Streets, N.W., in Ward 6, as Shiloh Way.

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

Sec. 2. Pursuant to sections 401 and 403a of the Street and Alley Closing Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01 and 9-204.03a), the Council symbolically designates the public alley in Square 365 that is bounded by 9th and 10th Streets, N.W., and P and Q Streets, N.W., as "Shiloh Way".

Sec. 3. Transmittal.

The Chairman of the Council shall transmit a copy of this act, upon its effective date, to the District Department of Transportation.

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 22, 2014

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

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

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

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COUNCIL OF THE DISTRICT OF COLUMBIA **PROPOSED LEGISLATION**

BILLS

B20-791 Uniform Certificate of Title for Vessels Act of 2014

Intro. 05-06-14 by Councilmember Orange and re-referred to the Committee on Business, Consumer, and Regulatory Affairs with comments from the Committee on Judiciary and Public Safety

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B20-795 DC General Short-Term Playground Amendment Act of 2014

Intro. 05-06-14 by Councilmembers Cheh, Graham, Wells, Bonds, Alexander, Grosso, Catania, Evans, Bowser and Chairman Mendelson and referred to the Committee on Human Services with comments from the Committee on Government Operations

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B20-796 Public Space Maintenance Contracting Authorization Amendment Act of 2014

Intro. 05-06-14 by Councilmembers Cheh and Evans and referred sequentially to the Committee on Transportation and the Environment, and the Committee of the Whole with comments from the Committee on Business, Consumer, and Regulatory Affairs

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B20-802 NMLS Conformity Act of 2014

Intro. 05-15-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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BILLS CON'T

B20-803 Human Rights Amendment Act of 2014

Intro. 05-21-14 by Councilmember Wells and referred to the Committee on Judiciary and Public Safety

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PROPOSED RESOLUTIONS

PR20-784 Chief Administrative Law Judge of the Office of Administrative Hearings Wanda R. Tucker Confirmation Resolution of 2014

Intro. 05-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-785 Board of Trustees of the University of the District of Columbia James W. Dyke, Jr. Confirmation Resolution of 2014

Intro. 05-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-786 Board of Trustees of the University of the District of Columbia Reginald Felton Confirmation Resolution of 2014

Intro. 05-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-787 Board of Trustees of the University of the District of Columbia Rev. Kendrick E. Curry Confirmation Resolution of 2014

Intro. 05-19-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-788 Dual Credit and Grades Regulations Approval Resolution of 2014

Intro. 05-20-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

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PR20-789 Interagency Council on Homelessness Luis Antonio Vasquez Confirmation Resolution of 2014

Intro. 05-20-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services

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PROPOSED RESOLUTIONS CON'T

PR20-790 District of Columbia Board of Library Trustees Vincent S. Morris Confirmation Resolution of 2014

Intro. 05-21-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Education

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PR20-791 Interagency Council on Homelessness Kelly Sweeney McShane Confirmation Resolution of 2014

Intro. 05-20-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Human Services

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PR20-793 The University of Georgia Foundation Revenue Bonds Project Approval Resolution of 2014

Intro. 05-23-14 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 THE JUDICIARYAND PUBLIC SAFETY
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

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

ANNOUNCES A PUBLIC HEARING ON

Bill 20-345, "Workman's Compensation Statute of Limitations Amendment Act of 2013"
Bill 20-790, "Reproductive Health Non-Discrimination Act of 2014"
Bill 20-757, "Wage Transparency Amendment Act of 2014"

Tuesday, June 24, 2014
11 a.m.
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, announces a public hearing on June 24, 2014, beginning at 11 a.m. in Room 412 of the John A. Wilson Building. The purpose of this public is to receive public comment on Bill 20-345, Bill 20-790, and Bill 20-757.

Bill 20-345 would amend the Workers' Compensation Act of 1979 to limit the time frame where the right to recover damages from a third party is assigned to the employer. Under the bill, if the employer does not bring an action against the third party within 90 days, then the right to recover reverts to the worker.

Bill 20-790 would amend the Human Rights Act of 1977 to prohibit an employer or employment agency from discriminating against an individual with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the individual's reproductive health decision making, including a decision to use or access a particular drug, device, or medical service, because of or on the basis of an employer's personal beliefs about such services.

Bill 20-757 would amend the Human Rights Act of 1977 to prohibit employers from requiring that an employee refrain from inquiring, disclosing, comparing, or otherwise discussing the employee's wages or those of another employee, and from retaliating against employees who do so. It would also require the Department of Human Resources to report to the Council the salaries of District government employees, without identifying information, organized by employing agency, position, and the employees' gender and race; and require the Department of Employment Services to submit to the Council a strategic plan to reduce wage disparities in the District between women and men in private and public sector employment.

The Committee invites the public to testify. Individuals who wish to testify should contact Nicole Goines at 724-7808 or ngoines@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Friday, June 20, 2014. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5

minutes for those representing organizations or groups. Those persons unable to testify at the public hearing are encouraged to submit written statements for the official record. Written statements should be submitted by 5 p.m. on Monday, July 7, 2014 to Ms. Goines, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at ngoines@dccouncil.us.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 20-521, N Street Village Way Designation Act of 2013;

Bill 20-683, Zion Baptist Church Way Designation Act of 2014; &

Bill 20-794, Nap Turner Way Designation Act of 2014

on

Wednesday, July 2, 2014
9:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing of the Committee of the Whole on **Bill 20-521**, the "N Street Village Way Designation Act of 2013;" **Bill 20-683**, the "Zion Baptist Church Way Designation Act of 2014;" and **Bill 20-794**, the "Nap Turner Way Designation Act of 2014." The public hearing will be held Wednesday, July 2, 2014, at 9:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of **Bill 20-521** is to symbolically designate the 1300 block of N Street NW, between 14th Street NW and Vermont Avenue NW, in Ward 2 as N Street Village Way. The stated purpose of **Bill 20-683** is to symbolically designate the public alley in Square 2655, bounded by the 4800 block of Colorado Avenue NW and Blagden Avenue NW, as Zion Baptist Church Way. The stated purpose of **Bill 20-794** is to symbolically designate the alley located between 13th and 14th Streets NW, Wallach Place NW, and U Street NW and directly abutting 1344 U Street NW as Nap Turner Way.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Monday, June 30, 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 30, 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 the PRs can be obtained through the Legislative Services Division of the Secretary of the Council's office or on 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, July 17, 2014.

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

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

on

Bill 20-600, the "Child and Adolescent Diabetes Prevention Act of 2014"

Wednesday, June 18, 2014
2:00 p.m., Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public hearing on Bill 20-600, the "Child and Adolescent Diabetes Prevention Act of 2014". The hearing will take place at 2:00 p.m. on Wednesday, June 18, 2014 in Room 500 of the John A. Wilson Building.

The purpose of this bill is to reduce the incidence of Type 2 diabetes in children and adolescnets by requiring the Department of Health to establish a pilot lifestyle intervention program in District of Columbia Public Schools, to conduct an epidemiological student of the disease in children and adolescents, and to create an action plan to prevent the growth of Type 2 in children and adolescents.

Those who wish to testify should contact Rayna Smith, Committee Director to the Committee on Health, at 202-741-2111 or via e-mail at rsmith@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, June 16, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, June 16, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to rsmith@dccouncil.us or to mailed to Rayna Smith at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Wednesday, July 2, 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

Bill 20-645, Closing of a Public Alley in Square 1412, S.O. 13-10159, Act of 2014;

Bill 20-684, Closing of a Portion of the Public Alley System in Square 368, S.O. 13-09586, Act of 2014; &

PR 20-758, Transfer of Jurisdiction of a portion of Reservation 497 (Square 3712, Lots 101-104) Approval Resolution of 2014

on

Thursday, June 19, 2014
9:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on **Bill 20-645**, the "Closing of a Public Alley in Square 1412, S.O. 13-10159, Act of 2014; **Bill 20-684**, the "Closing of a Portion of the Public Alley System in Square 368, S.O. 13-09586, Act of 2014;" and **PR 20-758**, the "Transfer of Jurisdiction of a portion of Reservation 497 (Square 3712, Lots 101-104) Approval Resolution of 2014." The hearing will be held at 9:00 a.m. on Thursday, June 19, 2014 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of PR **20-645** is to order the closing of an unimproved public alley in Square 1412 located to the west of the intersection of Chain Bridge Road NW and Sherier Place NW in Ward 3. The stated purpose of **Bill 20-684** is to order the closing of a portion of the public alley system in Square 368, bounded by N Street NW, 9th Street NW, M Street NW, and 10th Street NW in Ward 2. The stated purpose of **PR 20-758** is to approve the transfer of jurisdiction of a portion of Reservation 497 (Square 3712, Lots 101-104), from the United States, by the Department of the Interior, National Park Service, to the District of Columbia. The transfer is for the purpose of establishing a permanent memorial honoring the victims of, and first responders to, the Metrorail Red Line collision on June 22, 2009.

Those who wish to testify should contact Ms. Jessica Jacobs, Legislative Counsel, at (202) 724-8196, or via e-mail at jjacobs@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, June 17, 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 17, 2014 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes unless otherwise arranged with the Committee; less time will be allowed if there are a large number of witnesses. A copy of the Bills and PR can be obtained through the Legislative Services Division of the Secretary of the Council's office or on 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, July 3, 2014.

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

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

on

Bill 20-675, the "Centralized Medicaid Billing Protection Amendment Act of 2014"

Friday, June 20, 2014
12:00 p.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public hearing on Bill 20-600, the "Centralized Medicaid Billing Protection Amendment Act of 2014". The hearing will take place at 12:00 p.m. on Friday, June 20, 2014 in Room 412 of the John A. Wilson Building.

The purpose of this bill is to amend the District of Columbia Medical Assistance Program Act to consolidate Medicaid billing functions in order to increase transparency in agency Medicaid billing standards, decrease fraud, enhance review of service utilization across agencies, and provide for greater coordination of care.

Those who wish to testify should contact Rayna Smith, Committee Director to the Committee on Health, at 202-741-2111 or via e-mail at rsmith@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Wednesday, June 18, 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 Wednesday, June 18, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

For those unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements can be emailed to rsmith@dccouncil.us or to mailed to Rayna Smith at the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 115, Washington, D.C., 20004. The record will close at 5:00 p.m. on Wednesday, July 2, 2014.

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

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

ANNOUNCES A PUBLIC HEARING ON

B20-714, THE "SEX TRAFFICKING OF MINORS PREVENTION AMENDMENT ACT OF 2014"

Thursday, June 19, 2014
1 p.m.

Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Thursday, June 19, 2014, beginning at 1 p.m. in Room 123 of the John A. Wilson Building. The purpose of this hearing is to receive public comment on the Bill 20-714.

Bill 20-714 would amend the Prevention of Child Abuse and Neglect Act of 1977 to create procedures for reporting runaways and missing children under custodial care of District agencies; and to require the Metropolitan Police Department to report critically missing children to the Nation Center for Missing and Exploited Children. It would also amend the Prohibition Against Human Trafficking Act of 2010 to require public posting of the national human trafficking hotline, and would amend the Anti-Sexual Abuse Act of 1994 to clarify that sexual act or contact under that Act includes sex trafficking of children as prohibited by the District's human trafficking laws.

The Committee invites the public to testify. Individuals who wish to testify should contact Nicole Goines at 724-7808 or ngoines@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Tuesday, June 17, 2014. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups. Those persons unable to testify at the public hearing are encouraged to submit written statements for the official record. Written statements should be submitted by 5 p.m. on Monday, June 30, 2014 to Ms. Goines, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at ngoines@dccouncil.us.

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON

PR 20-694, THE "DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS DAVID SCRUGGS CONFIRMATION RESOLUTION OF 2014"

PR 20-695, THE "DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS MOTOKO AIZAWA CONFIRMATION RESOLUTION OF 2014"

PR 20-773, THE "DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS MICHELLE MCLEOD CONFIRMATION RESOLUTION OF 2014"

PR 20-774, THE "DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS MR. ALI MUHAMMAD CONFIRMATION RESOLUTION OF 2014"

PR 20-775, THE "DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS DR. ALBERTO FIGUEROA – GARCIA CONFIRMATION RESOLUTION OF 2014"

AND

PR 20-491, THE "DOMESTIC VIOLENCE FATALITY REVIEW BOARD DIANNE M. HAMPTON CONFIRMATION RESOLUTION OF 2014"

Thursday, June 26, 2014, 11 a.m.
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public roundtable on Thursday, June 26, 2014 beginning at 11 a.m. in Room 500 of the John A. Wilson Building. The purpose of this hearing is to receive public comment on the Mayor's nominations to the District of Columbia Commission on Human Rights and Domestic Violence Fatality Review Board.

PR 20-694, The "District of Columbia Commission on Human Rights David Scruggs Confirmation Resolution of 2014" would confirm the reappointment of David Scruggs for a two-year term to end December 31, 2016.

PR 20-695, The "District of Columbia Commission on Human Rights Motoko Aizawa Confirmation Resolution of 2014" would confirm the reappointment of Motoko Aizawa for a two-year term to end December 31, 2016.

PR 20-773, The "District of Columbia Commission on Human Rights Michelle McLeod Confirmation Resolution of 2014" would confirm the appointment of Michelle McLeod for a two-year term to end December 31, 2016.

PR 20-774, The "District of Columbia Commission on Human Rights Ali Muhammad Confirmation Resolution of 2014" would confirm the appointment of Michelle McLeod for a two-year term to end December 31, 2016.

PR 20-775, The "District of Columbia Commission on Human Rights Dr. Alberto Figueroa-Garcia Confirmation Resolution of 2014" would confirm the appointment of Dr. Alberto Figueroa-Garcia for a two-year term to end December 31, 2016.

PR 20-491, The "Domestic Violence Fatality Review Board Dianne M. Hampton Confirmation Resolution of 2014" would confirm the reappointment of Dianne M. Hampton for a term to end July 20, 2016.

The Committee invites the public to testify. Those who wish to testify should contact Nicole Goines at 724-7808 or ngoines@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Tuesday, June 24, 2014. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups. Witnesses should bring 15 copies of their testimony. Those unable to testify at the public hearing are encouraged to submit written statements for the official record. Written statements should be submitted by 5 p.m. on July 9, 2014 to Ms. Goines, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at ngoines@dccouncil.us.

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

COUNCILMEMBER MURIEL BOWSER, CHAIRPERSON
COMMITTEE ON ECONOMIC DEVELOPMENT

AND

COUNCILMEMBER KENYAN MCDUFFIE, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS

ANNOUNCE A JOINT PUBLIC ROUNDTABLE

On

Proposed Resolution 20-742, the 1005 North Capitol Street, N.E., Surplus Declaration and Approval Resolution of 2014,

Proposed Resolution 20-743, the 1005 North Capitol Street, N.E. Disposition Approval Resolution of 2014

AND

Proposed Resolution 20-763, the Young School Surplus Declaration Resolution of 2014,

Proposed Resolution 20-764, the Young School Disposition Approval Resolution of 2014

JUNE 5, 2014
10:00 A.M.
ROOM 500
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On Thursday, June 5, 2014, Councilmember Muriel Bowser, Chairperson of the Committee on Economic Development, and Councilmember Kenyan McDuffie, Chairperson of the Committee on Government Operations, will hold a joint public roundtable to consider Proposed Resolution 20-742, the 1005 North Capitol Street, N.E., Surplus Declaration and Approval Resolution of 2014; Proposed Resolution 20-743, the 1005 North Capitol Street, N.E. Disposition Approval Resolution of 2014; Proposed Resolution 20-763, the

Young School Surplus Declaration Resolution of 2014; and Proposed Resolution 20-764, the Young School Disposition Approval Resolution of 2014.

Proposed Resolutions 20-742 and 20-743 will, respectively, declare District owned property at 1005 North Capitol Street, N.E., as surplus, and authorize the Office of the Deputy Mayor for Planning and Economic Development to enter in to a new ground lease for the property. The Developer, North Capitol Commons, LP, has proposed a redevelopment project that will serve veterans and low income residents with 60 units of permanent supportive housing, at least 60 units for families earning at or below 60% of the Area Median Income, and 2,500 square feet of commercial space.

Proposed Resolutions 20-763 and 20-764 will, respectively, declare District owned property at 820 26th Street, N.E., as surplus, and authorize the Department of General Services to enter in to a new ground lease for the property. The Property is a public school building that has not been used by DCPS since 2008. In July 2013, the Department of General Services issued a competitive solicitation for the property and chose Two Rivers Public Charter School as the lessee. Two Rivers intends to renovate the property for educational purposes.

The joint public roundtable will begin at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

Individuals and representatives of community organizations wishing to testify should contact Tsega Bekele, Legislative Counsel to the Committee on Economic Development, at (202) 724-8052, or tbekele@dccouncil.us and furnish his or her name, address, telephone number, and organizational affiliation, if any, by the close of business on June 3, 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 with 20 copies of any written testimony.

If you are unable to testify at the joint public roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on 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
1350 Pennsylvania Avenue, NW
Washington, DC 20004

ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen (15) days on PR20-798, the "Ticketmaster LLC Ticketing Services Contract Approval Resolution of 2014" in order to consider the proposed resolution at the legislative meeting on June 3, 2014. This approval is necessary to continue ticketing services without interruption.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Request

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

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

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

Reprog. 20-187: Request to reprogram $400,000 of Capital funds budget authority and allotment within the Department of General Services (DGS) was filed in the Office of the Secretary on May 20, 2014. This reprogramming is needed to support the costs of completing aspects of the District's parking garage adjacent to the new Department of Employment Services (DOES) headquarters, located at 4058 Minnesota Avenue, NE.

RECEIVED: 14 day review begins May 21, 2014

Reprog. 20-188: Request to reprogram $221,654 of Pay-as you-go (Paygo) Capital funds budget authority and allotment to the Operating Budget of the Department of General Services (DGS) was filed in the Office of the Secretary on May 20, 2014. This reprogramming is necessary to enable the purchase of site furnishings, including park benches, picnic tables, and trash containers, which have been deemed ineligible for capital budget and therefore must be funded with operating budget funds.

RECEIVED: 14 day review begins May 21, 2014

Reprog. 20-189: Request to reprogram $600,000 of Fiscal Year 2014 Local funds budget authority within the Office of the District of Columbia Auditor (ODCA) was filed in the Office of the Secretary on May 22, 2014. This reprogramming is needed to cover the costs associated with the services required for the contractors, the National Academies of Science and the National Research Council, to complete their evaluation of the District of Columbia Public School system , pursuant to the Public Education Reform Amendment Act.

RECEIVED: 14 day review begins May 23, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JUNE 4, 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

Fact Finding Hearing **9:30 AM**
Thalia, LLC, t/a Slaviya; 2424 18th Street NW, License #83910, Retailer CR ANC 1C
License in Extended Safekeeping

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00050; Glover Park F & B, LLC, t/a Breadsoda, 2233 Wisconsin Ave NW, License #78085, Retailer CR, ANC 3B
Failed to Demonstrate the Requirements of a CR License

Fact Finding Hearing* **9:30 AM**
Eagle N Exile, LLC, t/a DC Eagle; 3701 Benning Road NE, License #93984 Retailer CT, ANC 7F
Motion's Hearing

Fact Finding Hearing* **9:30 AM**
MT 617 Corporation, t/a Ming's; 617 H Street NW, License #83415, Retailer CR ANC 2C
Change of Hours Application

Fact Finding Hearing **11:00 AM**
Pub Crawl
Applicant: Toni Fisher
Dates of Event: July 5, 2014 through December 27, 2014
Event: GoCity Events (Merrifield Venture Partners, LLC)
Neighborhood: Multiple Licensed Premises
Size of Event:500-2500
The names of the establishments participating in the Pub Crawl are available upon request.

Board's Calendar
June 4, 2014

Fact Finding Hearing* **11:30 AM**
Bardo, LLC, t/a Bardo; 1216 Bladensburg Road NE, License #90430, Retailer CT, ANC 5D
Entertainment Endorsement Application

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

Protest Hearing* **1:30 PM**
Case # 14-PRO-00028; Andy Lee Liquors, Inc., t/a To be Determined, 914 H Street NE, License #93550, Retailer A, ANC 6A
New Application
This hearing is cancelled due to the submission of a Settlement Agreement for the Board's review and consideration.

Protest Hearing* **1:30 PM**
Case # 14-PRO-00003; LMW, LLC, t/a Little Miss Whiskey's Golden Dollar 1104 H Street NE, License #79090, Retailer CT, ANC 6A
Termination of Settlement Agreement
The hearing is continued at the request of the Applicant and consent of the Protestant.

Protest Hearing* **1:30 PM**
Case # 14-PRO-00011; Top Shelf, LLC, t/a Penn Quarter Sports Tavern, 639 Indiana Ave NW, License #76039, Retailer CT, ANC 2C
Termination of Settlement Agreement

Protest Hearing* **4:30 PM**
Case # 14-PRO-00013; 2718 Corp, t/a Chuck and Bill Bison Lounge, 2718 Georgia Ave NW, License #14759, Retailer CT, ANC 1B
Renewal Application

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Offical Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 30, 2014
Petition Date: July 14, 2014
Hearing Date: July 28, 2014
Protest Date: September 17, 2014

License No.: ABRA-095309
Licensee: Capital Fringe, Inc.
Trade Name: Capital Fringe
License Class: Retailer's Class "CX" Multipurpose Facility
Address: 607 New York Ave., NE
Contact: Peter Korbel 202-737-7230

WARD 6 ANC 6E SMD 6E04

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 September 17, 2014.

NATURE OF OPERATION
Multipurpose facility featuring Summer Culture Festivals with a seating capacity for 325 and total occupancy load of 325. Request a summer garden with 325 seats and entertainment endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION
Sunday 12 pm – 2 am, Monday Closed, Tuesday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION FOR OUTSIDE SUMMER GARDEN
Sunday 12 pm – 2 am, Monday Closed, Tuesday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

ENTERTAINMENT ON SUMMER GARDEN
Sunday 12 pm – 2 am, Monday Closed, Tuesday through Thursday 8 am – 2 am and Friday & Saturday 8 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
5/30/2014

Notice is hereby given that:

License Number: ABRA-095178 **License Class/Type: C Restaurant**

Applicant: Micherie, LLC

Trade Name: Cheerz

ANC: 4B01

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

7303 GEORGIA AVE NW, WASHINGTON, DC 20012

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

7/14/2014

HEARING WILL BE HELD ON

7/28/2014

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

ENDORSEMENTS:

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

CORRECTION**

Posting Date:	May 23, 2014
Petition Date:	July 7, 2014
Roll Call Hearing Date:	July 21, 2014
Protest Hearing Date:	September 10, 2014
License No.:	ABRA-095028
Licensee:	Culture Coffee LLC
Trade Name:	Culture Coffee
License Class:	Retailer's Class" D "Restaurant **
Address:	709 Kennedy St., NW
Contact:	SAUNDRELL J. STEVENS: 703-869-4055

WARD 4 ANC 4D SMD 4D01

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 September 10, 2014 at 4:30 pm.

NATURE OF OPERATION

Coffee Shop that serves sandwiches, pastries, snakes. Entertainment Endorsement/
Cover Charge, Open Music, Poetry, Book Readings. No dancing. Occupancy load 15.

HOURS OF OPERATION

Sunday: 10am – 5pm, Monday through Friday: 7am – 10pm, Saturday: 8am – 10pm

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

Sunday: 12 noon – 5pm, Monday through Friday: 8am – 10pm, Saturday: 10am – 10pm **

HOURS OF LIVE ENTERTAINMENT ENDORSMENET

Sunday: NONE, Monday through Saturday: 6pm – 10pm

****Correction****

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 23, 2014
Petition Date:	July 7, 2014
Roll Call Hearing Date:	July 21, 2014
Protest Hearing Date:	September 10, 2014
License No.:	ABRA-95281
Licensee:	Del Frisco's of Washington DC, LLC.
Trade Name:	Del Frisco's Double Eagle Steak House
License Class:	Retailer's Class "C" Restaurant
Address:	950 I Street NW
Contact:	Michael Fonseca Esq. 202-625-7700

WARD 2 ANC 2C SMD 2C01

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

NATURE OF OPERATION
New fine dining American steakhouse, seafood and American comfort cuisine restaurant. Live entertainment will consist of a live pianist. No nude performances. **Summer Garden seating 52 patrons. Total occupancy load is 496.

HOURS OF OPERATION AND ALCOHOLIC SALES/SERVICE AND CONSUMPTION
Sunday through Thursday 11am – 1am and Friday & Saturday 11am - 2am

HOURS OF OPERATION AND ALCOHOLIC SALES/SERVICE AND CONSUMPTION FOR **SUMMER GARDEN
Sunday through Saturday 11am-11pm

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 11am – 1am and Friday & Saturday 11am - 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

CORRECTION**

Posting Date:	May 23, 2014
Petition Date:	July 7, 2014
Hearing Date:	July 21, 2014
Protest Hearing Date:	September 10, 2014

License No.:	ABRA-094784
Licensee:	Shawarmaji, LLC
Trade Name:	Micho's
License Class:	Retailer's Class "C" Restaurant
Address:	500 H Street, NE
Contact:	Edward Moawad 301-968-2400

WARD 6 ANC 6C SMD 6C05

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 September 10, 2014 at 1:30 pm.

NATURE OF OPERATION

Dine-in and out Lebanese Grill Casual Style Restaurant serving sandwiches with healthy appetizers. Total # of seats is 28 and the occupancy load is 28. Total # of sidewalk café** seats is 86.

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

Sunday through Thursday 11 am – 9 pm
Friday and Saturday 11am – 2 am

HOURS OF OPERATION/SUMMER GARDEN HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/ SIDEWALK CAFÉ**

Sunday through Thursday 11 am – 9 pm
Friday and Saturday 11am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 30, 2014
Petition Date: July 14, 2014
Hearing Date: July 28, 2014
Protest Date: September 17, 2014

License No.: ABRA-095194
Licensee: Orange Anchor 3050, LLC
Trade Name: Orange Anchor
License Class: Retail Class "C" Restaurant
Address: 3050 K Street, NW.
Contact: Andrew Kline 202 686-7600

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30pm on September 17, 2014.

NATURE OF OPERATION
New Restaurant. Serving American food. Occupancy load is 125. Summer Garden

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

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

HOURS OF OPERATON FOR SUMMER GARDEN
Sunday through Thursday 7 am – 2 am, Friday and Saturday 7 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION OF SUMMER GARDEN (110 SEATS)
Sunday through Thursday 8 am – 2 am, Friday and Saturday 8 am – 3 am

DISTRICT OF COLUMBIA TAXICAB COMMISSION
GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC HEARING

Public Hearing to Undertake a Review of the Taxicab Rate Structure
JUNE 20, 2014
10:00 A.M.

The DC Taxicab Commission (DCTC) has scheduled a Public Hearing at 10:00 am on Friday, June 20, 2014 at 441 4th Street, NW in the Old Council Chambers to undertake a review of the taxicab rate structure.

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 Wednesday, June 18, 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 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 Wednesday, June 18, 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 the public vehicle for hire industry. Therefore, when making suggestions as to what should be added or deleted to the proposed rulemakings, participants should cite the specific section of any current taxicab rate rule that is a concern, and provide a suggestion for alternative language, if appropriate. It is important to be clear and specific with presentations given the importance of taxicab rates to drivers, owners, and the riding public.

The taxicab rate rules which are relevant to the Commission's review appear in Title 31 of the D.C. Municipal Regulations, (including subsections 801 (Passenger Rates and Charges), and 804 (Snow Emergency Fares)), and in the Commission's proposed rulemakings amending Chapter 8 (published in the *D.C. Register* on May 9, 2014, at 61 DCR 4737).

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

FRIDAY, JUNE 20, 2014
10:00 am
OLD COUNCIL CHAMBERS
441 4TH Street, N.W., Washington, DC 20001

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JULY 29, 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 SIX

18803 ANC-6B **Application of Christopher Ornelas,** pursuant to 11 DCMR § 3104.1, for a special exception for a three story rear addition to an existing one-family row dwelling under section 223, not meeting the lot occupancy (section 403) requirements in the R-4 District at premises 625 South Carolina Avenue, S.E. (Square 876, Lot 50).

WARD SIX

18804 ANC-6C **Application of FBL Holdings LLC**., pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under subsection 401.3, to allow the conversion of a former grocery store into a four (4) unit apartment house in the CAP/R-4 District at premises 538 3rd Street, N.E. (Square 754, Lot 98).

WARD ONE

18805 ANC-1B **Application of 1831 14th Street, LLC,** pursuant to 11 DCMR § 3104.1, for a special exception from the rear yard requirements under subsection 774.2, in order to build a second floor addition to an existing building in the ARTS/C-3-A District at premises 1829-1831 14th Street, N.W. (Square 238, Lot 873).

WARD SEVEN

18806 ANC-7E **Application of 4525 Benning Road, LLC,** pursuant to pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the 20 ft. aisle with requirements under subsection 2117.5, and a special exception under subsection 2116.5, to allow the location of parking spaces as described in subsection 2116.4, for the establishment of a D.C. Department of Motor

Vehicle Service Center with accessory parking in the C-3-A District at premises 4525 Benning Road, S.E. (Square 5350, Lot 121).

WARD SIX

18807 ANC-6C **Application of Heritage Foundation,** pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception under section 214, and variances from subsections 214.1, 214.3, and 214.4, to allow the continued use of an accessory parking lot in the CAP/R-4 District at 415 3rd Street, N.E., 416 4th Street, N.E. and 424 4th Street, N.E. (Square 780, Lots 43, 62 and 810).

WARD FIVE

THIS APPLICATION WAS POSTPONED FROM THE JUNE 24, 2014, PUBLIC HEARING SESSION:

18787 ANC-5E **Application of 143 Rear W Street LLC**, pursuant to 11 DCMR § 3103.2, pursuant to for variances from subsection 2507.1, which permits a one-family dwelling as the only type of dwelling on an alley lot, and subsection 2507.2, which does not allow construction of a dwelling on an alley lot unless the alley lot abuts an alley 30 feet or more in width and has access to a street through an alley lot not less than 30 feet in width, to allow the construction of four flats on alley lots in the R-4 District at 143 Rear W Street, N.W. (Square 3121, Lots 73 and 74).

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

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FINAL 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 12523 (September 6, 2013)), and any similar succeeding legislation, hereby gives notice of the adoption of amendments to Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards) in Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

These amendments will clarify the use of Corrective Measures Plans during the Mental Health Rehabilitation Services (MHRS) certification process and period of certification, and create a decertification process for MHRS providers that fail to comply with Chapter 34 or the provider's Human Care Agreement.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on April 11, 2014 at 61 DCR 003838. No comments were received and no substantive changes were made.

The Director adopted these rules as final on May 21, 2014, and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards) of Subtitle A (Mental Health) of Title 22 (Health) of the DCMR is amended as follows:

Subsection 3401.4 is amended to read as follows:

3401.4 The Department may conduct an on-site survey at the time of certification application or certification renewal, or at any other time during the period of certification with appropriate notice.

Subsection 3401.5 is amended to read as follows:

3401.5 During an on-site survey, the Department shall have access to all records necessary to verify compliance with certification standards, and may conduct interviews with staff, others in the community, and consumers with consumer permission.

Subsection 3401.6 is amended to read as follows:

3401.6 An applicant or certified MHRS provider that fails to comply with the certification standards or its Human Care Agreement, or is in non-compliance with federal or District law, shall receive a Corrective Measures Plan (CMP) from the Department. The CMP shall describe the areas of non-compliance, suggest actions needed to bring operations into compliance, and set forth a timeframe for

the provider's submission of a written Corrective Action Plan (CAP). The issuance of a CMP is a separate process from the issuance of a Notice of Infraction under 16 DCMR Chapter 35. The Department is not required to utilize the CMP process and may proceed directly to decertification under Section 3426 when, in the Department's discretion, the nature of the violations present a threat to the health or safety of consumers.

Subsection 3401.7 is amended to read as follows:

3401.7 An applicant or certified MHRS provider's CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to DBH within ten (10) working days after receipt of the CMP from DBH.

Subsection 3401.11 is amended to read as follows:

3401.11 Certification as an MHRS provider shall be for one (1) calendar year for new applicants, and two (2) calendar years for existing providers seeking renewal. Certification shall start from the date of issuance of certification by the Department, subject to the MHRS provider's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to Section 3426. The Certification shall specify the effective date of the certification, whether the MHRS provider is certified as a CSA, sub-provider, or specialty provider, and the types of services the MHRS provider is certified to provide.

Subsection 3401.14 is amended to read as follows:

3401.14 The Director may deny certification if the applicant fails to comply with any certification standard. The Director may revoke certification of an MHRS provider through the decertification process in accordance with Section 3426 of this chapter.

Subsection 3401.16 is added to read as follows:

3401.16 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. Certification as an MHRS provider depends upon the Director's assessment of the need for additional providers(s) and availability of funds.

Subsection 3401.17 is added to read as follows:

3401.17 In addition to utilizing the CMP process in Subsection 3401.6 during the certification and recertification stage, the Director may utilize the same procedures at any other time to address violations of this chapter, a provider's Human Care Agreement, or a violation of federal or District law. The Department is not required to utilize the CMP process and may proceed directly

to decertification under Section 3426 when, in the Director's discretion, the nature of the violations present a threat to the health or safety of consumers.

A new Section 3426 is added as follows:

3426 DECERTIFICATION PROCESS

3426.1 Decertification is the revocation of the certification issued by the Director to an organization or entity as an MHRS provider. A decertified MHRS provider shall not be entitled to provide any MHRS services and shall not be eligible for reimbursement for any services as a MHRS provider.

3426.2 Grounds for revocation include a provider's failure to comply with the certification requirements contained in this chapter, the provider's breach of its Human Care Agreement, violations of federal or D.C. law, or any other action that constitutes a threat to the health or safety of consumers. Nothing in this chapter requires the Director to issue a CMP prior to revoking certification.

3426.3 If grounds for revocation have been met, the Director will issue a written notice of revocation setting forth the factual basis for the revocation, the effective date, and right to request an administrative review.

3426.4 The provider may request an administrative review from the Director within fifteen (15) business days of the date on the notice of revocation.

3426.5 Each request for an administrative review shall contain a concise statement of the reason(s) why the provider should not have the certification revoked and include any relevant supporting documentation.

3426.6 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.

3426.7 The Director shall issue a written decision and provide a copy to the provider. If the Director approves the revocation of the provider's certification, the provider may request a hearing under the D.C. Administrative Procedure Act, D.C. Official Code § 2-501, *et seq.*, within fifteen (15) business days of receipt of the Director's written decision. The administrative hearing shall be limited to the issues raised in the administrative review request. The revocation shall be stayed pending resolution of the hearing.

3426.8 Once certification is revoked, the MHRS provider shall not be allowed to reapply for certification for a period of two (2) years following the date of the order of revocation. If a provider reapplies for certification, the provider must reapply in accordance with the established certification standards for the type of services

provided, and show evidence that the grounds for the revocation have been corrected.

The following definitions in Section 3499 are amended to read as follows:

"Department" - the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523 (September 6, 2013)).

"Director" – the Director of the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523 (September 6, 2013)).

"DMH" – all references to DMH shall refer to the Department of Behavioral Health, the successor in interest to the Department of Mental Health, pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12523 (September 6, 2013)).

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF FINAL RULEMAKING

The Director of the District Department of Transportation ("DDOT"), pursuant to the authority set forth in Sections 5(2)(N), 5(3)(D), and 11r of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04(2)(N), (3)(D) and 50-921.76 (2012 Repl. & 2013 Supp.)), and Mayor's Order 2013-198, issued October 24, 2013, hereby gives notice of the adoption of the following rulemaking to add a new Chapter 16 (DC Streetcar) to, and amend Chapter 24 (Stopping, Standing, Parking, and Other Non-Moving) and Chapter 26 (Civil Fines for Moving and Non-Moving Infractions) of, Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to prohibit parking vehicles in a way that impedes the operation of the DC Streetcar system.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on February 28, 2014 at 61 DCR 1783. No comments were received and no substantive changes were made to the rulemaking.

DDOT adopted the rules as final on April 16, 2014. The rules will go into effect upon the date of publication of this Notice of Final Rulemaking in the *D.C. Register*.

Title 18, VEHICLES AND TRAFFIC, of the DCMR is amended as follows:

A new Chapter 16, DC STREETCAR, is added to read as follows:

CHAPTER 16 DC STREETCAR

1600 GENERAL PROVISIONS

1600.1 This chapter establishes regulations related to the operation of the DC Streetcar system, a passenger light rail transit service within the District of Columbia.

1601 IMPEDING THE STREETCAR SYSTEM

1601.1 It shall be unlawful to park, stop, or stand a vehicle:

(a) On a streetcar guideway; or

(b) Adjacent to a streetcar platform.

1601.2 A vehicle in violation of this section shall be subject to removal or impoundment at the vehicle owner's expense, pursuant to § 2421 of this title.

1699 DEFINITIONS

1699.1 When used in this chapter, the following terms shall have the meaning ascribed:

DDOT – District Department of Transportation

Streetcar – a car other than a railroad train that is operated on rails for the purposes of transporting persons.

Streetcar platform – the public right of way designated for public use as an embarkation/disembarkation or waiting area for the streetcar; the stairways, ramps, and sidewalks that provide direct access to the embarkation/ disembarkation or waiting area; and all equipment and fixtures, including streetcar shelters, in the embarkation/disembarkation or waiting area.

Streetcar guideway – the area where streetcars operate, including the streetcar track, overhead wiring, and the airspace between, above, and surrounding the streetcar tracks through which the streetcar or its appurtenances will pass while operating on the streetcar track. A streetcar guideway includes the concrete slab the tracks are resting on.

Chapter 24, STOPPING, STANDING, PARKING, AND OTHER NON-MOVING, is amended as follows:

Section 2405, STOPPING, STANDING, OR PARKING PROHIBITED: NO SIGN REQUIRED, is amended as follows:

Subsection 2405.1 is amended to read as follows:

2405.1 Notwithstanding any other parking regulations, no person shall stop, stand, or park a motor vehicle or trailer in any of the following places, except when necessary to avoid conflict with other traffic, or at the direction of a police officer or traffic control device:

(a) Within an intersection;

(b) On a crosswalk;

(c) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(d) Upon any bridge, viaduct, or other elevated structure, freeway, highway tunnel, or ramps leading to or from such structures, or within a highway tunnel;

(e) On any median, channelizing island, or safety zone, whether made of concrete, grass, or other material and with curbs or otherwise delineated by solid yellow or white lines;

(f) In any driveway, alley entrance, or other way when stopping, standing or parking would obstruct the flow of pedestrians or other lawful traffic upon any sidewalk;

(g) In a bicycle lane;

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

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

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

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

(i) On the streetcar guideway or adjacent to a streetcar platform, as defined by Subsection 1699.1 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 1699.1).

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended as follows:

Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended as follows:

Subsection 2601.1 is amended by adding the following infraction after the infraction "Stop sign, within 25 feet of [§ 2405.2(d)]":

INFRACTION (DCMR Citation)	FINE
Streetcar – parking, stopping or standing a vehicle in the streetcar guideway or adjacent to a streetcar platform. [§§ 1601.1, 2405.1(i)]	$ 100.00

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Pesticides Infractions: Schedule of Fines Amendments

The Director of the District Department of the Environment (DDOE or Department), pursuant to the authority set forth in 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.)); the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq*. (2012 Repl. & 2013 Supp.)); the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.* (2012 Repl. & 2013 Supp.)); the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; D.C. Official Code §§ 8-431 *et seq.* (2013 Repl.)); Mayor's Order 2006-61, Section 29, dated June 14, 2006; and Mayor's Order 2009-113, dated June 18, 2009, hereby gives notice of the intent to amend Chapter 40 (Department of Environment) of Title 16 (Consumers, Commercial Practices, & Infractions) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking amends Section 4002 of Title 16 to correspond with the new Notice of Proposed Rulemaking for the District of Columbia Pesticide Operation Regulations that amends Chapters 22 through 25 of Title 20 (Environment) of the DCMR. Appendix A lists sections that were not previously included in the Schedule of Fines.

Chapter 40 (Department of Environment), Title 16 (Consumers, Commercial Practices, & Infractions) of the DCMR is amended as follows:

Section 4002, PESTICIDE INFRACTIONS, is amended to read as follows:

4002 PESTICIDE INFRACTIONS

4002.1 Violation of any of the following provisions shall be a Class 1 infraction:

(a) 20 DCMR § 2201.7 (using a pesticide in a manner harmful to human health, non-target organisms, or the environment);

(b) 20 DCMR § 2201.12 (performing an inspection for wood infestation or determination of the presence of pests by a pesticide operator without a certification in the "Industrial, Institutional, Structural, and Health Related Pest Control" category as described in 20 DCMR § 2301.5);

(c) 20 DCMR § 2202.1 (using, manufacturing, distributing, selling, shipping, or applying a pesticide not registered with the Department);

(d) 20 DCMR § 2208.1 (applying a District restricted-use pesticide to schools, child-occupied facilities, waterbody-contingent property, or District property);

(e) 20 DCMR § 2208.2 (applying a non-essential pesticide to schools, child-occupied facilities, waterbody-contingent property, or District property);

(f) 20 DCMR § 2213.1 (failure to store pesticides in accordance with the requirements of 20 DCMR § 2213.1);

(g) 20 DCMR §2213.2 (storing a restricted-use pesticide without posting a sign in accordance with the requirements of 20 DCMR § 2213.2);

(h) 20 DCMR § 2213.3 (failure to dispose of a pesticide in accordance with the Resource Conservation and Recovery Act or label directions);

(i) 20 DCMR § 2213.4 (failure to transport a pesticide in accordance with the requirements of 20 DCMR § 2213.4);

(j) 20 DCMR § 2219.1(j) (making a false or fraudulent record, invoice, or report);

(k) 20 DCMR § 2219.1(k) (acting as, advertising as, or assuming to act as a pesticide dealer without a license);

(l) 20 DCMR § 2219.1(l) (aiding, abetting, or conspiring to evade pesticide laws or regulations);

(m) 20 DCMR § 2219.1(m) (making fraudulent or misleading statements during or after an inspection of a pest infestation or an inspection conducted pursuant to 20 DCMR Chapter 25);

(n) 20 DCMR § 2219.1(n) (impersonating a federal, state, or District inspector or official);

(o) 20 DCMR § 2219.1(o) (failure to immediately notify and report to the Department any pesticide accident, incident, fire, flood, or spill);

(p) 20 DCMR § 2219.1(p) (distributing an adulterated pesticide);

(q) 20 DCMR § 2219.1(q) (failure to maintain a record required for a transaction involving a restricted-use pesticide);

(r) 20 DCMR § 2311.2 (permitting the use of a pesticide by a technician who is not registered with the Department and acting under the direct supervision of a licensed applicator);

(s) 20 DCMR § 2400.4 (permitting the use of a restricted-use pesticide by a person who is not a licensed and certified applicator or a registered technician acting under the direct supervision of a licensed applicator); or

(t) 20 DCMR § 2505.4 (violating a "stop sale, use, or removal" order).

4002.2 In addition to § 4002.3, violation of any of the following provisions shall be a Class 2 infraction:

(a) 20 DCMR § 2201.1 (using a pesticide in a manner inconsistent with its labeling or in violation of a law or regulation);

(b) 20 DCMR § 2201.2 (failure to maintain equipment);

(c) 20 DCMR § 2201.3 (failure to distribute a registered pesticide in the registrant's or manufacturer's unbroken, immediate container);

(d) 20 DCMR § 2201.10 (detaching, altering, defacing, or destroying a label required by FIFRA);

(e) 20 DCMR § 2214.1 (distributing a pesticide or device that is misbranded);

(f) 20 DCMR §§ 2214.3 to 2214.4, or 2214.6 to 2214.14 (failure to comply with a labeling, package, container, or wrapper requirement);

(g) 20 DCMR § 2214.5 (offering for sale a pesticide under the name of another pesticide or imitation of another pesticide);

(h) 20 DCMR § 2215.5 (failure to have a Department-approved Integrated Pest Management program that meets the requirements of 20 DCMR § 2215.5);

(i) 20 DCMR § 2215.7 (applying a pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities without an approved integrated pest management plan);

(j) 20 DCMR § 2216.1 (performing fumigation without being a licensed applicator certified to perform fumigation or without supervision by a licensed applicator certified to perform fumigation);

(k) 20 DCMR § 2216.2 (failure to train and provide safety equipment to each member of a fumigation crew);

(l) 20 DCMR § 2216.3 (failure to notify the nearest fire station prior to fumigation);

(m) 20 DCMR § 2216.5 (failure to conspicuously post warning signs for fumigation);

(n) 20 DCMR § 2216.7 (failure to have a guard present on-site during fumigation);

(o) 20 DCMR § 2216.8 (failure of guard to be capable, awake, alert, or to remain on duty at the site at all times);

(p) 20 DCMR §§ 2216.9 or 2216.10 (failure to comply with a requirement for introducing a fumigant or for allowing re-occupancy after fumigation);

(q) 20 DCMR § 2217.1 (performing pest control by heat treatment without being a licensed and certified pesticide operator);

(r) 20 DCMR § 2218.1 (using a canine scent pest detection team without being a licensed and certified pesticide operator or using an uncertified canine scent pest detection team);

(s) 20 DCMR § 2219.1(a) (failure to register a pesticide in the District of Columbia);

(t) 20 DCMR § 2219.1(b) (using a pesticide in a manner inconsistent with its labeling or in violation of imposed restrictions);

(u) 20 DCMR § 2219.1(c) (making a pesticide recommendation that is inconsistent with its labeling or in violation of imposed restrictions);

(v) 20 DCMR § 2219.1(d) (falsifying, refusing, or neglecting to maintain or make available required records);

(w) 20 DCMR § 2219.1(e) (using fraud or misrepresentation in applying for certification or a license);

(x) 20 DCMR § 2219.1(g) (making a false or fraudulent claim through any media that misrepresents the effect of a pesticide or method to be utilized in its application);

(y) 20 DCMR § 2219.1(h) (applying an ineffective or improper pesticide; operating faulty or unsafe equipment); or

(z) 20 DCMR § 2219.1(i) (using or supervising the use of a pesticide in a faulty, careless, or negligent manner).

4002.3 In addition to § 4002.2, violation of any of the following provisions shall be a Class 2 infraction:

(a) 20 DCMR § 2300.2 (purchasing or using a restricted-use pesticide without a license and not under the direct supervision of a licensed commercial or public applicator, or supervising the use of a restricted-use pesticide without a license);

(b) 20 DCMR § 2310.4 (improper use of a public applicator license);

(c) 20 DCMR § 2312.8 (failure to instruct an employee on proper pesticide use);

(d) 20 DCMR § 2313.1 (failure to instruct an employee on the hazards of pesticide use and proper steps to avoid those hazards);

(e) 20 DCMR § 2313.2 (failure to provide an employee with necessary safety equipment and protective clothing);

(f) 20 DCMR § 2313.3 (failure to inform an employee of reentry requirements or provide necessary protective clothing or apparatus if premature reentry is necessary);

(g) 20 DCMR §§ 2400.1 or 2400.5 (failure to obtain a pesticide operator license);

(h) 20 DCMR § 2400.6 (transferring a pesticide operator license from one business to another);

(i) 20 DCMR § 2401.7(c) (using a restricted-use pesticide without the supervision of a licensed certified applicator during the grace period provided in 20 DCMR § 2401.7(b));

(j) 20 DCMR §§ 2403.1 or 2403.2 (failure to obtain a pesticide dealer's license);

(k) 20 DCMR § 2403.7 (selling or transferring a restricted-use pesticide to any person other than a licensed certified applicator or authorized representative); or

(l) 20 DCMR § 2516.10 (failure to report a significant pesticide accident or incident within twenty-four (24) hours of occurrence).

4002.4 Violation of any of the following provisions shall be a Class 3 infraction:

(a) 20 DCMR § 2201.4 (failure to have a FIFRA label affixed to a pesticide container);

(b) 20 DCMR § 2201.5 (using a pesticide container for a purpose other than containing the original product);

(c) 20 DCMR § 2201.8 (applying a pesticide when the wind velocity will cause the pesticide to drift beyond the target area);

(d) 20 DCMR § 2201.9 (displaying or offering for sale a pesticide in a container which is damaged or has a damaged or obscure label);

(e) 20 DCMR § 2201.11 (applying a pesticide without a copy of the label available for inspection);

(f) 20 DCMR § 2203.4 (using or revealing for one's own advantage information relating to the formula of a pesticide registered with the Department);

(g) 20 DCMR § 2211.1 (failure to provide customer with required information before a pesticide application);

(h) 20 DCMR § 2211.3 (failure to provide customer with advance notice of a pesticide application upon request);

(i) 20 DCMR § 2211.4 (failure to provide customer with advance notice of a pesticide application to multi-unit property upon request);

(j) 20 DCMR § 2211.5 (failure to provide tenant and resident with required information before a pesticide application);

(k) 20 DCMR § 2211.7 (failure to provide notice of pesticide application to abutting property);

(l) 20 DCMR § 2217.2 (failure to comply with record keeping requirements for pest control by heat treatment);

(m) 20 DCMR §§ 2218.7 or 2218.8 (failure to comply with record keeping requirements for canine scent pest detection);

(n) 20 DCMR § 2218.9 (failure to design a canine scent detection test that meets the requirements of 20 DCMR § 2218.9);

(o) 20 DCMR §§ 2218.14 to 2218.16 (failure to comply with the requirements for conducting a canine scent detection test);

(p) 20 DCMR § 2219.1(f) (refusing or neglecting to comply with a limitation or restriction on a certification or license);

(q) 20 DCMR §§ 2306.1 or 2307.5 (failure to renew certification);

(r) 20 DCMR § 2311.1 (applying a pesticide without being registered with the Department and acting under the direct supervision of a licensed certified applicator);

(s) 20 DCMR § 2311.3 (failure to register an employee who works under the direct supervision of a licensed certified applicator within thirty (30) days of employment);

(t) 20 DCMR §§ 2402.2 to 2402.5 (failure to comply with liability insurance requirements);

(u) 20 DCMR § 2514.3 (failure to renew a license on or before the first day of a licensure period);

(v) 20 DCMR §§ 2516.1 to 2516.3, or 2516.5 to 2516.10 (failure to comply with a record keeping requirement or provide records or other information); or

(w) 20 DCMR §§ 2517.1 or 2517.2 (failure to comply with a record keeping requirement for or provide records on restricted-use pesticides).

4002.5 Violation of any of the following provisions shall be a Class 4 infraction:

(a) 20 DCMR § 2201.6 (failure to use an effective anti-siphon device for equipment);

(b) 20 DCMR § 2212.1 (failure to post a sign at the time of pesticide application that meets the requirements of 20 DCMR § 2212);

(c) 20 DCMR § 2300.8 (failure to post license conspicuously);

(d) 20 DCMR § 2305.5 (failure to submit credentials and license to employer after termination of employment);

(e) 20 DCMR § 2305.6 (failure to notify the Department of the termination of an employee and return a terminated employee's license and credentials to the Department within ten (10) working days of employee submitting license and credentials);

(f) 20 DCMR § 2311.7 (failure to have registered technician identification card available for inspection));

(g) 20 DCMR § 2311.13 (failure to give written notice of termination of a registered technician within thirty (30) days of termination or failure to return a terminated registered technician's identification card);

(h) 20 DCMR § 2312.6 (failure to have a pesticide label at work site);

(i) 20 DCMR § 2400.7 (failure to surrender an operator certification and license within ten (10) working days of termination of a business);

(j) 20 DCMR § 2400.8 (failure to notify the Department of any change of address within thirty (30) days of the change);

(k) 20 DCMR § 2400.10 (failure to post license conspicuously); or

(l) 20 DCMR § 2401.7 (failure to notify the Department when supervision by a licensed certified applicator is not available).

4002.6 Violation of any provision of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 to 8-419); the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012, as amended (D.C. Law 19-191; D.C. Official Code §§ 8-431 to 8-440); or the implementing rules in 20 DCMR Chapters 22 through 25 which is not cited elsewhere in this section, shall be a Class 5 infraction.

Appendix A – Chart of Newly Scheduled Infractions

The following regulation sections were not previously included in the Schedule of Fines:

SECTION	CLASS
20 DCMR § 2208.1	1
20 DCMR § 2208.2	1
20 DCMR § 2213.1	1
20 DCMR §2213.2	1
20 DCMR § 2213.3	1
20 DCMR § 2213.4	1
20 DCMR § 2219.1(k)	1
20 DCMR § 2219.1(q)	1
20 DCMR § 2311.2	1
20 DCMR § 2215.5	2
20 DCMR § 2215.7	2
20 DCMR § 2218.1	2
20 DCMR § 2201.4	3
20 DCMR § 2201.11	3
20 DCMR § 2211.1	3
20 DCMR § 2211.3	3
20 DCMR § 2211.4	3
20 DCMR § 2211.5	3
20 DCMR § 2211.7	3
20 DCMR § 2217.2	3
20 DCMR § 2218.7	3
20 DCMR § 2218.8	3
20 DCMR § 2218.9	3
20 DCMR § 2218.14	3
20 DCMR § 2218.15	3
20 DCMR § 2218.16	3

The Director gives notice of the start of a thirty (30) day public comment period for this proposed rulemaking, as required by D.C. Official Code § 8-411(a) (2012 Repl.). Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to DDOE's Hazardous Materials Branch, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002, Attention: Pesticide Regulations; or sent electronically to ddoe.pesticideregs@dc.gov, with "Pesticide Regulations Proposed Rulemaking" in the subject line. Copies of the proposed rule may be obtained between the hours of 9:00 A.M. and 5:00 P.M. at the address listed above for a small fee to cover the cost of reproduction or on-line at http://ddoe.dc.gov.

All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties and is unable to contact the commenter for clarification, the Department may be unable to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

District of Columbia Pesticide Operation Regulations

The Director of the District Department of the Environment (DDOE or Department)**,** pursuant to the authority set forth in Section 12(a) of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-411(a) (2012 Repl.); Section 11(a) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; D.C. Official Code § 8-440(a)); Section 103(b)(1)(B)(ii)(II) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(II) (2012 Repl.)); the Brownfields Revitalization Amendment Act of 2010 (Brownfields Act), effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code § 8-631.01 *et seq*. (2012 Repl.)); and Mayor's Order 98-47, dated April 15, 1998, as amended by Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the intent to repeal Chapters 22 through 25 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), Pesticide Operation Regulations, in their entirety, and to adopt the following new provisions in Chapters 22 through 25, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Summary of the Proposed Rulemaking

The Department's Pesticide Operation Regulations, Chapters 22 through 25 of Title 20 of the DCMR, aim to protect the health of District residents, workers, and the environment from risks resulting from pesticide production, registration, distribution, use and disposal, while allowing the benefits that pesticides offer.

The purpose of this rulemaking is to implement the provisions of the Pesticide Education and Control Amendment Act of 2012 and to amend and reorganize the District's existing pesticide regulations. The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.) sets the requirements for labeling, distributing, disposing of, storing, transporting, using, or applying pesticides in the District. The original implementing regulations, promulgated in 1978, have only been updated once, to incorporate several provisions of the Loretta Carter Hanes Pesticide Consumer Notification Amendment Act of 2008, effective June 5, 2008 (D.C. Law 17-168; D.C. Official Code §§ 8-403.01-403.04 (2012 Repl.)) (Loretta Carter Act).

Subsequently, the Pesticide Education and Control Amendment Act of 2012 (PECA) became effective on October 23, 2012, requiring DDOE, among other things, to maintain a list of pesticides classified as "District restricted-use" or "non-essential," restrict certain pesticide applications, provide exemptions for certain applications, prescribe annual reporting requirements, and set pesticide registration fees. Like the existing rules, the proposed rules must comply with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, but are permitted to be more stringent, broader in scope, or otherwise different than the FIFRA regulations, with the exception of labeling requirements. 7 U.S.C. § 136v.

I. Control of Pesticides

The proposed rules amend and reorganize Chapter 22 to include requirements for pesticide registration, classification, usage, notification, storage, disposal, and transportation. The proposed rules move the section on the registration of pesticide dealers to Chapter 24, which governs pesticide operators, and move the sections on pesticide technicians (previously called "employees") and public applicators to Chapter 23, with related applicator sections.

The general requirements in § 2201 retain most of the existing provisions but are amended to require a person applying pesticides to have a copy of the label available for inspection at the time and place of application (20 DCMR § 2201.11). The pesticide registration requirements in §§ 2202 through 2204 have been reorganized for clarity and amended to include requirements for requesting a hearing at the Office of Administrative Hearings for any proposed denial, suspension, or revocation of a pesticide registration.

Sections 2205 through 2209 implement provisions of PECA that require the Department to create and maintain a list of pesticides classified as "District restricted-use" or "non-essential." The proposed regulations adopt the FIFRA definition of "pesticide," but for the purpose of classifying pesticides registered in the District, §§ 2205 through 2209 exclude certain substances from classification as restricted-use or non-essential. These exclusions, for classification purposes only, do not alter the existing definition of “pesticides” in § 2299, or the District’s regulation of substances defined as pesticides. Pursuant to PECA, the Department proposes to classify as District restricted-use all pesticides identified by the U.S. Environmental Protection Agency as restricted use. The Department will provide notice and a 30-day public notice and comment period when classifying additional pesticides as District restricted-use or as non-essential, and will publish the list of classified pesticides on the Department’s website and via amendment of §§ 2206 and 2007.

Sections 2208 and 2209 establish the prohibited and restricted uses and exemptions for pesticides classified by § 2205, pursuant to PECA § 3. Section 2211 implements the notification provisions pursuant to the Loretta Carter Act and requires applicators licensed under the Act to provide a written notification, as specified, prior to a pesticide application. Section 2213 establishes specific standards for storage, disposal, and transportation. Section 2215 requires District agencies to utilize an integrated pest management policy to reduce pesticide application on public rights-of-way, parks, District-occupied buildings, and other District property, as required by the District’s Municipal Separate Storm Sewer System Permit. Section 2215 also subjects child-occupied facilities to the same integrated management requirements to reduce the risks associated with pesticide application. Section 2217 requires persons performing pest control by heat treatment to maintain certain records. Finally, Section 2218 establishes standards for canine pest detection, which are based on Maryland’s recently adopted standards.

II. Pesticide Applicators

The sections in Chapter 23 retain the majority of the existing provisions. Sections 2310 (Government Agencies and Public Applicators) and 2311 (Registration of Technicians), previously in Chapter 22, are moved to Chapter 23 with the related applicator requirements and

the existing requirements governing the supervision of registered technicians. The existing regulations refer to "registered employees," but the proposed rules change this term to "registered technicians," pursuant to PECA § 12.

Additionally, the proposed rules amend provisions in Chapter 23 to accommodate the migration of licensing from the District Department of Consumer and Regulatory Affairs (DCRA) to DDOE. Currently, applicants are required to receive a certification from DDOE, apply for a license at DCRA, and then return to DDOE to receive the required credentials. Beginning on January 1, 2016, applicants will apply for both certification and license from DDOE. Regulated applicators will benefit from a streamlined application process provided by one District agency.

III. Pesticide Operators and Dealers

As proposed, Chapter 24 remains largely the same as the existing regulations, but includes the dealer licensing provisions previously in Chapter 22. Currently, there are no licensed pesticide dealers in the District.

IV. Pesticide-Use Enforcement and Administration

The proposed rules in Chapter 25 amend the Pesticide Operation Regulations to include reporting requirements pursuant to PECA and to clarify the enforcement authority of the Department. The proposed rules establish the notice and entry requirements for inspection, sampling, and observation, in addition to entry, for responsive or corrective action pursuant to the Brownfields Act. The proposed rules also set forth the various administrative enforcement actions that the Department may take and procedures before the Office of Administrative Hearings. Specifically, Chapter 25 establishes the penalties and injunctive relief available for failure to comply with administrative orders (§ 2509); civil infraction fines, penalties, and fees (§ 2510); judicial actions available (§ 2511); and settlement agreement requirements (§ 2512).

Pursuant to PECA § 7, Chapter 25 implements the pesticide education reporting requirements applicable to the University of the District of Columbia and the recordkeeping and reporting requirements affecting regulated applicators. The proposed reporting requirements, added pursuant to PECA § 8, require regulated applicators to maintain and submit records annually to the Department containing detailed information about the application and pesticides applied.

Finally, the proposed rules set the terms and fees governing pesticide registration (§ 2518), examination (§ 2519), and certification (§ 2510). Previously, licenses were valid for three years, and certifications were valid for one year. Beginning on January 1, 2016, certifications and licenses for commercial applicators are valid for one year and must be renewed each year; certifications and licenses for private applicators are valid for two years and must be renewed every two years; and registration for registered technicians is valid for three years.

Title 20 (Environment) of the DCMR, Chapters 22 through 25 are repealed in their entirety and hereby replaced with new Chapters 22 through 25, to read as follows:

CHAPTER 22 CONTROL OF PESTICIDES

2200 General Provisions
2201 General Requirements for Pesticides
2202 Pesticide Registration
2203 Procedures for Pesticide Registration
2204 Denial, Suspension, and Revocation of Pesticide Registration
2205 Classification of Pesticides
2206 District Restricted-Use Pesticides
2207 Non-Essential Pesticides
2208 Prohibited and Restricted Uses
2209 Prohibited and Restricted Uses: Exemptions
2210 Reduced-Risk Pesticides and Methods of Pest Control
2211 Notification
2212 Posting
2213 Storage, Disposal, and Transportation of Pesticides
2214 Misbranded Pesticides and Devices
2215 Integrated Pest Management
2216 Pest Control by Fumigation
2217 Pest Control by Heat Treatment
2218 Canine Pest Detection
2219 Unlawful Acts
2299 Definitions

CHAPTER 23 PESTICIDE APPLICATORS

2300 General Provisions
2301 Categories of Pesticide Applicators
2302 Commercial Applicators: Eligibility for Certification
2303 Commercial Applicators: Determination of Competency
2304 Commercial Applicators: Standards for Determination of Competency
2305 Commercial Applicators: Certification and Licensing
2306 Commercial Applicators: Certification and Licensing Renewal
2307 Private Applicators: Certification and Licensing
2308 Private Applicators: Determination of Competency
2309 Private Applicators: Standards for Determination of Competency
2310 Government Agencies and Public Applicators
2311 Registration of Technicians
2312 Supervision of Registered Technicians
2313 Protection of Pesticide Handlers and Applicators
2314 Reciprocity of Certification
2399 Definitions

CHAPTER 24 PESTICIDE OPERATORS AND DEALERS

CHAPTER 25 PESTICIDE USE ENFORCEMENT AND ADMINISTRATION

CHAPTER 22 CONTROL OF PESTICIDES

2200 GENERAL PROVISIONS

2200.1 The purpose of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, is to conform the laws of the District of Columbia with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136 *et seq*.), as amended, and the implementing regulations, and to establish a regulatory process in the District of Columbia as provided for in the Pesticide Operations Act of

1977, effective April 18, 1978 (D.C. Official Code §§ 8-401 *et seq*.), as amended.

2200.2 The Pesticide Operation Regulations, Chapters 22 through 25 of this title, apply to all pesticide operations in the District, including federal pesticide operations, to the full extent permitted by FIFRA.

2201 GENERAL REQUIREMENTS FOR PESTICIDES

2201.1 Pesticides shall be used in strict accordance with the manufacturer's labeling directions, and in compliance with District and federal laws and regulations.

2201.2 A pesticide operator shall maintain pesticide equipment or application apparatus in sound mechanical condition and a condition capable of satisfactory operation.

2201.3 A pesticide distributed in the District shall be distributed in the registrant's or the manufacturer's unbroken immediate container.

2201.4 Pesticide containers shall have a label containing the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) securely affixed to the outside.

2201.5 Unless the pesticide label indicates otherwise, no person shall use pesticide containers for any purposes other than containing the original labeled pesticide product.

2201.6 Each pesticide operator shall make available, and each pesticide applicator shall use, effective anti-siphon devices or back-flow preventers on all hoses to protect the water supply from pesticide contamination when drawing water from a water source during pesticide application.

2201.7 No person shall use pesticides in a manner that is harmful to human health, non-target organisms, or the environment.

2201.8 No person shall apply pesticides by air or ground equipment when the wind velocity is reasonably likely to cause the pesticide to drift beyond the target area.

2201.9 No person shall display or offer for sale pesticides in leaking, broken, corroded, or otherwise damaged containers, or with damaged or obscure labels.

2201.10 No person shall detach, alter, deface, or destroy, wholly or in part, any label or labeling prescribed by FIFRA.

2201.11 No person shall apply pesticides without a copy of the label available for inspection at the time and place of application.

2201.12 The inspection of premises for the purpose of issuing wood infestation certificates or determining the presence of other pests shall only be performed by licensed pesticide applicators certified in the category of "Industrial, Institutional, Structural, and Health Related Pest Control," as described in § 2301.5.

2201.13 Nothing in these regulations shall be construed to relieve any person from liability for any damages to the person or property of another, caused by the use of pesticides even though the use conforms to regulations prescribed by the District Department of the Environment.

2202 PESTICIDE REGISTRATION

2202.1 Except as provided in § 2202.2, any pesticide used, manufactured, distributed, sold, shipped, or applied in the District, shall be registered with the District Department of the Environment (Department), including, but not limited to, the following:

(a) Pesticides that are registered with the United States Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(b) Pesticides that are exempt from registration with the EPA under FIFRA; and

(c) Any pesticide that the Department determines should be registered to protect public health, safety, or welfare, or the environment.

2202.2 Registration of a pesticide under § 2202.1 shall not be required if:

(a) A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this chapter; or

(b) A pesticide is distributed, used, or applied under the provisions of an experimental use permit issued by the EPA, provided that written notification and a copy of the experimental use permit is provided to the Department.

2202.3 If an emergency condition so dictates, the Director of the District Department of the Environment may petition the EPA Administrator for an exemption from any provisions of FIFRA.

2203 PROCEDURES FOR PESTICIDE REGISTRATION

2203.1 An applicant for registration of a pesticide in the District shall file with the District Department of the Environment (Department), on a form prescribed by the Department, a statement that includes the following information:

(a) The name and address of the applicant and any other person whose name will appear on the label;

(b) The name of the pesticide;

(c) A complete copy of the labeling accompanying the pesticide, a statement of all claims to be made for it, and any directions for use;

(d) The use classification of the pesticide, as established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(e) If an agent is acting on behalf of the company registering a pesticide for distribution, sale, or use in the District, a letter of authorization designating the authorized agent;

(f) A copy of the Notice of Supplemental Distribution of a Registered Pesticide Product (Environmental Protection Agency (EPA) Form 8750-5), along with the distributor's label of the EPA-registered product that is being distributed in the District; and

(g) Any other necessary information required for completion of the application form for registration, as specified by the Department.

2203.2 If requested by the Department, the applicant shall submit a full description of every test conducted with respect to the pesticide, and the results of the tests upon which any claim is based.

2203.3 If the Department determines it necessary for approval of a pesticide registration, the Department may require the submission of the complete formula for any pesticide, including the active and inert ingredients.

2203.4 No person shall use or reveal for that person's own advantage any information relating to the formula of pesticides acquired by the authority of this section, except that this provision shall not be deemed to prohibit the disclosure of information to the Department, to the proper officials or employees of the District, to courts of competent jurisdiction in response to a subpoena, to physicians or pharmacists or other qualified persons for use in the preparation of antidotes, or to any other person when the Department determines that disclosure is necessary to protect the public health, safety, or welfare, or the environment.

2203.5 An applicant shall pay an annual registration fee for each pesticide registered by the applicant, as specified in § 2518.

2203.6 Each registration approved by the Department and in effect on December 31st, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until the Department notifies the applicant that the registration has been renewed or denied.

2203.7 In renewing a registration, the Department shall only require each applicant to provide information that is different from the information furnished when the pesticide was originally registered or last reregistered in the District.

2204 DENIAL, SUSPENSION, AND REVOCATION OF PESTICIDE REGISTRATION

2204.1 If the District Department of the Environment (Department) determines that a pesticide registered under the Department's authority does not warrant the proposed claims for it, or if the pesticide and its labeling and other supporting material do not comply with the pesticide provisions of this title, the Department shall notify the applicant of the manner in which the pesticide, labeling, or other supporting material fail to comply with the provisions of this title so as to afford the applicant an opportunity to make the necessary corrections.

2204.2 If, upon receipt of the notice required by § 2204.1, the applicant does not make the required changes within thirty (30) days, the Department may deny the application for registration of the pesticide.

2204.3 The Department may deny, suspend, or revoke the registration of any pesticide if the Department determines any of the following conditions exist:

(a) The pesticide, its labeling, or other material required to be submitted do not comply with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or

(b) The denial, suspension, or revocation is necessary to prevent unreasonable adverse effects on public health, safety, or welfare, or the environment.

2204.4 If the Department determines that there is an imminent hazard, the Department may immediately suspend a pesticide registration in the District without prior compliance with §§ 2204.5 or 2204.6.

2204.5 The Department shall notify the registrant in writing with the reasons for any proposed denial, suspension, or revocation of a pesticide registration in the District.

2204.6 Pursuant to § 2504, the registrant shall have fifteen (15) calendar days from the date of service of the notice to deny, suspend, or revoke registration to request a hearing with the Office of Administrative Hearings (OAH) to show cause why registration should not be denied, suspended, or revoked.

2204.7 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2205 CLASSIFICATION OF PESTICIDES

2205.1 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term "pesticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, but does not including the following:

(a) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;

(b) Pesticides exempt under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its implementing regulations, specifically those pesticides exempted under Section 25(b) of FIFRA and 40 C.F.R. § 152.25(f), subject to reclassification as set forth in Section 3 of FIFRA;

(c) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;

(d) Sanitizers, disinfectants, and antimicrobial agents; and

(e) Other chemicals, devices, or substances excluded by the District Department of the Environment (Department) in regulations.

2205.2 For the purposes of classifying pesticides as District restricted-use or non-essential in this section, the term "pest management" means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

2205.3 The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

2205.4 The Department shall publish on the Department's website the lists of pesticides classified as District restricted-use or non-essential.

2205.5 The Department shall designate as District restricted-use any pesticide that:

(a) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

(b) The Department determines presents a significant, scientifically sound basis justifying that reclassification; and

(c) For purposes of this subsection, "scientifically sound basis" shall include conclusions of published, peer-reviewed studies conducted by experts in their respective fields, EPA guidance documents, and other similar materials.

2205.6 The Department shall designate as non-essential any pesticide that is not used as part of critical pest management in the District, as follows:

(a) Critical pest management shall include controlling:

(1) Plants that are poisonous to touch or are likely to cause damage to a structure or infrastructure; or

(2) Insects that bite or sting, are venomous or disease-carrying, or are likely to cause damage to a structure or infrastructure.

(b) The Department shall presume that a pesticide should be classified as essential if it is intended primarily for use on or for:

(1) Agriculture;

(2) Forests;

(3) Promotion of public health or safety;

(4) Protection of structures or infrastructure;

(5) Protection of endangered, threatened or other similarly situated plant and animal species;

(6) Management of invasive plant species; or

(7) Management of invasive insect species.

2205.7 The Department shall offer an opportunity for public comment before classifying as District restricted-use any pesticide that is not designated as restricted-use under 40 C.F.R. § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 C.F.R. § 152.175.

2205.8 The Department shall publish notice in the *D.C. Register* regarding the proposed reclassification of a particular pesticide and provide a comment period of at least thirty (30) days.

2205.9 The Department shall hold a public hearing if significant public interest is expressed during the comment period specified in § 2205.8.

2206 DISTRICT RESTRICTED-USE PESTICIDES

2206.1 The following pesticides are classified by the District Department of the Environment as District restricted-use:

(a) Products classified by the United States Environmental Protection Agency (EPA) as restricted-use pesticides under Section 3(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. § 136a(d)), as enumerated in 40 C.F.R. § l52.175; and

(b) [Reserved].

2207 NON-ESSENTIAL PESTICIDES

2207.1 The following pesticides are classified by the District Department of the Environment as non-essential:

(a) [Reserved].

2208 PROHIBITED AND RESTRICTED USES

2208.1 No person shall apply District restricted-use pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2208.2 No person shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 2209.

2209 PROHIBITED AND RESTRICTED USES: EXEMPTIONS

2209.1 The provisions of § 2208 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

(a) Drinking water treatment plants;

(b) Wastewater treatment plants;

(c) Reservoirs and swimming pools; and

(d) Related collection, distribution, and treatment facilities.

2209.2 A person may apply to the District Department of the Environment (Department) for an exemption from § 2208.1 for a District restricted-use pesticide. The

Department may grant an exemption to apply a District restricted-use pesticide on property prohibited under § 2208.1 if the applicant demonstrates:

(a) That integrated pest management practices have been utilized prior to application for an exemption;

(b) That the applicant has made a good-faith effort to seek effective and economical alternatives to the District restricted-use pesticides, and they are unavailable;

(c) That providing a waiver will not violate District or federal law; and

(d) That use of the District restricted-use pesticide on the property prohibited under § 2208.1 is linked to a need to protect health, the environment, or property.

2209.3 An application for exemption under § 2209.2 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.4 A person may apply to the Department for an exemption from § 2208.2 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under § 2208.2, if the applicant demonstrates:

(a) That integrated pest management practices have been utilized prior to application for an exemption;

(b) That effective alternatives are unavailable;

(c) That providing a waiver will not violate District or federal law; and

(d) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

2209.5 An application for exemption under § 2209.4 shall be made in writing to the Department and signed by the person requesting the exemption under penalty of perjury.

2209.6 A person may apply to the Department for an emergency exemption in the event that an emergency pest outbreak poses an immediate threat to public health or would result in significant economic damage because of failure to use a pesticide prohibited or restricted by § 2208. The Department may grant an emergency exemption to apply pesticides prohibited under § 2208, after the application, if the applicant demonstrates:

(a) An urgent, non-routine situation that requires the use of pesticides where:

(1) No effective pesticides are available that are registered for use to control the pest under the conditions of the emergency;

(2) No economically or environmentally feasible practices which provide adequate control are available; and

(3) The situation:

(i) Involves the introduction or dissemination of a new pest;

(ii) Will cause significant economic loss due to an outbreak or an expected outbreak of a pest; or

(iii) Presents significant risks to human health, endangered or threatened species, beneficial organisms, or the environment.

2209.7 If a person makes an emergency application of pesticides under this section under a condition not qualifying as an emergency under § 2209.6(a), as determined by the Department, then the Department may initiate an action to suspend, modify, or revoke the certification of the person in accordance with § 2507.

2209.8 The Department may require a person who applies for an exemption under this section for the same property on more than one (1) occasion to attend a District-approved integrated pest management course.

2209.9 Upon receiving notice from the Department that a person is required to take a District-approved integrated pest management course as provided in § 2209.8, the person shall complete the required course and submit proof of completion to the Department within one (1) year.

2210 REDUCED-RISK PESTICIDES AND METHODS OF PEST CONTROL

2210.1 For the purposes of customer notification required by § 2211, the following pesticides are identified by the District Department of the Environment (Department) as reduced-risk:

(a) Products classified by the United States Environmental Protection Agency (EPA) as exempt from regulation under Section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. § 136w(b)), when used according to District-approved label instructions, because the products meet all of the criteria set forth in 40 C.F.R. § 152.25, contain only the active ingredients listed in 40 C.F.R. § l52.25(f)(l), as amended,

and include only the inert ingredients described in 40 C.F.R. § 152.25(f)(2) and listed in the most current List 4A (4A Inerts List).

(b) Biopesticide active ingredients in products registered by EPA under FIFRA and components of plant-incorporated protectants (PIPs) registered by EPA under FIFRA, when used according to EPA-approved label directions;

(c) The following compounds, when used according to EPA label directions: boric acid, disodium octaborate tetrahydrate, silica gels, and diatomaceous earth; and

(d) Non-volatile pesticides in tamper resistant containers.

2210.2 For the purposes of customer notification required by § 2211, the following methods for applying pesticides, when the pesticides are used according to EPA-approved label directions, are identified by the Department as reduced-risk:

(a) Pesticides used for the purpose of rodent control that are placed directly into rodent burrows or placed in areas inaccessible to children or pets; and

(b) Pesticides in the form of a non-liquid gel used for the purpose of insect control that are placed in areas inaccessible to children or pets.

2211 NOTIFICATION

2211.1 When a customer enters into a contract for pesticide application services with a pesticide operator, the person applying the pesticide shall provide the customer with the following written information prior to applying treatment:

(a) The name of the pesticide operator;

(b) The name of the pesticide applicator if different from that of the operator;

(c) The District of Columbia pesticide operator license number;

(d) The telephone number of the pesticide operator;

(e) The National Capital Poison Control Center hotline number;

(f) The re-entry period specified on the pesticide label, if applicable;

(g) The common name of the pest to be controlled;

(h) The common name of pesticide or active ingredient to be applied;

(i) At the request of the customer, both or either:

(1) An original or legible copy of the current pesticide product label; or

(2) A Material Safety Data Sheet; and

(j) The following statement: "District of Columbia law requires that you be given the following information:

Notice of Pesticide Application:

CAUTION -- PESTICIDES MAY CONTAIN TOXIC CHEMICALS. Companies that apply pesticides are licensed and regulated by the District Department of the Environment (DDOE). The United States Environmental Protection Agency and DDOE approve pesticides for use. At your request, the company conducting your pest control will provide you with either or both of the Material Safety Data Sheet(s) or the pesticide label(s), both of which provide further information about the approved uses of and recommended precautions for the pesticide being applied on your property. Neither of these documents is guaranteed to list every danger associated with a pesticide. DDOE maintains a list of pesticides that present a reduced risk to humans and the environment, and encourages the use of such pesticides whenever possible. The pesticide company:

[ ] HAS
[ ] HAS NOT

chosen to apply reduced-risk pesticide(s). The District of Columbia government encourages the use of non-chemical and reduced-risk methods of pest control by residents and commercial pest control companies. Even when using reduced-risk pesticides, residents should familiarize themselves with safety information for pesticide products, and should avoid exposure to pesticides."

2211.2 In addition to the information required in § 2211.1, the person applying the pesticide may provide the customer with additional product information, such as a United States Environmental Protection Agency fact sheet on the product, or additional labeling information provided by the product manufacturer (registrant).

2211.3 Upon a customer's request at least forty-eight (48) hours prior to an application, the person applying the pesticide shall provide the customer with advance notice of a pesticide application, including the information required under § 2211.1, no less than twenty-four (24) hours prior to the application.

2211.4 When pesticide is to be applied on a multi-unit property, the pesticide operator shall provide the information listed in § 2211.1 to the customer at least forty-eight (48) hours before the pesticide is to be applied.

2211.5 At least twenty-four (24) hours, and not more than seven (7) days, before the application of pesticides on a multi-unit property, the owner of the property shall provide each resident and tenant of the property that will be treated with the information listed in § 2211.1 by:

(a) Delivering the information to each resident's door or mailbox, or to each resident through electronic mail or facsimile; and

(b) Posting the information conspicuously in common spaces on the property, in reasonably close proximity to the locations where pesticide will be applied.

2211.6 In the event that there is no clearly defined customer or business entity as identified in § 2211.1, the applicator shall post the documentation required in § 2211.1 in an accessible location at the site of the application for public inspection.

2211.7 When applying a restricted-use pesticide outside the confines of an enclosed structure, the person applying the pesticide shall provide notice of the date and approximate time of any such pesticide application to any property that abuts the property to be treated.

2212 POSTING

2212.1 Any person applying pesticides to a lawn or to exterior landscape plants shall post a sign which meets the following requirements:

(a) The information on the front of the sign shall be the same words and symbols and in the sizes specified in Figure A shown in § 2299.1 at the end of this chapter; and

(b) The information on the back of the sign shall be at least eighteen (18) point type (5/32 inch) in size and indicate the following:

(1) Date pesticide was applied;

(2) Name of applicator;

(3) Telephone number of applicator; and

(c) The sign shall be:

(1) Four (4) inches in height and five (5) inches in width or larger;

(2) Constructed of a sturdy, weather-resistant material;

(3) Constructed of a rigid material, as opposed to a flag;

(4) Printed on a yellow background with black, bold-faced lettering; and

(5) Posted so that the bottom of the sign shall be at least twelve (12) inches but not more than sixteen (16) inches above the surface of the soil; and

(d) The sign shall be clearly visible:

(1) From the principal places of access to the property; and

(2) On the portion of the property where the pesticide is applied.

2212.2 The sign shall remain in place for forty-eight (48) hours following the pesticide application, after which time the property owner is responsible for removal of the sign.

2212.3 Subject to the penalties provided in the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), no person, acting alone or in concert with others, may alter or deface the sign, or remove the sign within forty-eight (48) hours of its posting.

2213 STORAGE, DISPOSAL, AND TRANSPORTATION OF PESTICIDES

2213.1 Any person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*), for storing pesticides shall ensure that the pesticides under storage and the pesticide storage areas shall meet the following requirements, unless otherwise directed by the pesticide label:

(a) The storage area shall be secured or locked to prevent unauthorized access;

(b) Pesticides shall be stored in a separate building or under cover on a paved surface, separated by a physical barrier from living and working areas and from food, feed, fertilizer, seed, and safety equipment;

(c) Pesticides shall be stored in a dry, clean, and well-ventilated area;

(d) A supply of absorbent material, sufficient to absorb a spill equivalent to the capacity of the largest container in storage, shall be kept in the storage area;

(e) All pesticide containers in the storage area shall be properly labeled, free of leaks, and in sound condition;

(f) The storage area shall have a fire extinguisher available of a type and capacity sufficient to extinguish fires originating in the storage area;

(g) Pesticides shall be stored in an area located at least fifty (50) feet from any waterbody, storm sewer, or well, or stored in secondary containment approved by the District Department of the Environment; and

(h) Personal protective equipment shall be stored in an area separated by a physical barrier from the storage area or in a chemical-resistant container.

2213.2 In addition to the requirements in § 2213.1, any person storing restricted-use pesticides shall post on the exterior of the storage area and at each entrance or exit to the storage area, a sign which meets the following requirements:

(a) The sign shall be twelve (12) inches by twelve (12) inches or larger; and

(b) The information on the sign shall include the same words specified in Figure B shown in § 2299.1 at the end of this chapter.

2213.3 Disposal of any pesticides shall be in accordance with Subtitle C of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), and in accordance with label directions on each pesticide product.

2213.4 Unless otherwise provided for in United States Department of Transportation regulations, pesticide operators shall ensure that:

(a) During transport, pesticide containers and application equipment shall be secured to prevent shifting or release of pesticides; and

(b) Pesticides shall not be placed or carried in the same compartment as the driver, food, or feed, unless placed or carried in a manner that provides adequate protection for the health of the driver and passengers, and the safety of the food or feed from the pesticide.

2213.5 The pesticide business name and certification number shall appear on each motor vehicle transporting in the District pesticides or devices used in pest control. The pesticide operator certification number shall be preceded by "DC Cert. No." and the business name shall be:

(a) In bold print not less than 2 inches high; and

(b) Displayed on both sides of the vehicle.

2214 MISBRANDED PESTICIDES AND DEVICES

2214.1 It shall be unlawful for any person to distribute any pesticide or device that is misbranded.

2214.2 A pesticide is misbranded if its labeling and packaging fail to comply with the provisions of this section.

2214.3 No pesticide label shall have any statement, design, or graphic representation relative to the pesticide or its ingredients that is false or misleading.

2214.4 No pesticide shall be contained in a package or other container or wrapping that does not conform to the standards established by the Environmental Protection Agency (EPA) Administrator pursuant to § 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136w(c)(3)).

2214.5 No pesticide shall be an imitation of, or offered for sale under the name of, another pesticide.

2214.6 The label of a pesticide shall bear the registration number assigned under § 7 of FIFRA (7 U.S.C. § 136e) to each establishment in which it is produced.

2214.7 Any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling shall be prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling), and stated in terms that will render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

2214.8 The labeling accompanying a pesticide shall contain directions for use that are necessary for effecting the purpose for which the product is intended that, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), are adequate to protect health and the environment.

2214.9 The label shall bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except as provided in § 2214.10.

2214.10 The label need not bear an ingredient statement as required by § 2214.9 if the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase. In this case, the ingredient statement shall appear prominently on another part of the

immediate container, or on the outside container or wrapper, as permitted by the EPA Administrator.

2214.11 Each label shall contain a statement of the use classification established by the EPA Administrator under which the pesticide is registered.

2214.12 Each label shall contain a warning or cautionary statement that may be necessary and, if complied with, together with any requirements imposed under § 3(d) of FIFRA (7 U.S.C. § 136a(d)), is adequate to protect health and the environment.

2214.13 Each pesticide shall have affixed to its container, and to the outside container or wrapper of its retail package, if there is one, through which the required information on the immediate container can be clearly read, a label bearing the following information:

(a) The name and address of the producer, registrant, or person for whom the pesticide was produced;

(b) The name, brand, or trademark under which the pesticide is sold;

(c) The net weight or measure of the content, provided that the EPA Administrator may permit reasonable variations; and

(d) When required by regulation of the EPA Administrator to effectuate the purposes of FIFRA, the registration number assigned to the pesticide under FIFRA, and the use classification established by the EPA Administrator.

2214.14 No pesticide shall contain any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by FIFRA, the following information:

(a) The skull and crossbones symbol;

(b) The word "poison" prominently displayed in red on a background of distinctly contrasting color; and

(c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

2215 INTEGRATED PEST MANAGEMENT

2215.1 A District agency shall utilize an IPM program to reduce application of pesticides applied by District employees or contractors to public rights-of-way, parks, District-occupied buildings, and other District property to ensure that:

(a) Pesticides are used only if monitoring indicates they are needed according to established IPM guidelines;

(b) Pesticides are used only as a last resort after all alternative pest management strategies have been exhausted; and

(c) Pesticide application is made with the purpose of removing only the target organism.

2215.2 A child-occupied facility shall utilize an IPM program to reduce application of pesticides.

2215.3 A District agency and a child-occupied facility shall have an IPM program approved by the District Department of the Environment (Department) that meets the following requirements:

(a) Has a written IPM policy;

(b) Has a written policy on pest management roles and responsibilities of decision makers, including the name, address, and telephone number of the contact person;

(c) Has procedures for conducting the pest control program, including pest management objectives;

(d) Has procedures for regular inspection and monitoring activities to determine the presence and distribution of pests;

(e) Has standards to determine the:

(1) Severity of pest infestation;

(2) Need for alternative pest management strategies; and

(3) Need for pesticide application only as a last resort after all alternative pest management strategies have been exhausted;

(f) Has recordkeeping procedures for documenting:

(1) Pest sightings;

(2) Pest control procedures; and

(3) Any communications to potentially affected individuals regarding IPM or pesticide use; and

(g) Has a range of alternative pest management strategies, including sanitation, structural repair, physical, cultural, and biological control, and other non-chemical methods.

2215.4 If a District agency employs a contractor to perform pesticide management or application, the District agency's IPM policy shall be incorporated into the specifications or statement of work for the pest management or application contract.

2215.5 No person required to obtain a license or certification under the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) shall apply any pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities if the location does not have an IPM program approved by the Department.

2216 PEST CONTROL BY FUMIGATION

2216.1 Notwithstanding any other provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, each fumigation operation shall be performed or supervised only by a licensed applicator certified to perform fumigation.

2216.2 Each member of the fumigation crew shall be trained in those aspects of the fumigation process in which the member participates, have adequate knowledge of the fumigant, and be provided with all the safety equipment necessary for the member's protection.

2216.3 Before performing fumigation, the licensed applicator shall notify the fire station nearest the site of the fumigation.

2216.4 The notice to the nearest fire station required by § 2216.3 shall be in writing and shall include the following information:

(a) The name and address of the pesticide operator;

(b) The name of the fumigant;

(c) The name of the licensed certified applicator and the applicator's day and night telephone numbers;

(d) The location and type of structure; and

(e) The date and approximate time of fumigation, and the estimated length of the fumigation period.

2216.5 The structure, vault, vehicle, commodity, or area to be treated shall be conspicuously posted with warning signs on all sides.

2216.6 Warning signs required by § 2216.5 shall carry the following information:

(a) The skull and crossbones symbol;

(b) The name of the fumigant;

(c) A warning statement that reads: "DANGER POISON KEEP OUT";

(d) The name of the company performing fumigation; and

(e) The name and telephone number of the licensed certified applicator in charge.

2216.7 A guard shall be on the site during the entire fumigation period.

2216.8 A guard shall be capable, awake, alert, and remain on duty at the site at all times to prevent unauthorized persons from gaining entrance into the structure.

2216.9 The licensed certified applicator shall:

(a) Ensure that all persons are out of the structure before fumigation;

(b) Ensure that the structure is secure; and

(c) Ensure that the structure is safe for re-occupancy.

2216.10 Only a licensed applicator certified to perform fumigation shall perform the introduction of the fumigant.

2217 PEST CONTROL BY HEAT TREATMENT

2217.1 No person shall perform pest control by heat treatment unless the person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2217.2 A person performing pest control by heat treatment shall maintain records containing the following information:

(a) Name or identification of the person performing heat treatment;

(b) Address of treated property;

(c) Date of heat treatment, including the month, day, and year;

(d) Duration of heat treatment;

(e) Procedure for performing heat treatment; and

(f) Brand and model of the heat treatment equipment used.

2218 CANINE PEST DETECTION

2218.1 No person shall use a canine scent pest detection team to detect any pest for compensation, unless:

(a) The person is a licensed and certified pesticide operator, in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title; and

(b) The team, consisting of a handler and dog, is certified according to the requirements of this section.

2218.2 Each team shall be certified as satisfactorily trained for pest detection for each target pest by two (2) persons meeting the requirements of § 2218.14.

2218.3 Each team shall be certified as satisfactorily trained for pest detection for each target pest for which the team intends to offer pest detection services.

2218.4 Only a team may be certified as trained for pest detection and not individual dogs or handlers who are not part of a team.

2218.5 A team shall renew its certification each year for pest detection for each target pest for which the team offers pest detection services.

2218.6 A person that trains or certifies a team for pest detection may use pseudo-scents and extracts for training purposes but shall not use them for a canine scent detection test.

2218.7 A pesticide operator that uses a team to detect any pest shall maintain accurate records of the training of each team and its certification, which shall include the following:

(a) The name of the handler and the dog;

(b) The name, address, and telephone number of the individual or organization that provided initial training, maintenance training, or certification of the team;

(c) The date when initial training, maintenance training, or certification was completed; and

(d) Proof that the team has been certified as required by this section.

2218.8 A pesticide operator shall maintain the records specified in § 2218.7 for three (3) years and shall make the records immediately available, on request, to the District Department of the Environment (Department).

2218.9 A canine scent detection test shall be designed by a person to accurately evaluate the ability of a team to satisfactorily perform pest detection for each target pest and shall meet the following requirements:

(a) A canine scent detection test shall take place under conditions that are similar to conditions where target pests may be found;

(b) A canine scent detection test shall consist at a minimum of four (4) areas or spaces designed to restrict odors from moving between areas or spaces;

(c) A canine scent detection test shall contain at least two (2) distractors and three (3) hides as follows:

(1) The persons performing a canine scent detection test shall place hides in the testing room or space at least thirty (30) minutes before testing begins;

(2) A distractor shall represent the type encountered under field conditions by a team in the region the team operates; and

(3) If a dead target pest is used as a distractor, the target pest shall have been dead for at least forty-eight (48) hours; and

(d) The time limit for completing the search of all rooms, spaces or areas for a pest by a team shall be twenty (20) minutes, excluding the time spent by the team travelling between rooms or spaces. The qualified persons conducting the canine scent detection test may adjust the time limit of the test to account for varying size rooms and spaces.

2218.10 The persons conducting a canine scent detection test shall pass or fail the team.

2218.11 The team may make one false alert during a canine scent detection test, but it cannot be on a placed distractor.

2218.12 If the team passes a canine scent detection test, the persons conducting the test shall certify the team as satisfactorily trained for pest detection for the target pest.

2218.13 If the dog is treated cruelly during the canine scent detection test, the persons conducting the canine scent detection test shall fail the team.

2218.14 A person conducting a canine scent detection test shall have a minimum of five (5) years of documented experience, recognized by the Department, in dog scent handling, training, and evaluation in at least one of the following areas:

(a) Law enforcement;

(b) Other government agency;

(c) Military; or

(d) Other comparable experience verifiable by the Department in dog scent detection training or evaluation.

2218.15 At least two (2) persons meeting the requirements of § 2218.14 shall conduct each canine scent detection test.

2218.16 The persons conducting a canine scent detection test may not be the dog's current or former trainer and may not have any business or financial interest in the team's business.

2218.17 The persons conducting a canine scent detection test may have standards that are stricter than the standards provided in this section.

2219 UNLAWFUL ACTS

2219.1 Pursuant to the provisions in § 2500, the District Department of the Environment (Department) may pursue an enforcement action against any person who violates the Pesticide Operation Regulations, Chapters 22 through 25 of this title, including, but not limited to any person who:

(a) Fails to register a pesticide in accordance with the pesticide registration provisions of this title;

(b) Uses a pesticide in a manner that is inconsistent with the labeling of the pesticide or that is in violation of the restrictions imposed on the use of the pesticide by the Environmental Protection Act (EPA) Administrator or the Department;

(c) Makes a pesticide recommendation that is inconsistent with the labeling of the pesticide, or that is in violation of the restrictions imposed on the use of the pesticide by EPA Administrator or the Department;

(d) Falsifies, refuses, or neglects to maintain or make available records required to be kept under the provisions of this title;

(e) Uses fraud or misrepresentation in applying for certification, registration, or a license;

(f) Refuses or neglects to comply with any limitations or restrictions on his or her certification, registration, or license;

(g) Makes false or fraudulent claims through any media that misrepresent the effect of a pesticide or the method to be utilized in the application of a pesticide;

(h) Applies any known ineffective or improper pesticide, or operates faulty or unsafe equipment;

(i) Uses or supervises the use of a pesticide in a faulty, careless, or negligent manner;

(j) Makes false or fraudulent records, invoices, or reports;

(k) Acts in the capacity of, advertises as, or assumes to act as a pesticide dealer in the District at any time unless he or she is licensed by the District in accordance with the provisions of this title;

(l) Aids, abets, or conspires with any other person to evade the provisions of this title;

(m) Makes fraudulent or misleading statements during or after an inspection of a pest infestation, or during or after an inspection pursuant to the provisions in Chapter 25 (Pesticide Use Enforcement and Administration) of this title;

(n) Impersonates any federal, state, or District inspector or official;

(o) Fails to immediately notify the Department by telephone, or in writing, of any pesticide accident, incident, fire, flood, or spill, or to report to the Department the full details of the event, including any remediation taken;

(p) Distributes any pesticide that is adulterated;

(q) Fails to maintain a record required pursuant to § 2517.1 for a transaction involving a restricted-use pesticide; or

(r) Violates any other requirement or provision of the Pesticide Operations Act of 1977, as amended, or the rules promulgated to carry out the provisions of the Act, set forth in Chapters 22 through 25 of this title.

2219.2 Each unlawful act shall constitute a separate violation of the Pesticide Operation Regulations, Chapters 22 through 25 of this title. In the event of any violation of

or failure to comply with the Pesticide Operation Regulations, each and every day of the violation or failure shall constitute a separate offense.

2299 DEFINITIONS

2299.1 When used in this chapter, the following terms shall have the meanings ascribed (definitions that are codified in the relevant Acts are indicated as [Statutory], and are reprinted below for regulatory efficiency):

Accident - an unexpected, undesirable event, caused by the use or presence of a pesticide that adversely affects humans or the environment.

Active ingredient - shall be as follows:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that will prevent, destroy, repel, or mitigate any pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, will accelerate or retard the rate of growth or maturation, or otherwise alter the behavior of ornamental or crop plants or the product of the plants;

(c) In the case of a defoliant, an ingredient that will cause the leaves or foliage to drop from a plant; and

(d) In the case of a desiccant, an ingredient that will artificially accelerate the drying of plant tissue. [Statutory]

Adulteration - a pesticide the strength or purity of which falls below the professed standard or quality as expressed in its labeling or under which it is sold, or the total or partial substitution of any substance for the pesticide, or the total or partial abstraction of any valuable constituent of the pesticide. [Statutory]

Agriculture - land whose primary purpose and use is to raise crops. [Statutory]

Agricultural commodity - any plant or part of a plant, or an animal or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by humans or animals.

Alert - a characteristic change in a dog's behavior in response to the odor of a pest as interpreted by the dog's handler.

Animal - all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish, and shellfish. [Statutory]

Biopesticide - a chemical derived from plants, fungi, bacteria, or other non-man-made synthesis that is effective in controlling target pests; or certain microorganisms, including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. These agents usually do not have toxic effects on animals and people and do not leave toxic or persistent chemical residues in the environment.

Canine scent pest detection team - a unit consisting of a human and a dog that train and work together to detect a target pest.

Certification - the recognition by a certifying agency that a person is competent and is authorized to use or supervise the use of restricted-use pesticides or authorized to perform pest detection for a target pest.

Certified applicator - any individual who is certified by the Department as being competent to use or supervise the use of any restricted-use pesticide or class of restricted-use pesticides covered by his or her certification. [Statutory]

Child-occupied facility - a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function, including day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities. [Statutory]

Commercial applicator - an individual, whether or not he or she is a private applicator with respect to some uses, who uses or supervises the use of any pesticide that is classified for restricted use for any purpose or on any property other than as provided by the definition of "private applicator." [Statutory]

Competent - properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

DCRA - the District of Columbia Department of Consumer and Regulatory Affairs.

Defoliant - any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. [Statutory]

Department - the District Department of the Environment.

Desiccant - any substance or mixture of substances intended for artificially accelerating the drying of plant tissue. [Statutory]

Device - any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living humans or other living animals); but not including equipment used for the application of pesticides when sold separately from the pesticides. [Statutory]

Director - the Director of the District Department of the Environment or the Director's designated agent.

Distractor - a non-target odor source placed within a pest scent-detecting dog's search area.

Distribute - to offer for sale, hold for sale, sell, barter, or trade a commodity. [Statutory]

District - the District of Columbia. [Statutory]

District agency - any District office, department, or agency, including independent agencies, the District of Columbia Water and Sewer Authority, and the Washington Metropolitan Area Transit Authority.

District property - buildings or land owned, leased, or otherwise occupied by the District government. [Statutory]

District restricted-use - a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in § 2205 of Chapter 22 of this title. [Statutory]

Environment - includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these. [Statutory]

EPA - the United States Environmental Protection Agency.

EPA Administrator - the Administrator of the United States Environmental Protection Agency. [Statutory]

Equipment - any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power, and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in the land. This term shall not include any pressurized hand-sized household apparatus used to apply a pesticide. [Statutory]

Extract - an odor extracted from a target pest for a pest scent-detecting dog to detect.

FIFRA - the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 *et seq*.), as amended.

Forestry - trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use. [Statutory]

Fumigation - the act of releasing or dispensing a toxic chemical agent in such a way that it reaches the organism wholly or primarily in the gaseous state.

Fungus - any non-chlorophyll-bearing thallophyte (any non-chlorophyll-bearing plant of a lower order than mosses and liverworts); for example: rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other animals and those on or in processed food, beverages, or pharmaceuticals. [Statutory]

Hazard - a probability that a given pesticide will have an adverse effect on humans or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

Hide - a container that allows free movement of air containing between five (5) and twenty (20) live target pests or viable eggs.

Inert ingredient - an ingredient that is not active.

Ingredient statement - a statement that contains:

(a) The name and percentage of each active ingredient, and the total percentage of all inert ingredients in the pesticide; and

(b) If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

Insect - any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class

insecta, comprising six- (6) legged, usually winged forms (for example, beetles, bugs, bees, and flies). For purposes of Chapters 22 through 25 of this title, the term "insect" also applies to allied classes of arthropods whose members are wingless and usually have more than six (6) legs (for example, spiders, mites, ticks, centipedes, and wood lice). [Statutory]

Integrated pest management or **IPM** - an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment. [Statutory]

Label - the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its container or wrappers. [Statutory]

Labeling - all labels and all other written, printed, or graphic matter:

(a) Accompanying the pesticide or device at any time, or

(b) Accompanying or referring to the pesticide or device except when accurate non-misleading references are made to current official publications of Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides. [Statutory]

Land - all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation. [Statutory]

Licensed certified applicator - a pesticide applicator who has completed the requirements for certification and holds a valid District license.

Mayor - the Mayor of the District of Columbia or the Mayor's designee.

Minimum-risk pesticide - a pesticide registered with the Department, but exempt from federal registration under Section 25(b) of FIFRA. [Statutory]

Misbranded - a pesticide is misbranded if its labeling and packaging fail to comply with the provisions of § 2214 of Title 20 of the District of Columbia Municipal Regulations.

Nematode - invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms. [Statutory]

Non-essential - a pesticide that is not critical to managing pests that threaten health, property, or the environment in the District as set forth in § 3 of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191). [Statutory]

Ornamental - trees, shrubs, and other plantings in and around habitations, generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.

Person - any individual, partnership, association, corporation, company, joint stock association, or any organized group of people whether incorporated or not, and includes any trustee, receiver, or assignee. [Statutory]

Pest - any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living humans or other living animals) which commonly is considered to be detrimental to humans or their interests or which the Department may declare to be detrimental. [Statutory]

Pesticide - any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. [Statutory]

Pesticide applicator or **applicator** - an individual who is a commercial applicator, private applicator, public applicator, or registered technician. [Statutory]

Pesticide dealer - any person who distributes to the ultimate user restricted-use pesticides or any pesticide whose use or distribution are further restricted by the Department. [Statutory]

Pesticide operator - shall be:

(a) Any person who owns or manages a pesticide application business in which pesticides are applied upon the lands of another for hire or compensation; or

(b) Except as otherwise provided under the definition of "private applicator," the owner or manager of any commercial firm, business, corporation, or

private institution, who directly or through employees uses restricted-use pesticides on property owned, managed, or leased by the commercial firm, business, corporation, or private institution; or

(c) Any District or other governmental agency whose officials or employees apply pesticides as part of their normal duties. [Statutory]

Pesticide registration fee - the fee set for product registration by § 2518 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Plant incorporated protectant - pesticidal substances that are intended to be produced and used in a living plant or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. Plant incorporated protectant also includes any inert ingredient contained in the plant, or produce thereof.

Plant regulator - any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, it shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration. [Statutory]

Private applicator - any individual who uses any restricted-use pesticide for purposes of producing any agricultural commodity on property owned or rented by the individual or his or her employer, or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. [Statutory]

Protective equipment - clothing or any other materials or devices that shield against unintended exposure to pesticides.

Pseudo-scent - a human-made compound that mimics a target pest odor.

Public applicator - a commercial applicator who is authorized to use or supervise the use of pesticides and who is an employee of the District or of a governmental agency. [Statutory]

RCRA - the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended.

Reduced-risk pesticides - any pesticide identified in § 2210 of Title 20 of the District of Columbia Municipal Regulations. [Statutory]

Registered technician - an individual who is registered with the Department, under § 2311 of Title 20, and who works under the direct supervision of a licensed commercial or public applicator, as set forth in § 12(c) of the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191).

Registrant - any person who registers any pesticide pursuant to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*).

Restricted-use pesticides - any pesticides or pesticide use classified by the EPA Administrator for restricted use; or any pesticide, which when used as directed or in accordance with a commonly recognized practice, the Department determines, subsequent to a hearing, that additional restrictions for that use are necessary in order to prevent a hazard to the applicator or other persons, or to prevent unreasonable adverse effects upon the environment. [Statutory]

School - a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility. [Statutory]

Space treatment - the dispersal of insecticides into the air by foggers, misters, aerosol devices, ultra-low volume equipment, or vapor dispensers for the control of flying insects and exposed crawling insects.

Storm sewer - a system of pipes or other conduits which carries or stores intercepted surface runoff, street water, and other wash waters, or drainage, but excludes domestic sewage and industrial wastes.

Under the direct supervision of - unless otherwise prescribed by its labeling or other restrictions imposed by the Department, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent registered technician acting under the instruction and control of a certified applicator who is available if and when needed, even though the certified applicator may not be physically present at the time and place the pesticide is applied. [Statutory]

University - the University of the District of Columbia.

Waterbody - those portions, sections, or segments of waters located within the District that are:

(a) Subject to the ebb and flow of the tide; or

(b) Free flowing, unconfined, and aboveground rivers, streams, or creeks. [Statutory]

Waterbody-contingent property - property within 25 feet of a waterbody. [Statutory]

Weed - any plant that grows where it is not wanted. [Statutory]

Figure A

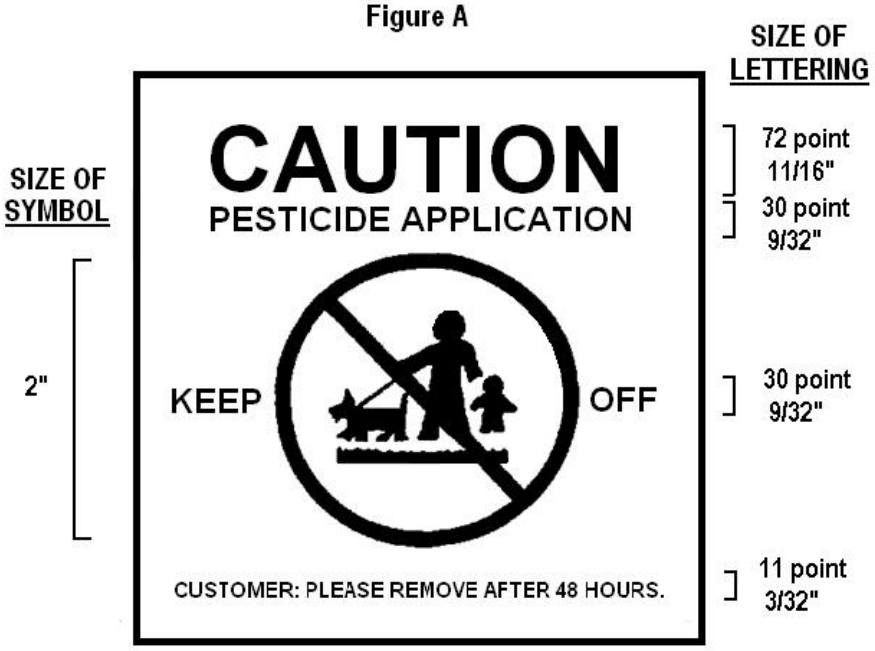
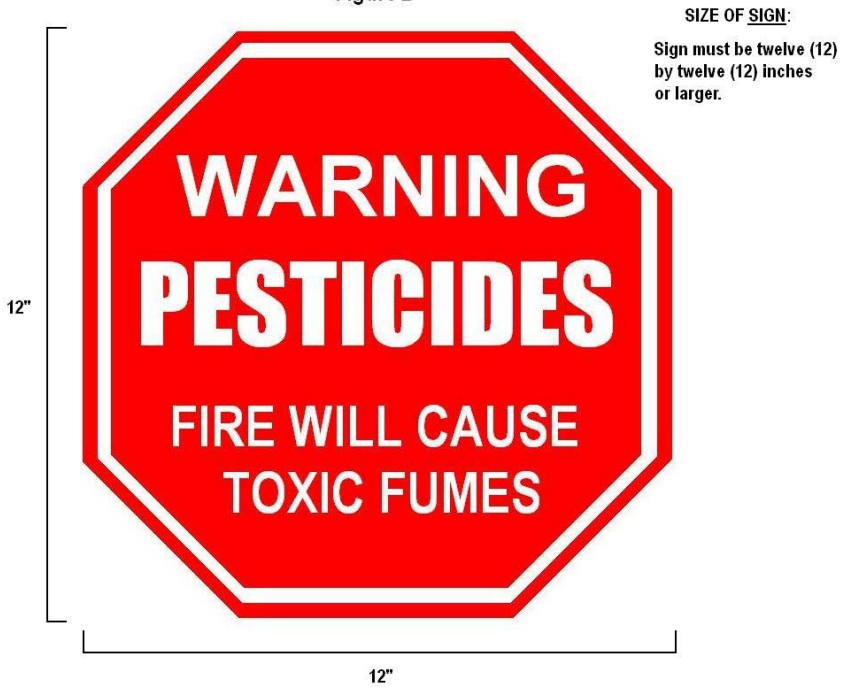


Figure B



CHAPTER 23 PESTICIDE APPLICATORS

2300 GENERAL PROVISIONS

2300.1 The following regulations shall apply to all persons required to obtain an applicator certification and license under § 3 of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code § 8-403).

2300.2 No person shall purchase, use, or supervise the use of any restricted-use pesticide unless he or she is certified and licensed in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, except as provided in §§ 2300.6 and 2300.7.

2300.3 No person shall apply for a pesticide applicator license unless the applicant is certified as a pesticide applicator.

2300.4 Application for a pesticide applicator's license shall be made in writing on a form prescribed by the Department.

2300.5 If the Department does not certify or license an applicant as provided in this chapter, the Department shall inform the applicant in writing of the reasons for the denial of the license or certification.

2300.6 A registered technician shall purchase and use restricted-use pesticides under the direct supervision of a licensed commercial or public applicator in accordance with §§ 2311 and 2312.

2300.7 The certification and licensing requirements of this chapter shall not apply to the following individuals:

(a) A person conducting laboratory-type research involving restricted-use pesticides;

(b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs or medication during the course of normal practice;

(c) A registered technician while working under the direct supervision of a licensed certified applicator; or

(d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.

2300.8 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the licensee.

2301 CATEGORIES OF PESTICIDE APPLICATORS

2301.1 Individuals shall apply for certification on a form prescribed by the District Department of the Environment in one (1) of the categories or subcategories of pest control outlined in this section (subject categories are classified in accordance with 40 C.F.R. § 171.3).

2301.2 Ornamental and Turf Pest Control - this category includes applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf. This category contains the following subcategories:

(a) Exterior Ornamental Plants;

(b) Lawns and Turf; and

(c) Interior Ornamental Plants.

2301.3 Aquatic Pest Control - this category includes applicators using or supervising the use of pesticides purposefully applied to standing or running water, wetland areas, or within tidal basins, excluding applicators engaged in public health-related activities included in § 2301.6.

2301.4 Right of Way Pest Control - this category includes applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway right-of-way, or other similar areas.

2301.5 Industrial, Institutional, Structural, and Health Related Pest Control - this category includes applicators using or supervising the use of pesticides in, on, or around food handling establishments; human dwellings; industrial establishments, including warehouses and grain elevators; institutions, such as schools and hospitals; and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. This category contains the following subcategories:

(a) General Pest Control - preventing, repelling, or controlling insects, fungi, or other pests within or adjacent to structures of any kind, or the adjacent grounds, or where people may assemble or congregate. This subcategory does not include work otherwise defined in §§ 2301.5(b) through (f);

(b) Wood Destroying Organism - preventing, repelling, or controlling termites, powder post beetles, fungi, or wood destroying organisms in or on structures of any kind of pre-treating areas or the surrounding grounds where the structures are to be constructed;

(c) Wildlife Control - preventing, repelling, or controlling nuisance birds, mammals, reptiles, and other wildlife not covered by the Rodent Control category;

(d) Fumigation - the use of a fumigant within an enclosed space for the destruction of a pest, not including space treatment;

(e) Rodent Control - preventing, repelling, or controlling rodents; and

(f) Industrial Weed Control - preventing, repelling, or controlling weeds on industrial or commercial sites.

2301.6 Public Health Pest Control - this category includes District and other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.

2301.7 Regulatory Pest Control - this category includes District and other governmental employees who use or supervise the use of pesticides in the control of regulated pests.

2301.8 Demonstration and Research Pest Control - this category includes the following:

(a) Individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides, or who supervise the public demonstration. Included in this group is any person who is an extension specialist, or a commercial representative demonstrating restricted-use pesticide products, and anyone demonstrating methods used in public programs; or

(b) Persons conducting field research with restricted-use pesticides and, in doing so, use or supervise the use of restricted-use pesticides.

2301.9 Miscellaneous Pest Control - this category includes commercial applicators using or supervising the use of a pesticide(s) for the management and control of pests that are not related to or described in §§ 2301.2 through 2301.8.

2302 COMMERCIAL APPLICATORS: ELIGIBILITY FOR CERTIFICATION

2302.1 Each applicant for certification as a commercial applicator shall demonstrate to the District Department of the Environment (Department) that he or she has at least one (1) of the following:

(a) One (1) year of experience acceptable to the Department as a full-time registered technician engaged in those categories in which the applicant seeks to be certified. Proof of this experience may include affidavits from

former employers, certification or licensing from other states or the federal government, or other measures acceptable to the Department;

(b) A degree or certification from an accredited college or university with specialized training acceptable to the Department in the categories in which the applicant seeks to be certified. One (1) year of this specialized training may be considered equivalent to one (1) year of practical experience; or

(c) A combination of training and experience acceptable to the Department. This combination shall total not less than one (1) year.

2303 COMMERCIAL APPLICATORS: DETERMINATION OF COMPETENCY

2303.1 To be certified as competent in the use and handling of pesticides, each applicant shall meet the requirements of this section.

2303.2 An applicant for certification shall pass a written examination (and, where appropriate, a practical examination) administered by the District Department of the Environment (Department) in each category or subcategory for which the applicant seeks to be certified.

2303.3 The required examinations and testing shall be based upon the standards set forth in § 2304.

2303.4 The required examinations and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory, if any, in which an applicator is to be certified.

2303.5 Examinations shall be administered as requested; examinations shall be administered at least two (2) times a year at locations and times designated and announced by the Department.

2303.6 To become certified in any category or subcategory, each applicant shall be required to pass the following separate written examinations:

(a) A general, core examination; and

(b) A category examination which shall be specific to the category(ies) or subcategory(ies) described in § 2301 of this chapter, and which, when applicable, may include a practical examination.

2303.7 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the Department.

2303.8 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.

2303.9 An applicant who fails the general core or category examination, or, when applicable, the practical examination, may not reapply to take that examination until thirty (30) days after the date of the last failed examination.

2303.10 An applicant who fails the general core or category examination, or, when applicable, the practical examination, three (3) consecutive times, shall wait one hundred and eighty (180) days after the date of the last failed examination before re-applying to take the examination.

2303.11 The Department shall notify in writing each applicant who has successfully completed the requirements for certification, stating the category(ies) or subcategory(ies) in which competency has been demonstrated.

2303.12 A certified applicator who elects to add one (1) or more category(ies) or subcategory(ies) to an existing certification shall be required to take only the examination for the new category(ies) or subcategory(ies) for which certification is desired.

2303.13 An applicator who has any part of his or her certification revoked shall retake the examination in the category(ies) or subcategory(ies) for which the applicator seeks to be recertified.

2304 COMMERCIAL APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY

2304.1 The standards prescribed in this section shall be used to determine the competency of each commercial applicator prior to his or her certification.

2304.2 A commercial applicator shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides.

2304.3 A commercial applicator shall demonstrate mastery of the principles of integrated pest management.

2304.4 Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification, as well as the following areas of competency:

(a) Label and labeling comprehension, including the following factors:

(1) The general format and terminology of pesticide labels and labeling;

(2) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

(3) Classification of the product; and

(4) Necessity for use consistent with the label;

(b) Pests, including factors such as the following:

(1) Common features of pest organisms and characteristics of damage needed for pest recognition;

(2) Recognition of relevant pests; and

(3) Pest development and biology as it may be relevant to problem identification and control;

(c) Safety, including the following factors:

(1) Pesticide toxicity, common exposure routes, and hazard to humans;

(2) Common types and causes of pesticide accidents;

(3) Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

(4) Need for and use of protective clothing and equipment;

(5) Symptoms of pesticide poisoning;

(6) First aid and other procedures to be followed in case of a pesticide accident; and

(7) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers;

(d) Environment, including the potential environmental consequences of the use and misuse of pesticides as may be influenced by factors such as the following:

(1) Weather and other climatic conditions;

(2) Types of terrain, soil, or other substrate;

(3) Presence of fish, wildlife, and other non-target organisms; and

(4) Drainage patterns;

(e) Pesticides, including factors such as the following:

(1) Types of pesticides;

(2) Types of formulations;

(3) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations;

(4) Hazards and residues associated with use;

(5) Factors that influence effectiveness or that lead to problems such as a resistance to pesticides; and

(6) Dilution procedures;

(f) Equipment, including the following factors:

(1) Types of equipment and advantages and limitations of each type; and

(2) Uses, maintenance, and calibration;

(g) Application techniques, including the following factors:

(1) Methods and procedures used to apply various formulations of pesticides, solutions and gases, together with a knowledge of which technique of application to use in a given situation;

(2) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(3) Prevention of drift and pesticide loss into the environment; and

(h) All applicable District and federal laws and regulations.

2304.5 In order to be certified in a particular category(ies) or subcategory(ies), commercial applicators shall demonstrate qualification in their respective category(ies) or subcategory(ies) according to the practical knowledge standards specified in §§ 2304.6 through 2304.13.

2304.6 Ornamental and Turf Pest Control - applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, plantings, shrubs, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators shall be knowledgeable about the various application methods that will minimize or prevent hazards to humans, pets, and other domestic animals.

2304.7 Aquatic Pest Control - applicators shall demonstrate practical knowledge of the secondary effects that can be caused by improper application rates, incorrect formulations, and faulty application of restricted-use pesticides used in this category. Applicators shall demonstrate practical knowledge of various water use situations and the potential of down-stream effects. Further, applicators shall have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

2304.8 Right-of-Way Pest Control - applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-ways can traverse many different terrains, including waterways. These applicators shall demonstrate practical knowledge of problems of runoff, drift, and excessive foliage destruction, and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the rights-of-way area, and the impact of their application activities in the adjacent areas and communities.

2304.9 Industrial, Institutional, Structural, and Health Related Pest Control - applicators shall demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination of habitat, and exposure of people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem, applicators shall demonstrate a practical knowledge of the specific factors that may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applications, applicators shall also demonstrate practical knowledge of environmental conditions that are particularly related to this activity.

2304.10 Public Health Pest Control - applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that these be known and recognized, and that appropriate life cycles and habitats be understood as a basis for a control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in

buildings. They also should have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal, and drainage.

2304.11 Regulatory Pest Control - applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted-use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

2304.12 Demonstration and Research Pest Control - persons demonstrating the safe and effective use of pesticides to other applicators and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration; and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, applicators shall demonstrate an understanding of pesticide-organism interactions, and the importance of integrating pesticide use with other control methods. In general, it shall be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in § 2304.4 of this section. In addition, applicators shall meet the specific standards required for the categories listed as §§ 2304.6 through 2304.9 as may be applicable to their particular activity.

2304.13 Miscellaneous Pest Control - applicators shall demonstrate a practical knowledge of the type of pest(s) and pesticide(s) problems as it relates to a particular type of pest control activity. If appropriate, the applicator may be required to demonstrate a practical knowledge of a wide variety of pests, including their life cycles, types of formulations appropriate for their control, and methods of application, potential effects on the environment, and principles of limited area application. The District Department of the Environment shall specify a specific subcategory pertaining to the applicant's request for certification.

2305 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING

2305.1 The District Department of the Environment (Department) shall issue an applicant a certification and the appropriate credentials, after an applicant performs the following actions:

(a) Submits proof of competency; and

(b) Submits a completed application for an applicator's license.

2305.2 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.

2305.3 Each certification and license shall contain the names of both the applicant and the employing pesticide operator and shall specify the category(ies) or subcategory(ies) of pest control activity in which the applicant has demonstrated and maintained competency.

2305.4 No applicator shall be employed by more than one (1) pesticide operator unless the applicator has a separate certification for each employer.

2305.5 A licensed certified applicator terminating employment within a licensing period shall submit his or her certification and credentials to the employing pesticide operator.

2305.6 Within ten (10) working days after a licensed certified applicator terminating employment within a licensing period submits his or her certification and credentials to the employing pesticide operator, the pesticide operator shall:

(a) Notify the Department in writing of the termination of the licensed certified applicator's employment; and

(b) Return the certification and credentials of the employee to the Department for cancellation.

2305.7 A licensed certified applicator whose employment has terminated within a licensing period may, after becoming employed by another pesticide operator and after new application and payment of the appropriate certification fees, be issued a new certification and appropriate credentials.

2305.8 Any applicant who has successfully completed the requirements for certification, but who does not complete the licensing requirement within one (1) year from the date of certification, shall lose certification and may re-qualify for certification only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which the applicant seeks certification.

2305.9 Any licensed certified applicator who has not renewed his or her certification within one (1) year from the date certification expires shall be considered as a new applicant.

2305.10 Any applicator whose license has been revoked, or whose license has lapsed, shall re-qualify for certification and licensing only by passing the relevant qualifying examinations for the category(ies) or subcategory(ies) in which they seek certification.

2305.11 An applicator may maintain his or her certification by putting it on inactive status. To maintain a certification in inactive status, the applicator shall notify the Department of the change in status and maintain recertification credits in accordance with the provisions of this chapter.

2306 COMMERCIAL APPLICATORS: CERTIFICATION AND LICENSING RENEWAL

2306.1 Beginning January 1, 2016, a licensed certified applicator shall renew his or her certification and license every year.

2306.2 Beginning January 1, 2016, an applicant for certification renewal shall be required to present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the District Department of the Environment (Department) and pertinent to the applicator's competency, including training on integrated pest management principles or other least-toxic pest management practices.

2306.3 Refresher courses meeting the requirements of § 2306.2 may be in the form of educational courses, programs, seminars, or workshops.

2306.4 To renew certification, the refresher course shall be combined with a history of satisfactory performance as a certified applicator.

2306.5 If the Department determines after consultation with the EPA or other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that an applicator take an examination prior to the issuance of the renewed certification.

2307 PRIVATE APPLICATORS: CERTIFICATION AND LICENSING

2307.1 Each applicant shall notify the District Department of the Environment (Department), in writing, of reasons for requesting private applicator certification.

2307.2 An applicant's written notification shall include the following information:

(a) The name of the restricted pesticide;

(b) The intended use of the pesticide; and

(c) The address of the site where the pesticide will be applied.

2307.3 If the notification is accepted by the Department, the applicant may then apply for certification pursuant to § 2308 of this chapter.

2307.4 The Department shall issue an applicant a certification and the appropriate credentials, after the applicant performs the following actions:

(a) Submits proof of competency; and

(b) Submits a completed application for an applicator's license.

2307.5 Beginning January 1, 2016, a private applicator shall renew his or her certification every two (2) years by presenting documentation indicating satisfactory completion of a minimum of one (1) refresher training course meeting the requirements of §§ 2306.2 or 2306.3, combined with a history of satisfactory performance.

2307.6 A license shall be valid only when accompanied by a current pesticide applicator's certification issued by the Department.

2308 PRIVATE APPLICATORS: DETERMINATION OF COMPETENCY

2308.1 Each applicant shall demonstrate proof of practical and scientific knowledge of pest control by:

(a) Passing an examination that meets the requirements outlined in § 2309; and

(b) Performing a labeling exercise pertinent to the restricted use product or products for which certification is requested.

2308.2 A passing score for any examination shall consist of a total correct score equal to or exceeding seventy percent (70%) of the total points on the examination as graded by the District Department of the Environment (Department).

2308.3 The Department shall notify in writing each applicant who takes an examination of the results of the examination on a pass-fail basis.

2308.4 The Department shall notify in writing each applicant who successfully completes the requirements for certification for the product or products for which competency has been demonstrated.

2308.5 Certification of private applicators shall be limited to specified uses of a single product or related products having the same active ingredient formulation and uses.

2308.6 Each applicator shall be authorized to use only the pesticide or pesticides for which competency has been demonstrated.

2308.7 The Department may amend a certification to include additional products if the private applicator fulfills the testing requirement of § 2309 for the additional products.

2308.8 Any applicator who has any part of his or her certification revoked shall re-qualify for certification only by fulfilling the testing requirement of § 2309.

2309 PRIVATE APPLICATORS: STANDARDS FOR DETERMINATION OF COMPETENCY

2309.1 The District Department of the Environment (Department) shall determine competency in the use and handling of pesticides by a private applicator by procedures set forth in this section.

2309.2 As a minimum requirement for certification, a private applicator shall show that he or she possesses a practical knowledge of the following:

(a) The pest problems and pest control practices associated with the agricultural operations, proper storage, use, handling, and disposal of the pesticides and containers with which the applicator will be involved;

(b) The principles of integrated pest management; and

(c) The legal responsibilities related to the applicator's job.

2309.3 An applicator's practical knowledge shall be evaluated according to his or her ability to:

(a) Recognize common pests to be controlled and the damage caused by these pests;

(b) Read and understand the label and labeling information, including the common name of pesticides the applicator applies, the pest or pests to be controlled, the timing and methods of applications, the safety precautions, the pre-harvest or reentry restrictions, and any specific disposal procedures;

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as the area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) Recognize local environmental situations that must be considered during an application in order to avoid contamination; and

(e) Recognize poisoning symptoms and know procedures to follow in case of a pesticide accident.

2309.4 The Department may verify the competence of each private applicator through the administration of a private applicator certification system that ensures that the

private applicator is competent, based upon the standards set forth in this section, to use the restricted-use pesticides under limitations of applicable District and federal laws and regulations.

2309.5 The certification system specified in § 2309.4 shall employ a written demonstration of competence or any other equivalent system as may be adopted by the Department subject to the approval of the Environmental Protection Agency.

2310 GOVERNMENT AGENCIES AND PUBLIC APPLICATORS

2310.1 Except as otherwise provided, all District and other governmental agencies shall be subject to the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2310.2 The District Department of the Environment shall issue a certification to each qualified public applicator pursuant to the standards for certification of commercial applicators set forth in this chapter.

2310.3 No fee shall be charged for the issuance of a public applicator certification or license to an employee of the District or any federal governmental agency.

2310.4 A public applicator license shall be valid only when the licensee is engaged by his or her employing agency as an applicator to use or supervise the use of pesticides on land or other property owned or rented by the agency, or is acting within the scope of his or her employment.

2310.5 A District and federal governmental agency employing pesticide applicators shall not be subject to the requirements of § 2402.

2311 REGISTRATION OF TECHNICIANS

2311.1 Except for persons who are exempt from certification requirements under § 2300.7, only those persons certified under the Pesticide Operation Regulations, Chapters 22 through 25 of this title, may apply pesticides in the District of Columbia unless they are registered with the District Department of the Environment (Department) pursuant to this section and acting under the direct supervision of a licensed certified commercial or public applicator.

2311.2 No pesticide operator required to be licensed in the District of Columbia pursuant to the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall permit the use of any pesticide by any technician unless that technician is registered with the Department pursuant to this section and under the direct supervision of a licensed certified commercial or public applicator pursuant to the requirements in § 2312.

2311.3 Application for registration of each technician shall be made within thirty (30) days after the first date of employment.

2311.4 Application for registration shall be made in writing on a form prescribed by the Department.

2311.5 Prior to approval by the Department as a registered technician, an individual shall receive a passing score on the general core examination as provided for in §§ 2303.6(a) and 2303.7.

2311.6 Upon approval, the Department shall issue an identification card to each registered technician.

2311.7 A registered technician shall carry, or have reasonably available nearby, his or her identification card during all working hours and shall display it upon request.

2311.8 Registration under this section shall be valid for three (3) years from the date of issuance of the registration card.

2311.9 In order to renew his or her registration, a registered technician shall be required to:

(a) Present documentation indicating satisfactory completion within the year of a minimum of one (1) refresher training course approved by the Department and pertinent to the employee's competency;

(b) Demonstrate a history of satisfactory performance; and

(c) If the Department determines after consultation with the EPA and other qualified professionals in the field of pest control that a significant change in technology has occurred and that additional training is vital for the protection of the environment, the Department may require that the registered technician take an examination prior to the issuance of the renewed registration.

2311.10 Upon completion of any three (3) year term as a registered technician, the individual shall apply for certification in a category pursuant to § 2303 of this chapter. The individual shall sit for a category examination. If a passing score is achieved, the individual shall be certified as an applicator in that category. If a passing score is not achieved, the individual may remain a registered technician for an additional three (3) year term.

2311.11 A registered technician can only renew his or her registration for one additional three (3) year term. If at the end of this additional term the registered technician does not apply for and achieve certification in a category pursuant to § 2303 of these regulations, the technician may no longer remain a registered technician.

2311.12 The pesticide operator shall pay an annual fee for each registered technician in the amount specified in § 2520.

2311.13 The pesticide operator shall give the Department written notice of the termination of the employment of a registered technician within thirty (30) days of the termination and shall return the employee's identification card to the Department with the written notice of termination.

2312 SUPERVISION OF REGISTERED TECHNICIANS

2312.1 A registered technician shall apply pesticides under the direct supervision of a licensed certified applicator whose certification permits the application.

2312.2 A registered technician working under direct supervision shall meet the following requirements:

(a) Be able to read and comprehend written instructions, including the text of pesticide labeling;

(b) Be capable of properly handling and applying a given pesticide to the satisfaction of the supervising licensed certified applicator; and

(c) Be able to carry out assignments and instructions in a responsible manner.

2312.3 Direct supervision shall include, but is not necessarily limited to, the requirements set forth in §§ 2312.4 and 2312.5.

2312.4 If the label of the pesticide being applied so stipulates, direct supervision shall be defined as the physical presence of a supervising licensed certified applicator.

2312.5 Unless the pesticide label indicates otherwise, in the absence of the supervising licensed certified applicator, direct supervision may be provided by clearly legible written or electronic verifiable instructions or directions at a location at which pesticides are handled, mixed, stored, disposed, applied, or used. The instructions shall specify the following information:

(a) How to handle and apply the pesticide;

(b) The precautions to be taken to prevent injury to the applicator, other persons, and the environment; and

(c) How to contact the supervising licensed certified applicator under whose supervision the registered technician is working. The technician shall have direct voice contact with the supervising licensed certified applicator if needed.

2312.6 The pesticide label shall be a part of the instructions required by § 2312.5, and may suffice in those matters that it addresses.

2312.7 Ultimate responsibility for the application of pesticides by registered technicians shall remain with the supervising licensed certified applicator.

2312.8 The supervising licensed certified applicator shall instruct the registered technician in all directions for use and of cautions necessary for the safe use and application of any pesticide the technician may be directed to use.

2312.9 The supervising licensed certified applicator is responsible for understanding and complying with the provisions of this section.

2312.10 The availability of the supervising licensed certified applicator shall be directly related to the hazard of the situation, and as provided in §§ 2312.4 and 2312.5.

2313 PROTECTION OF PESTICIDE HANDLERS AND APPLICATORS

2313.1 Each applicator required to be licensed under this chapter shall acquaint those working under his or her direct supervision with the hazards involved in the use of pesticides generally and specific hazards set forth on the labeling of the pesticides to be used, and instruct the employees on the proper steps to avoid these hazards.

2313.2 Each applicator required to be licensed under this chapter shall provide the necessary safety equipment and protective clothing for the protection of all employees under his or her supervision as set forth on the pesticide labeling.

2313.3 Each applicator required to be licensed under this chapter shall inform those working under his or her direct supervision of any appropriate reentry requirements, and to provide the necessary protective clothing or apparatus if premature reentry is necessary.

2313.4 If the applicator is not the owner or manager, the pesticide operator shall have ultimate responsibility for providing safety equipment and protective clothing.

2314 RECIPROCITY OF CERTIFICATION

2314.1 The District Department of the Environment (Department) may certify a nonresident of the District of Columbia who is certified by a state under a certification plan that has been approved by the Environmental Protection Agency Administrator and that is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title, provided that the state has a reciprocity provision granting similar accommodation to applicators certified by the District.

2314.2 The Department may waive all or part of any applicator certification examination required by the Pesticide Operation Regulations, Chapters 22 through 25 of this title. Grounds for waiver include when a commercial applicator or registered technician is certified under the state plan of another state granting similar accommodations to applicators licensed and certified by the District of Columbia, and the certifying state's plan has been approved by the Environmental Protection Agency Administrator and is substantially in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2314.3 The Department shall suspend or revoke certifications issued pursuant to this section in the same manner and on the same grounds as other certifications issued pursuant to the provisions of the Pesticide Operation Regulations, Chapters 22 through 25 of this title, or upon suspension or revocation of the applicator's or registered technician's certification by the state issuing the applicator's original certification.

2314.4 An applicant for a waiver of all or part of any certification shall furnish to the Department a copy of the applicant's credentials at the time of application. The applicant shall comply with all other requirements of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2399 DEFINITIONS

2399.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 24 PESTICIDE OPERATORS AND DEALERS

2400 GENERAL PROVISIONS

2400.1 No person shall act in the capacity of a pesticide operator, or advertise as, or assume to act as a pesticide operator, at any time unless the person is certified and licensed by the District Department of the Environment (Department) in accordance with the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2400.2 No person shall apply for a pesticide operator license unless the applicant is certified as a pesticide operator.

2400.3 Application for a pesticide operator's license shall be made in writing on a form prescribed by the Department.

2400.4 No licensed certified pesticide operator shall permit the use of any pesticide, including any restricted-use pesticide, by any person who is not:

(a) A licensed certified applicator in the category in which the application is made; or

(b) A registered technician of the pesticide operator acting under the direct supervision of a pesticide applicator certified and licensed in that category.

2400.5 A pesticide operator shall apply to the Department for a separate certification and license for each place of business providing services involving the use of pesticides or devices or performing other pest control activities in the District for the control, eradication, mitigation, or prevention of pests either entirely or as part of the business, in accordance with the provisions of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and to the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2400.6 The certification and license issued to a pesticide operator is not transferable and shall remain with the person to whom it is issued.

2400.7 Within ten (10) days of termination of business, the operator shall submit the operator's certification and license to the Department for cancellation.

2400.8 A pesticide operator shall notify the Department in writing of any change of address within thirty (30) days of the change.

2400.9 The following types of persons shall not be required to obtain a pesticide operator's certification or license:

(a) A person conducting laboratory-type research involving restricted-use pesticides;

(b) A doctor of medicine or doctor of veterinary medicine applying pesticides as drugs during the course of normal practice;

(c) A registered technician while working under the direct supervision of a licensed certified applicator; or

(d) A person applying any pesticide that is not a restricted-use pesticide on his or her own premises, or an employee of that person who applies any pesticide that is not a restricted-use pesticide on the person's premises.

2400.10 All certifications and licenses granted pursuant to this chapter shall be posted conspicuously on the premises of the pesticide operator.

2401 PESTICIDE OPERATORS: CERTIFICATION AND LICENSING

2401.1 Application for a pesticide operator's certification shall be made in writing on a form prescribed by the District Department of the Environment (Department).

2401.2 Each application for a pesticide operator's certification shall contain the following information:

(a) Data about the applicant's proposed operations;

(b) The certification category or categories applied for;

(c) The full name of the person applying for the certification;

(d) The full name of each principle member of the entity, if the applicant is a person other than an individual;

(e) The address of the person applying for a pesticide operator certification;

(f) A certificate of liability insurance as required by § 2402 of this chapter;

(g) Designation of those individuals who are certified in each category in which the operator will engage; and

(h) Any other information as the Department may prescribe.

2401.3 Each pesticide operator's certification shall specify the category(ies) or subcategory(ies) of pest control activity in which the business may lawfully engage.

2401.4 The Department shall issue an applicant a pesticide operator certification and the appropriate credentials, after the applicant performs the following actions:

(a) Submits proof of certification; and

(b) Submits a completed application for a pesticide operator's license.

2401.5 The pesticide operator's license shall be valid only when accompanied by a current pesticide operator's certification issued by the Department.

2401.6 A licensed certified operator that elects to add or delete one (1) or more categories or subcategories from an existing certification shall notify the Department in writing of the proposed changes to the current certification.

2401.7 A pesticide operator shall immediately notify the Department when the operator no longer employs a licensed certified applicator in any of the categories for which the

operator is certified.

(a) The certification shall not be affected for ten (10) days after such notification, during which time the operator shall designate another licensed certified applicator;

(b) In response to a written request from the operator, the Department may extend the ten (10) day grace period to up to thirty (30) days; and

(c) During the grace period, restricted-use pesticides may not be used without an applicator certified and licensed in the appropriate category.

2402 PESTICIDE OPERATORS: LIABILITY INSURANCE

2402.1 The District Department of the Environment (Department) shall only issue a pesticide operator's license when the applicant has provided proof of liability insurance for the protection of persons who may suffer damages as a result of the operations of the applicant. Proof of liability insurance shall be provided on a form prescribed by the Department.

2402.2 The insurer of a pesticide operator shall notify the Department in writing at least ten (10) days before the effective date of cancellation, if a certified operator's policy is to be canceled.

2402.3 Each pesticide operator shall inform its insurer of the requirement to notify the Department of policy cancellation as provided by § 2402.2.

2402.4 Each pesticide operator shall keep its liability insurance in full force and effect as long as pesticide operations continue.

2402.5 Pesticide operators shall maintain liability insurance against bodily injury and property damage in amounts not less than the following:

(a) For bodily injury: $100,000 each person, $300,000 each occurrence; and

(b) For property damage: $15,000 each occurrence, $30,000 annual aggregate provision.

2403 PESTICIDE DEALERS: LICENSING

2403.1 Except as provided in § 2403.8, any person who distributes restricted-use pesticides to the ultimate user in the District of Columbia shall obtain a pesticide dealer's license from the District Department of the Environment (Department).

2403.2 Each manufacturer, registrant, or distributor whose restricted-use pesticide products are distributed or who distributes restricted-use pesticide products in the District

and who has no pesticide dealer outlet licensed within the District, shall obtain a pesticide dealer's license from the Department for the manufacturer, registrant, or distributor's principal out-of-state location or outlet.

2403.3 Each applicant for a pesticide dealer's license shall apply in writing on a form prescribed by the Department.

2403.4 The Department shall not issue a pesticide dealer's license unless an applicant has submitted a completed application as specified in § 2403.3 and paid the fee set forth in § 2520.

2403.5 Each applicant for a pesticide dealer's license shall pay an annual fee to the Department in the amount specified in § 2520.

2403.6 A pesticide dealer shall be liable for the acts of each of the dealer's employees in the marketing and sale of restricted-use pesticides and for all claims and recommendations for the use of restricted-use pesticides.

2403.7 A pesticide dealer shall not sell or transfer any restricted-use pesticide to any person other than a certified and licensed applicator or the certified and licensed applicator's authorized representative presenting the applicator's proof of certification.

2403.8 The provisions of this section shall not apply to a certified and licensed pesticide operator who sells restricted-use pesticides only as an integral part of the pesticide operator's pesticide application service or to any District or other governmental agency that provides pesticides only for its own programs.

2499 DEFINITIONS

2499.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

CHAPTER 25 PESTICIDE USE ENFORCEMENT AND ADMINISTRATION

2500 GENERAL ADMINISTRATIVE AND ENFORCEMENT AUTHORITY

2500.1 This chapter applies to the administration and enforcement of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), and of the rules promulgated to carry out the provisions of the Act, set forth in Title 20, Chapters 22 through 25 of the District of Columbia Municipal Regulations.

2500.2 The District Department of the Environment may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government or the District, or with any agency of a state, to obtain assistance in the implementation

of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.); the Pesticide Operation Regulations, Chapters 22 through 25 of this title; or in the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2501 RIGHT OF ENTRY, INSPECTION, SAMPLING, AND OBSERVATION

2501.1 For the purposes of carrying out and enforcing the law and rules described in § 2500.1, the District Department of the Environment (Department) shall have the right, upon presentation of appropriate credentials, to enter, inspect, sample, and observe, without delay, subject to § 2501.3, any place or vehicle where:

(a) There is present any pesticide, or any pesticide device, container, product, apparatus, or equipment that is stored, disposed of, used or intended for use in pest control activity, pesticide manufacture, or pesticide storage;

(b) The Department has reason to believe that pest control activity is being conducted, has been conducted, or will be conducted; or

(c) In the case of a vehicle, if:

(1) If it is marked as a pesticide application vehicle; or

(2) The Department has other reason to believe that the vehicle is involved in pest control activity.

2501.2 Appropriate credentials for making an inspection shall include:

(a) A duly issued photo identification card or badge showing the name of the inspector and proof of employment with the Department; or

(b) A notice of inspection issued by the Department.

2501.3 Entry by the Department may be made, with or without prior notice, as follows:

(a) At any time, in emergency situations, or where there is a potential immediate threat to public health, safety, or welfare, or the environment; and

(b) At any reasonable time in non-emergency situations. The following times shall be deemed reasonable for purposes of entry:

(1) Between the hours of 7:30 a.m. and 6:00 p.m. on weekdays;

(2) Any hours during which the place is open for business or operation; or

(3) In the case of a vehicle, any time the vehicle is being used in the course of business or operations, or any time the Department has reason to believe the vehicle is, has been, or will be involved in pest control activity.

2501.4 If a person denies access to any place or vehicle to the Department acting pursuant to the authority in the law and rules described in § 2500.1, the Department may apply for a search warrant in a court of competent jurisdiction, in addition to other actions authorized by law and regulations.

2502 ENTRY FOR INSPECTION, SAMPLING, AND OBSERVATION

2502.1 Upon entry, the District Department of the Environment (Department) may do any of the following:

(a) Inspect the place or vehicle where the pesticide, pesticide equipment, or device is located, or will be located; any areas involved in pesticide control activity; and any surrounding areas that may be impacted;

(b) Inspect and obtain samples of any pesticide or pesticide equipment or device used in handling, transporting, applying, storing, or disposing of the pesticide, pesticide equipment or device;

(c) Inspect and copy or print out any record, including electronic records, reports, tapes, test results, or other documents or information relating to the purpose of the laws and rules described in § 2500.1; or

(d) Conduct interviews and obtain photographs, recordings, videos, or electronic documentation relating to the purpose of the law and regulations described in § 2500.1.

2502.2 If the Department obtains any samples from the premises or the vehicle, the Department shall give the owner, applicator, dealer, operator, supervisor, or agent in charge a receipt that describes the samples obtained, and if requested, a portion of each sample equal in volume or weight to the portion obtained.

2502.3 In addition to the information required to be produced during an inspection pursuant to § 2502.1, the Department may require in writing that an owner, applicator, dealer, operator, supervisor, technician, employee, or any other person involved in the activity being investigated, respond to specific questions or provide other information with respect to any of the pesticides, pesticide equipment or devices, or pesticide control activity as may be necessary to determine compliance with the law and rules described in § 2500.1.

2502.4 When the Department makes a written request for any document, response to specific questions, or other information pursuant to § 2502.3, the documents, responses, or other information shall be submitted to the Department within ten (10) days of receipt of the request, unless the Department specifies a different time period.

2502.5 The Department may require an owner, applicator, dealer, supervisor, operator, technician, employee, or any other person involved in an activity being investigated pursuant to § 2502.1 to take any necessary action to determine or facilitate compliance with the law and rules described in § 2500.1 or to protect public health, safety, or welfare, or the environment.

2502.6 When requiring action under § 2502.5, the Department may issue a field notice or directive letter that shall advise the recipient of the action the person is required to take and state the time period within which the action must be performed.

2502.7 Notwithstanding § 2502.6, the Department may give an oral directive to take immediate action to mitigate any hazard from any application, spill, release, or other pesticide control activity where there is potential serious danger to public health, safety, or welfare, or the environment; provided, that the Department shall, as soon thereafter as practicable, issue a written directive incorporating the contents of the oral directive.

2502.8 When a pesticide, pesticide device, equipment, or pesticide control activity poses an imminent threat to public health, safety, welfare, or the environment, the Department may post notice of the threat on the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists and restrict entry, and the Department may prohibit the owner, applicator, dealer, operator, supervisor, technician, or employee from removing or handling the pesticide, pesticide device, or equipment, or from continuing the pesticide control activity until the Department has determined that the threat no longer exists.

2503 ENTRY FOR RESPONSIVE OR CORRECTIVE ACTION

2503.1 Pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011 (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq.*), in the event of an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, the District Department of the Environment (Department) may, under the following circumstances, enter any place or vehicle to perform, or cause to be performed, any responsive or corrective action necessary to protect public health, safety, or welfare, or the environment:

(a) In a situation that requires immediate action by the Department to protect public health, safety, welfare, or the environment; or

(b) Where the person responsible for the application, spill, release or alleged violation has failed or refused to comply with an administrative or court order requiring responsive or corrective action.

2503.2 Except as provided in § 2503.3, the Department shall provide notice in writing of the Department's intent to enter the premises or vehicle to take responsive or corrective action to the owner, applicator, dealer, operator, supervisor, employee, or agent in charge at least seven (7) days before commencing work, and shall serve the notice personally or by first class mail, or where such service cannot be accomplished, by publication or posting.

2503.3 When an application, spill, or release of a pesticide, or an alleged or threatened violation of the law and rules described in § 2500.1, creates an imminent threat to public health, safety, or welfare, or the environment necessitating response or corrective action, and the emergency nature of the situation makes it impractical to give prior notice as described in § 2503.2, the Department may provide notice by conspicuously posting the notice on the property at the earliest time feasible, before commencing work.

2504 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

2504.1 With respect to a matter governed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title, a person adversely affected or aggrieved by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01 *et seq.*), or OAH's successor.

2504.2 The Department may pursue administrative enforcement actions through:

(a) Warning notices;

(b) Field notices or directive letters;

(c) Stop sale, use, or removal orders;

(d) Notices of violation;

(e) Compliance orders;

(f) Notices of violation combined with an immediate compliance order or stop sale, use, or removal order;

(g) Denial, suspension, or revocation of pesticide registration;

(h) Denial, modification, suspension, or revocation of a license;

(i) Notices of infraction;

(j) DDOE internal notices of violation or notices of infraction; or

(k) Any other order necessary to protect public health, safety, or welfare, or the environment.

2504.3 For the purposes of this chapter, a DDOE internal notice of violation or notice of infraction:

(a) Shall not be an action of the Department that a person may appeal to OAH, except as stated in § 2504.4(b);

(b) Shall be responded to within fifteen (15) calendar days of service of the notice, including a written statement containing the grounds, if any, for opposition; and

(c) Shall not waive compliance or toll any period of fine or penalty.

2504.4 If a person fails to agree to or settle an internal notice of infraction or otherwise denies a claim stated in an internal notice of infraction:

(a) The Department may cancel the internal notice of infraction and file a notice of infraction for adjudication with OAH; or

(b) The person may request adjudication by OAH.

2504.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

(a) Within fifteen (15) calendar days of service of the notice of the action; or

(b) Another period of time stated specifically in the section for an identified Department action.

2504.6 Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

2504.7 OAH shall:

(a) Resolve an appeal or a notice of infraction by:

(1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;

(2) Remanding for Department action or further proceedings, consistent with OAH's order; or

(3) Providing such other relief as the governing statutes, regulations and rules support;

(b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and

(c) By its final decision render a final agency action which will be subject to judicial review.

2504.8 The filing of an administrative appeal shall not in itself stay enforcement of an action; except that a person may request a stay according to the rules of OAH.

2504.9 The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof for any action it takes that denies a personal, property, or other right.

2504.10 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:

(a) To the Department when a party challenges the Department's denial, suspension, modification, or revocation of a:

(1) Pesticide registration;

(2) Certification or license; or

(3) Other right;

(b) To the party who asserts an affirmative defense; and

(c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

2504.11 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

2504.12 Judicial review of a final OAH decision shall not be *de novo*, but shall be a review of the administrative record alone and shall not duplicate agency proceedings or consider additional evidence.

2504.13 Nothing in this chapter shall be interpreted to:

(a) Provide that a filing of a petition for judicial review stays enforcement of an action; or

(b) Prohibit a person from requesting a stay according to the rules of the court.

2505 WARNING NOTICES; FIELD NOTICES OR DIRECTIVE LETTERS; STOP SALE, USE, OR REMOVAL ORDERS; NOTICES OF VIOLATION

2505.1 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall identify the alleged violation or threatened violation and may require the respondent to conduct monitoring or testing, or to take any responsive or corrective measures the District Department of the Environment (Department) determines reasonable and necessary.

2505.2 A warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation shall make clear the basis for the notice and that the respondent's failure to take the measures directed will constitute an additional violation of the pertinent statute or regulation.

2505.3 The Department shall serve a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation on the respondent or the respondent's authorized representative in person or in a manner likely to insure receipt, including first class mail, fax with return receipt, email with return read receipt, or hand-delivery with certification of service.

(a) The Department shall send the notice to the last known address listed on the person's application for certification or other official correspondence submitted to the Department; and

(b) The Department shall verify the accuracy of the address.

2505.4 After receipt of a stop sale, use, or removal order issued by the Department, no person shall sell, use, or remove the pesticide or device described in the order, except in accordance with the provisions of the order.

2505.5 When any pesticide, pesticide application, or pest control activity poses a threat to public health, safety, welfare, or the environment, and the responsible person, or the address of the responsible person, is unknown or cannot be located, the Department may serve written notice by conspicuously posting the notice on the property where

the threat exists and sending a copy to the owner of the property at the owner's last known address.

2506 COMPLIANCE ORDER

2506.1 The District Department of the Environment may issue a compliance order if the respondent upon whom a warning notice; field notice; directive letter; stop sale, use, or removal order; or a notice of violation has been served fails to comply with any actions required in the notice, pursuant to the Brownfields Revitalization Amendment Act of 2000, effective April 8, 2011, as amended (D.C. Law 18-369; D.C. Official Code §§ 8-631 *et seq*.)).

2506.2 A compliance order shall:

(a) Include a statement of the facts and nature of the alleged violation;

(b) Allow a reasonable time for compliance with the order, consistent with the likelihood of any harm and the need to protect public health, safety, or welfare, or the environment;

(c) Advise the respondent that the respondent has the right to request an administrative hearing and, at the respondent's expense, the right to legal representation at the hearing;

(d) Inform the respondent of any scheduled hearing date, or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the compliance order or failure to request a hearing;

(e) State the action that the respondent is required to take, or the activity or activities that the respondent is require to cease to comply with the order; and

(f) State that civil infraction fines, penalties, or costs may be assessed for failure to comply with the order.

2506.3 A compliance order shall state that the respondent is required to file a written answer to the compliance order, the time within which to respond, and the form of responses required.

2507 DENIAL, SUSPENSION, MODIFICATION, AND REVOCATION OF CERTIFICATION AND LICENSE

2507.1 The District Department of the Environment (Department) shall initiate an action denying, suspending, modifying, or revoking a certification or license by issuing a notice of denial, suspension, modification, or revocation.

2507.2 Except as provided in § 2507.5, the notice of proposed denial, suspension, modification, or revocation shall be in writing, and shall include the following:

(a) The name and address of the holder of the license;

(b) A statement of the action or proposed action and the effective or proposed effective date and duration of the denial, suspension, modification, or revocation;

(c) The grounds upon which the Department is proposing to deny, suspend, modify, or revoke the certification or license;

(d) Notice that the respondent has a right to request an administrative hearing before the District of Columbia Office of Administrative Hearings (OAH), in accordance with Rules of Practice and Procedure of OAH set forth in Chapter 28 of Title 1 of the District of Columbia Municipal Regulations;

(e) A statement that the respondent has the right, at the respondent's expense, to legal representation at the hearing; and

(f) Information notifying the respondent of any scheduled hearing date or of any actions necessary to obtain a hearing, and the consequences of failure to comply with the suspension or immediate revocation, if applicable.

2507.3 The Department may issue a notice of denial, suspension, modification, or revocation:

(a) To protect the public health, safety, welfare, or the environment;

(b) If the applicant or license holder is in violation or threatened violation of the law and rules described in § 2500.1;

(c) If the applicant or license holder violates the provisions of § 2208 more than once in a calendar year in a manner that endangers human health or the environment, pursuant to D.C. Official Code § 8-418(b);

(d) If the applicant or license holder has been convicted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or is subject to a final order imposing a civil penalty under FIFRA; or

(e) To correct an error in the terms and conditions of the certification or license.

2507.4 Pursuant to § 2504, the applicant or license holder shall have fifteen (15) calendar days from the date of service of the notice of denial, suspension, modification, or revocation to request a hearing with OAH to show cause why the certification or license should not be denied, revoked, modified, or suspended.

2507.5 The Department may immediately suspend a certification or license to protect the public health, safety, or welfare, or the environment. The suspension shall be immediately effective pending further investigation.

2507.6 The Department may serve a notice of modification, suspension, or revocation in addition to any other administrative or judicial penalty, sanction, or remedy authorized by law.

2507.7 The Department shall not reissue a certification or license to any person whose certification and license has been revoked until after at least one hundred eighty (180) days following the revocation.

2507.8 The Department shall not reissue a certification or license to any person whose license has been revoked until the applicant has been recertified in accordance with the recertification provisions contained in Chapter 23 (Pesticide Applicators).

2507.9 An appeal to OAH pursuant to this section shall be subject to the requirements of § 2504.

2508 CONDEMNATION PROCEEDINGS

2508.1 In addition to the enforcement actions set forth in this chapter, the District Department of the Environment may seize for confiscation by a process *in rem* for condemnation, any pesticide, pesticide device or equipment that is being transported or, having been transported, remains unsold or in original unbroken packages, is being sold or offered for sale in the District of Columbia, or that is imported from a foreign country.

2508.2 Any pesticide device or equipment may be proceeded against as provided in this section if it is misbranded.

2508.3 A pesticide may be proceeded against as provided in this section under the following circumstances:

(a) If it is adulterated or misbranded;

(b) If it is not registered pursuant to the provisions of the law and rules described in § 2500.1;

(c) If its labeling fails to bear the information required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

(d) If it is not colored or discolored, and the coloring or discoloring is required under FIFRA; or

(e) If any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration.

2508.4 Any pesticide, pesticide device or equipment may be proceeded against as provided in this section even when used in accordance with the requirements imposed under the law and rules described in § 2500.1 and as directed by the labeling, if the pesticide, pesticide device or equipment causes unreasonable adverse effects on the environment.

2508.5 In the case of a plant regulator, defoliant, or desiccant that is used in accordance with the label claim and recommendations, physical or physiological effects on plants or parts of the plants shall not be deemed to be unreasonable adverse effects on the environment when the effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

2508.6 If the pesticide, pesticide device or equipment is condemned pursuant to this section, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct; and the proceeds, if sold, less the court costs, shall be paid into the District Treasury and credited to the general fund. A pesticide, pesticide device or equipment sold pursuant to this subsection shall not be sold in violation of the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of the jurisdiction in which it is sold.

2508.7 Upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned upon assurances that the pesticide shall not be sold or otherwise disposed of contrary to the provisions of the law and rules described in § 2500.1, FIFRA, or the laws of any jurisdiction in which it is sold, the court may direct the pesticide, pesticide device or equipment to be delivered to the owner.

2508.8 The proceedings of condemnation cases shall conform, as nearly as possible, to the proceedings used for the condemnation of insanitary buildings under An Act to create a board for the condemnation of insanitary buildings in the District, and for other purposes, approved May 1, 1906, as amended, D.C. Official Code Title 6, Chapter 9.

2508.9 When a decree of condemnation is entered against the pesticide, pesticide device or equipment, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide, pesticide device or equipment.

2509 PENALTIES AND INJUNCTIVE RELIEF FOR FAILURE TO COMPLY WITH FINAL ADMINISTRATIVE ORDER

2509.1 The District Department of the Environment may seek a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief in

any court of competent jurisdiction, or any administrative, civil, or criminal penalty, or other remedy authorized by the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.*) or other legal authority, including for failure to comply with a final compliance order; stop sale, use, or removal order; or final modification, suspension, or revocation issued pursuant to this chapter.

2510 CIVIL INFRACTION FINES, PENALTIES, AND FEES PURSUANT TO THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS CIVIL INFRACTIONS ACT

2510.1 A person violating a provision of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq*.), as amended, or the Pesticide Operation Regulations, Chapters 22 through 25 of this title, shall be fined according to the schedule set forth in Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than ninety (90) days, or both.

2510.2 Where civil infraction fines are the only penalties pursued in a particular case, the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*), and the regulations adopted thereunder govern the proceedings in lieu of this chapter, and where there is a violation, a notice of infraction may be issued without first issuing a notice of violation or threatened violation.

2511 JUDICIAL ACTION IN LIEU OF ADMINISTRATIVE ENFORCEMENT

2511.1 The District Department of the Environment may bring an action in Superior Court of the District of Columbia to enjoin the violation or threatened violation of any provision of the law or rules described in § 2500.1.

2512 SETTLEMENT AGREEMENTS AND CONSENT COMPLIANCE ORDERS

2512.1 At any time after the issuance of a notice or order listed in § 2504.2, the parties to the proceeding may enter into a settlement agreement or consent compliance order.

2512.2 A settlement agreement or consent compliance order, including a consent compliance decree, shall set forth each of the agreements made, actions to be taken by the parties to the agreement, the dates by which any required actions must be undertaken or completed, and any agreed-upon fines, penalties, cost recovery, damages, attorney's fees, costs and expenses, interest, supplemental environmental project, or any other sanction or remedy authorized by law.

2512.3 A settlement agreement shall be effective when signed by the parties and shall not require the signature of an administrative law judge of the District of Columbia

Office of Administrative Hearings or a judge of a court of competent jurisdiction to become effective or to be filed in the case.

2512.4 A settlement agreement may be submitted to a court of competent jurisdiction for approval.

2512.5 The parties may enter into a consent compliance order with the approval of a court of competent jurisdiction.

2512.6 A consent compliance order shall be signed by the parties to the case and by the judge and shall have the force and effect of any judicial order.

2512.7 Unless the consent compliance order states otherwise, there shall be no right of appeal from a consent compliance order.

2513 COMPUTATION OF TIME

2513.1 Except as provided in § 2219.2, this section applies to all periods of time prescribed or allowed by the Pesticide Operation Regulations, Chapters 22 through 25 of this title.

2513.2 In computing any period of time measured in days or calendar days, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

2513.3 For any period of time that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation, unless the period of time is measured in calendar days.

2513.4 Whenever a person has the right or the obligation to do some act within a prescribed period after the service of an order or other paper upon the person, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statue provides otherwise.

2514 LICENSE RENEWAL

2514.1 The District Department of the Environment will mail each license holder an application for renewal of a license not less than thirty (30) days before the expiration of the current license period.

2514.2 Failure to receive an application to renew a license shall not relieve the license holder of his or her responsibility to renew any license and pay the appropriate fee.

2514.3 A person who fails to file a renewal application on or before the first day of any licensure period shall be subject to the late fee specified in § 2520.

2515 PESTICIDE EDUCATION REPORTING

2515.1 The University of the District of Columbia (University) shall prepare and submit a report to the Council on or before January, 1, 2015, assessing the effectiveness of the District's pesticide programs. The University shall prepare and submit a new report by January 1 of each subsequent calendar year assessing the effectiveness of the District's pesticide programs. The report shall include:

(a) An assessment of attitudinal changes of District residents toward pesticide use;

(b) An assessment of changes in the cost of pest management in the District; and

(c) An assessment of changes in the number of pesticides registered and used in the District.

2516 RECORDKEEPING AND REPORTING REQUIREMENTS

2516.1 Any person applying pesticides, other than those excluded in § 2300.7(a), (b), or (d), shall maintain records containing the following information:

(a) Name or identification of applicator;

(b) Name of supervising certified applicator;

(c) Address of treated property;

(d) Date of application, including the month, day, and year;

(e) Time of application;

(f) Type of plant, animal, or structure treated and target pest;

(g) Acreage, or number of plants or animals, or a description of or square or cubic footage of the structure treated;

(h) Wind direction, estimated velocity, and weather conditions;

(i) Pesticide applied (the name brand) and the type of formulation;

(j) Classification of pesticide used, whether restricted-use, District restricted-use, or non-essential;

(j) Dilution rate of the product as applied (the percent of active ingredient);

(k) The amount of diluted material applied;

(l) The type of equipment used; and

(m) Environmental Protection Agency registration number of product used.

2516.2 Except as provided in § 2516.4, any person applying pesticides, other than those excluded in § 2300.7(a), (b), or (d) shall submit to the District Department of the Environment (Department) the records of pesticide applications to property in the District specified in § 2516.1.

2516.3 Each year, on or before February 1, an applicator or operator shall submit for each application performed during the previous year the records required to be maintained under § 2516.1 to the Department in a form prescribed by the Department.

2516.4 Applications of minimum-risk and reduced-risk pesticides are exempt from the reporting requirements of § 2516.2.

2516.5 Each person shall, upon written request from the Department, furnish the Department with copies of any requested records within 24 hours of the request.

2516.6 The records required in this chapter shall be subject to inspection by the Department in accordance with § 2501.3.

2516.7 Each licensee, permit holder, or certified applicator, shall immediately notify the Department in writing if there is any change in business ownership, name, address, or phone number.

2516.8 If an applicator or operator goes out of business, he or she shall immediately transfer all the pesticide application records in his or her possession to the Department.

2516.9 The pesticide operator shall file and maintain sales invoices provided to customers separately from the records required in § 2516.1, for a minimum of three (3) years.

2516.10 The applicator or operator shall provide the Department with written notification of any significant pesticide accidents or incidents within 24 hours of occurrence.

2516.11 The Department shall preserve the required records for not less than ten (10) years.

2517 RECORDS OF RESTRICTED-USE PESTICIDES

2517.1 Dealers of restricted-use pesticides shall keep and maintain for a period of three (3) years records of each transaction involving restricted-use pesticides and shall then transfer the records to the District Department of the Environment.

2517.2 For each restricted-use pesticide transaction, the dealer is required to record the following information:

(a) Name and address of purchaser or receiver, including name and license number of the licensed certified applicator;

(b) Pesticide product sold (the brand name), the Environmental Protection Agency registration number, and the type of formulation;

(c) Quantity; and

(d) The date of sale.

2518 PESTICIDE REGISTRATION FEES AND TERMS

2518.1 The registration for each pesticide registered pursuant to §§ 2202 and 2203 shall be issued for a period of one (1) year, beginning on January 1 and expiring on December 31.

2518.2 The annual registration fee for each pesticide shall be two hundred and fifty dollars ($250), payable to the District Department of the Environment.

2518.3 If the renewal of a pesticide registration is not filed before January 31 of any year, an additional fee equal in amount to the registration fee shall be assessed and added to the original fee, and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

2519 CERTIFICATION EXAMINATION FEES

2519.1 A thirty-dollar ($30) fee shall be charged for the core certification and each category examination for registered technicians and pesticide applicators.

2519.2 A ten-dollar ($10) fee shall be charged for each re-examination session.

2520 PESTICIDE CERTIFICATION AND LICENSING FEES AND TERMS

2520.1 Except as provided in § 2520.2, pesticide certifications are valid for a period of one (1) year.

2520.2 Pesticide certifications issued pursuant to § 2307 are valid for a period of two (2) years.

2520.3 Beginning January 1, 2016, the following pesticide licenses shall be valid for a period of one (1) year and shall be subject to the following fee schedule:

(a) Pesticide Operator:

(1) Commercial: $215

(2) Public: No Charge

(b) Pesticide Applicator:

(1) Commercial: $135

(2) Public: No Charge

(c) Pesticide Dealer: $215

2520.4 Beginning January 1, 2016, the following pesticide license shall be valid for a period of two (2) years from the effective date of the license, and shall be subject to the following fee schedule:

(a) Private Applicator: $135

2520.5 The following registration shall be valid for a period of three (3) years from the effective date, and shall be subject to the following fee schedule:

(a) Registered technician: $33

2520.6 The late fee for failing to file a renewal application on or before the first day of any licensure period is twenty dollars ($20) per application.

2599 DEFINITIONS

2599.1 The meanings ascribed to the definitions appearing in § 2299 of Chapter 22 of this title shall apply to the terms in this chapter.

Public Participation

The Director gives notice of the start of a thirty- (30) day public comment period for this proposed rulemaking, as required by D.C. Official Code § 8-411(a) (2012 Repl. & 2013 Supp.). Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to DDOE's Hazardous Materials Branch, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002, Attention: Pesticide Regulations; or sent electronically to ddoe.pesticideregs@dc.gov, with "Pesticide Regulations Proposed Rulemaking" in the subject line. Copies of the proposed rule may be obtained between the hours of 9:00 A.M. and 5:00 P.M. at the address listed above for a small fee to cover the cost of reproduction, or on-line at http://ddoe.dc.gov.

All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties and is unable to contact the commenter for clarification, the Department may be unable to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF SECOND PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority ("DCHA"), pursuant to the District of Columbia Housing Authority Act of 1999, effective May 9, 2000, as amended (D.C. Law 13-105; D.C. Official Code § 6-203 (2012 Repl.)), hereby gives notice of its intent to adopt the following second proposed amendments to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR), in not less than fifteen (15) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the second proposed rulemaking is to amend existing regulations with respect to DCHA's housing in service rich environments and to ensure such residents access to housing with critical supportive services.

The proposed amendments were initially published as a Notice of Proposed Rulemaking in the *D.C. Register* on February 28, 2014 at 61 DCR 001755. The comment period of this second proposed rulemaking has been reduced for good cause, per D.C. Official Code § 2-505(a). Due to the increased need for service rich affordable housing, a shortened public comment period will immediately create additional service rich affordable housing. This second proposed rulemaking contains revisions which take into consideration comments received after the initial publication of the proposed rulemaking.

Chapter 61 (Public Housing: Admission and Recertification), of Title 14 (Housing), is amended as follows:

Section 6113 (Tenant Admission and Occupancy: Redeveloped and Special Needs Properties) is retitled as follows:

Section 6113 (Tenant Admission and Occupancy: Redeveloped and Service Rich Properties)

Subsection 6113.1 (Scope) is amended to read as follows:

6113.1 Scope.

Redeveloped Properties are mixed-finance communities owned by private entities which communities are created through HOPE VI or other public funding combined with private financing, which have some or all of their units assisted by operating funds provided by DCHA. Service Rich Properties may be DCHA-owned, conventional public housing or privately owned units assisted with operating funds provided by DCHA and managed by DCHA or third parties, which provide and/or oversee the delivery of services for residents.

Subsection 6113.2 (Overview) is amended to read as follows:

6113.2 Overview.

(a) Pursuant to the MTW Agreement between DCHA and the U.S. Department of Housing and Urban Development, dated July 25, 2004, as amended by an Agreement dated September 29, 2010, and as such agreement may be further amended, DCHA may, notwithstanding certain provisions of the Housing Act of 1937 and regulations issued pursuant thereto, adopt local rules for the governance of its public housing and housing choice voucher programs.

(b) Accordingly, Section 6113 sets forth the regulatory framework for the property based rules and ongoing oversight or approvals governing: occupancy and re-occupancy; selection criteria; screening criteria; application processing; waiting lists; lease provisions; income determinations; and grievance procedures for properties officially designated as Redeveloped or Service Rich Properties by the DCHA Board of Commissioners.

(c) Service Rich Properties operated as District of Columbia-licensed assisted living residences also shall operate subject to, and in accordance with the requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq*. (2012 Repl.)), and regulations promulgated thereunder, Title 22 (Health), The Health Insurance Portability and Accountability Act of 1996 ("HIPPA"), and any other applicable local or federal regulatory requirements.

Subsection 6113.3 is amended to read as follows:

6113.3 Selection Criteria.

(a) The selection criteria, including all priorities and preferences for applicants for initial occupancy following construction and re-occupancy upon vacancy of units at Redeveloped or Service Rich Properties that are receiving operating subsidies from DCHA, are those incorporated in a regulatory and operating agreement by and between the owner and DCHA after consultation with representatives of the community and former and/or prospective residents. These selection criteria are hereinafter referred to herein as the "General Selection Criteria".

(b) While the General Selection Criteria may vary by property, selection and screening criteria for all properties shall include the mandatory federal standards with respect to certain types of criminal activity as specified in federal statute.

(c) For UFAS-Accessible Units, besides the General Selection Criteria, occupancy of the Units shall be to a household qualified for the available bedroom size of the Unit and a verified need for the features of a UFAS-Accessible Unit in the following order of priority, with date and time of application or transfer request where there are multiple applicants within any one priority:

(i) First, to a qualified returning resident who previously resided in one of the developments being redeveloped.

(ii) Second, to a qualified applicant referred by DCHA from its list of households designated in 2006 for interim assistance in accordance with the provisions of the Amended VCA.

(iii) Third, to a qualified applicant referred by DCHA from its list of households designated in 2007 for interim assistance in accordance with the provisions of the Amended VCA.

(iv) Fourth, to a qualified DCHA resident on DCHA's Transfer List;

(v) Fifth, to a qualified public housing applicant on DCHA's Waiting List;

(vi) Sixth, to a qualified Housing Choice Voucher.

Subsections 6113.4 (a) and (c) (Application Process) are amended to read as follows:

(a) Application forms for transferring or returning residents and applicants are developed by the owner for the Redeveloped Property and shall be subject to review and approval by DCHA.

(c) The occupancy and re-occupancy application and selection process shall be monitored by DCHA's Office of Asset Management.

Subsection 6113.6 (a) is amended to read as follows:

(a) Leases for Redeveloped Properties or Service Rich Properties may be developed by the owner or manager, subject to the approval of DCHA for compliance with applicable local and federal provisions as well as DCHA's regulations, including the requirements regarding Special Supplements to Lease governed by the provisions of Subsection 6112.4 of Title 14.

Subsection 6113.7 is amended to read as follow:

6113.7 Income Determinations. Certification and recertification of income shall be performed by the manager of the property and monitored periodically by DCHA for compliance with applicable DCHA and federal regulations. At certain Service Rich Properties designated by DCHA, income for certification and recertification purposes may be disregarded for up to two years of occupancy.

Section 6113 is amended by adding the following Subsection 6113.8 (Service Rich Properties – Assisted Living Residences) in its entirety, as follows:

6113.8 Service Rich Properties – Assisted Living Residences.

(a) Authority. HUD has authorized DCHA to operate certain of its Service Rich Properties as assisted living residences, as defined in the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq.* (2012 Repl.)).

(b) Eligibility; Continuing Occupancy.

(i) Families selected to live in a DCHA assisted living residence must meet assisted living-specific selection criteria, as outlined in site-based, site-managed community-specific eligibility criteria that are set forth in the Management Plan for the property.

(ii) Continued occupancy for families residing at DCHA assisted living residences will be based on adherence to the programmatic and occupancy requirements for the specific property, as set forth in the Lease and any other related program agreements.

(c) Jurisdiction; Applicable Law.

(i) The D.C. Superior Court - Landlord and Tenant Branch has jurisdiction over any Lease of a DCHA assisted living unit.

(ii) Service Rich Properties operated as District of Columbia-licensed assisted living residences also shall operate subject to, and in accordance with the requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq*. (2012 Repl.)), and regulations promulgated thereunder, Title 22 (Health), The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and other applicable Federal and District laws and regulation.

(d) Grievance Rights.

(i) DCHA assisted living residences shall establish grievance procedures that are consistent with the requirements of 24 C.F.R. § 966.50, *et seq.*, the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official

Code §§ 44-101.01, *et seq*. (2012 Repl.)), and with any District and federal statutes and/or regulations, which impose grievance requirements on any Service Rich Property and/or its programs or services. The procedures shall be outlined in the regulatory and operating agreement for the property and/or Management Plan and incorporated into the Dwelling Lease,, as set forth in 24 C.F.R.§ 966.4(n).

(ii) The grievance procedures shall provide:

(A) Informal Settlement of Grievance, as follows:

(1) If a Tenant wishes to grieve a decision of the administrator of the assisted living residence, he or she or his or her representative/surrogate must request an informal conference in writing within four (4) days of receiving the decision of the administrator in writing or within four (4) days of any alleged failure to act on the part of the administrator

(2) The request for an informal hearing must include a description of the nature of the complaint and issue to be grieved.

(3) The administrator will provide the Tenant with a dated receipt when the request for an informal conference is filed. The informal conference will be scheduled at a mutually agreeable time and will be held within two (2) days of the receipt of the request by the administrator.

(4) The Tenant may bring his or her representative/surrogate and an advocate if he or she wishes. A Supervisor of the Administrator will preside and render the decision resulting from the informal conference. A copy of the written decision will become a part of the Resident’s clinical record.

(5) The Supervisor shall provide the decision in writing to the Resident within twenty four (24) hours of the completion of the informal conference. The decision shall include a summary of the discussion, the decision regarding the disposition of the complaint and the specific reasons for the decision. The decision summary will list the names of the participants, and the date of the meeting. When the written results of the decision are delivered to the Resident, they will include a description of the options remaining to the Resident, including instructions on how to request a Formal Hearing.

(6) If the original decision is concerning a discharge, transfer or relocation and it is upheld, if the Resident decides not to pursue a Formal Grievance Hearing, the Resident must comply with the decision within thirty (30) days of having received the Notice Relocation, Transfer or Discharge prepared and delivered according to the provisions of D.C. Official Code Section 44-1003.02(a).

(B) Formal Grievance Hearing Regarding Involuntary Discharge, Transfer or Relocation, as follows:

(1) If the Resident wishes to proceed with a formal hearing in order to contest the decision to involuntarily discharge, transfer or relocate the Resident, the Resident, his or her representative/surrogate or the Long-Term Care Ombudsman shall mail a written request to the Department of Health and deliver it to the Administrator within seven (7) calendar days after receiving a notice of discharge or transfer to another facility, or within five (5) calendar days after receiving a notice as described in F., above, of relocation within the facility.

(2) If the Resident elects to request a Formal Hearing, the Administrator will remind the Resident that if

the original decision is upheld, then the Resident will be required to leave the facility by the fifth (5th) calendar day following his or her notification of the hearing decision or before the 31st calendar day following his or her receipt of notice of discharge required by D.C. Official Code Section 44-1003.02(a),whichever is later If the Resident is being required to relocate within the facility, he or she will be reminded by the Administrator that this must occur by the 8th calendar day following his or her receipt of the notice to relocate or the 3rd calendar day following his or her notification of the hearing decision, whichever is later.

(3) The Department of Health will designate an appointee of the Office of Administrative Hearings as the Hearing Officer.

(4) The Office of Administrative Hearings will schedule the formal hearing to occur within five (5) days of the request from the Resident.

(5) The Resident may bring his/her representative/ surrogate, and advocate or the Long-Term Care advocate to participate in the hearing. The facility shall have the burden of proof unless the ground for the proposed discharge, transfer, or relocation is a prescribed change in the resident's level of care, in which case the person(s) responsible for prescribing that change shall have the burden of proof and the resident shall have the right to challenge the level of care determination at the hearing. The Resident may not litigate Medicaid eligibility at the hearing.

(6) The Office of Administrative Hearings will provide the decision within seven (7) days of the completion of the hearing. The decision will become a part of the Resident's clinical record.

(7) If the original decision is upheld, the resident must leave the facility by the 5th calendar day after the receipt of the Hearing Officer's decision or the 31st day after receiving the discharge notification, whichever is later. If the original decision required relocation within the facility and it is upheld, this must occur before the 3rd calendar day after receiving the Hearing Officer's decision or by the 8th calendar day after having received the relocation notification, whichever is later.

(8) Failure to request a formal grievance hearing shall not constitute a waiver by the Resident of his or her right thereafter to contest the Administrator's action in disposing of the complaint in an appropriate judicial proceeding.

(9) A decision by the Office of Administrative Hearings in favor of the Administrator or which denies the relief requested by the Resident in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the Resident may have to a trial or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

(10) If the Resident chooses to take the matter to court, he or she must make the filing within the 30 day notice period.

(e) Rent Calculation and Rent Collection at DCHA Assisted Living Residences.

(i) Tenant rent at DCHA assisted living residences shall be established as set forth at 14 DCMR § 6200, except as provided in paragraphs (ii) and (iii) of this subsection.

(ii) For purposes of calculating adjusted income, as defined in 14 DCMR § 6099, to establish tenant rent for DCHA assisted living residences, any amount that a Family is required to pay to participate in programming made available at the assisted living

residence- shall be considered to be medical expenses and shall be deducted, in full, from the Family's annual income, as set forth in DCHA's approved 2014 Moving To Work Plan. In the event that adjusted income is zero dollars ($0.00) or less, then rent shall equal zero dollars ($0.00). Minimum rent, as defined by 14 DCMR § 6210, for assisted living residences, if any, shall be established by DCHA.

(iii) Payments or allowances to residents of DCHA assisted living residences, for incidental living expenses under the provisions of any applicable assisted living program may be excluded from annual income for the purpose of calculating tenant rent.

(iv) The Lease for DCHA assisted living residences will include an itemized list of all fees, how they are calculated and allowances or payments for incidental living expenses.

(v) Unpaid fees payable by participating Families residing at DCHA assisted living residences will be converted to rent if they become more than thirty (30) days past due.

(f) Assisted Living Residences - Resident Agreements.

(i) For purposes of this Section 6113, the term "Residential Agreement" shall have the meaning and components according to the requirements of Section 44-106.2 of the D.C. Code. In addition, the Resident Agreement shall set forth the terms and conditions governing participation in the assisted living programming

(ii) At DCHA assisted living residences, the Resident Agreement may include or incorporate Individual Service Plans, as defined by D.C. Official Code § 44-106.04, to be completed by the participating household members.

(iii) Upon execution, the Resident Agreement and related documents will become part of the Dwelling Lease. Participating Families must comply with the terms and conditions of the Dwelling Unit Lease Agreement, Addenda, the Resident Agreement and any related documents.

(iv) Failure to abide by the terms of the Resident Agreement and related documents shall be considered a violation of the Dwelling Lease Agreement.

(g) Assisted Living Residences - Transfers.

(i) A request by a Family currently residing in a DCHA assisted living residence, to transfer to a DCHA assisted living residence, in accordance with 14 DCMR § 6400, will be deemed "a tenant initiated transfer" request if the Family accepts the offer of a unit at a DCHA assisted living residence.

(ii) If a Family, which resides in a DCHA assisted living residence, no longer wishes to participate in the programing available at the assisted living residence, but remains compliant with the Lease and otherwise passes the screening criteria for Public Housing, then the Family will receive up to two (2) transfer offers of Conventional Public Housing units, in writing.

(iii) A Family residing in a DCHA assisted living residence unit that receives a written offer to transfer into a new dwelling unit may refuse the offer on the basis of evidence, satisfactory to DCHA, that acceptance of the offered unit would cause undue hardship, as set forth in subsection 6111.9, and such refusal shall not count against one of tenant's allowable offers under paragraph ii of this subsection.

(iv) If a Family and refuses a second offered unit without good cause, DCHA shall issue a "Notice to Cure or Vacate", in accordance with Subsection 6113.8(h).

(v) Unless otherwise specified in the applicable Regulatory and Operating Agreement or Management Plan, or otherwise determined by DCHA, in the event of any transfer to or from a DCHA assisted living residence to or from a conventional public housing unit as set forth in paragraph ii of this subsection, then the Family will be responsible for relocation costs.

(vi) In addition to the foregoing requirements of this subsection g, any transfer of any resident from a DCHA assisted living residence shall be subject to, and in accordance with the applicable discharge and transfer requirements of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq*. (2012 Repl.)).

(h) DCHA Assisted Living Residences - Termination.

(i) Any termination of any tenancy at DCHA assisted living facility shall be subject to the applicable termination and discharge provisions (including tenants' rights and protections) of the the Assisted Living Residence Regulatory Act of 2000, effective June

24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq*. (2012 Repl.)), in addition to any other DCHA, District or federal requirements

(ii) If DCHA determines that a Family residing in an assisted living residence is in violation of the Dwelling Lease, except for lease violations predicated on the performance of an illegal act, DCHA shall issue to the Lessee a notice to cure or vacate, stating in writing the violation(s) which provides the basis for the termination the lessee's right to cure the violations and instructions on how to cure the violations, provided that such notice and any requirement that tenant vacate the assisted living residence shall be subject to requirements of any applicable District or federal statute or regulation including those governing the assisted living residence or its services or programs.

(iii) The notice shall inform the Family of its right to file an administrative complaint in accordance with Subsection 6113.8 (d), and any other administrative rights to which Tenant may be entitled by virtue of any District or federal regulation or statute governing the assisted living residence or its services.

(iv) If a Lessee has filed a complaint requesting an administrative determination of his or her rights, in accordance with Subsection 6113.8 (d), in response to service of a notice to cure or vacate or a notice of lease termination in the case of failure to pay rent, and or such other notice required by District or federal regulation or statute including the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01, *et seq*. (2012 Repl.)), to which the assisted living facility, may be subject, and has not prevailed, the Lessee shall be issued a notice to vacate, as the time to cure has past and the Lessee shall be subject to legal action to gain possession of the unit (eviction).

(v) If DCHA determines that a Family's violation of the Lease results from a change in circumstance which renders the Family ineligible for the services offered at the assisted living facility, which change is not at the fault or initiative of the Tenant, then DCHA may, subject to availability and applicable requirements, transfer the Family to a unit in conventional public housing, in accordance with Subsection 6113.8(g).

(vi) In the event of any lease violations, predicated on criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the assisted living residence or drug related criminal

activity on or off the Leased Premises or the assisted living residence, DCHA shall issue a notice to vacate, together with such other notice required by District or federal regulation or statute to which the assisted living facility or its programs or services may be subject.

(vii) DCHA will not issue a notice to cure or vacate, or notice to vacate, where DCHA has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.

Interested persons are encouraged to submit comments regarding this Proposed Rulemaking to DCHA's Office of General Counsel. Copies of this Proposed Rulemaking can be obtained at www.dcregs.gov, or by contacting Karen Harris at the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599 or via telephone at (202) 535-2835. All communications on this subject matter must refer to the above referenced title and must include the phrase "Comment to Proposed Rulemaking" in the subject line. There are two methods of submitting Public Comments:

1. Submission of comments by mail: Comments may be submitted by mail to the Office of the General Counsel, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599.
2. Electronic Submission of comments: Comments may be submitted electronically by submitting comments to Karen Harris at: PublicationComments@dchousing.org.
3. No facsimile will be accepted.

Comments Due Date: June 14, 2014

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director of the District of Columbia Department of Human Services (DHS), pursuant to authority set forth in Section 108 of the Data-Sharing and Information Coordination Amendment Act of 2010 (Act), effective December 4, 2010 (D.C. Law 18-273; D.C. Official Code § 7-248)(2012 Repl.)), and Mayor's Order 2011-169, dated October 5, 2011, hereby gives notice of its intent to amend Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR) by creating a new Chapter 30 entitled "Data-Sharing."

The purpose of the rulemaking is to promulgate rules for implementing the Act. The Act allows District of Columbia (District) agencies and service providers to share health and human services information (HHSI) for specified purposes. These rules will mandate (1) the purposes for using or disclosing information; (2) the requirements for sharing HHSI between District agencies; (3) the requirements District agencies and service providers must follow when sharing HHSI with other service providers; and (4) the penalties for not complying with the Act.

The Director gives notice of the intent to take final rulemaking action to adopt the amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. In accordance with Section 108(b) of the Act, these rules will be submitted to the Council for the District of Columbia for a thirty (30)-day period of review.

Title 29 (Public Welfare) is amended by creating a new Chapter 30 (Data-Sharing) to read as follows:

CHAPTER 30: DATA-SHARING

3000 SCOPE AND APPLICABILITY

3000.1 These rules shall apply to the sharing of health and human services information (HHSI) between District of Columbia (District) agencies (Agency or Agencies) and the Agency's service providers (Provider) in accordance with the Data-Sharing and Information Coordination Amendment Act of 2010, effective December 4, 2010, as amended (D.C. Law 18-273; D.C. Official Code §§ 7-241, *et seq.*)(Act).

3001 USE AND DISCLOSURE OF HEALTH AND HUMAN SERVICES INFORMATION

3001.1 An Agency or Provider shall disclose HHSI referencing or related to an identified individual client or customer (Individual) upon request from another Agency or Provider for the following purposes, unless disclosure is precluded by District or federal law:

(a) To establish the Individual's eligibility for, or determine his or her amount of:

(1) Treatment;

(2) Services;

(3) Benefits;

(4) Support; or

(5) Assistance;

(b) To coordinate for the Individual, his or her:

(1) Treatment;

(2) Benefits;

(3) Services;

(4) Support; or

(5) Assistance;

(c) To conduct oversight activities, including:

(1) Management;

(2) Financial and other audits;

(3) Program evaluations;

(4) Planning;

(5) Investigations;

(6) Examinations;

(7) Inspections;

(8) Quality reviews;

(9) Licensure;

(10) Disciplinary actions; or

(11) Civil, administrative, or criminal proceedings or actions; and

(d) To conduct research related to treatments, benefits, services, support, or assistance provided that:

(1) Information referencing or relating to an Individual shall not be disclosed in a manner that would permit the Individual's identity to be reasonably inferred by either direct or indirect means; and

(2) The Agency or Provider receiving HHSI shall affirm in writing that any individually identifiable health information shall be treated in accordance with the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996, as amended (110 Stat. 1936; 42 U.S.C. §§ 1320d, *et seq*.) (HIPAA) and its implementing regulations.

3001.2 Neither an Agency nor a Provider requesting or disclosing HHSI referencing or related to an Individual pursuant to § 3001.1 of this chapter has to obtain the person's prior consent to using or disclosing HHSI unless required by § 3004 of this chapter.

3001.3 An Agency or Provider shall use or disclose HHSI in accordance with this chapter.

3001.4 Notwithstanding any other provision in this chapter, Agencies and Providers shall comply with any applicable Agency or Provider HIPAA policies and procedures, and Agencies shall comply with the District-wide HIPAA Policy.

3001.5 An Agency or Provider using or disclosing HHSI shall make reasonable efforts to limit the use or disclosure of HHSI to the minimum extent necessary to accomplish its intended purpose.

3001.6 An Agency or Provider that discloses HHSI shall designate a person within the Agency or Provider's staff who shall, in coordination with any person that the Agency or Provider has designated as its HIPAA privacy officer and/or security officer, be responsible for:

(a) Responding to requests for HHSI from another Agency or Provider; and

(b) Ensuring that any HHSI disclosed pursuant to this chapter is limited to the minimum amount of HHSI necessary to accomplish the purpose of the disclosure.

3001.7 The individual designated by an Agency or Provider pursuant to § 3001.6 shall:

(a) Respond to a request within forty-eight (48) hours;

(b) Not unreasonably deny a request; and

(c) Within five (5) business days of the date of the request, supply the requested information to the extent such request was approved.

3001.8 If an Agency or Provider is unable to provide the requested HHSI within five (5) business days pursuant to § 3001.7(c), it shall notify the requesting Agency or Provider immediately and provide a reasonable timeline for fulfilling the request to the extent possible.

3002 DATA-SHARING AGREEMENT BETWEEN AGENCIES

3002.1 A District Agency seeking to use another District Agency's HHSI or seeking to disclose HHSI to another District Agency shall, consistent with the District-wide HIPAA Policy, enter into a data-sharing agreement (Agreement). Any Agency or Provider seeking to enter into an Agreement must follow any applicable Agency or Provider HIPAA policies and procedures.

3002.2 At a minimum, the Agreement shall include the following information:

(a) The legal authority which authorizes the sharing of HHSI between the two Agencies including the Act's legal citation;

(b) A listing of the specific HHSI each Agency is requesting from the other along with a statement of the Agency's purpose for requesting each piece of HHSI on that list, which shall be limited to the minimum amount of HHSI necessary to accomplish the purpose of the disclosure;

(c) A provision stating that the requested HHSI shall be safeguarded and protected from improper access, use, or dissemination in accordance with the Act, and any other applicable District and Federal laws;

(d) A provision stating that any unlawful use or disclosure of HHSI shall be subject to penalties outlined in the Act, and any other applicable District and Federal laws;

(e) Procedures for notifying an Agency of an actual or suspected unauthorized access, use, or dissemination of the HHSI.

3003 A PROVIDER OR AGENCY DISCLOSING HEALTH AND HUMAN SERVICES INFORMATION TO SERVICE PROVIDERS

3003.1 A Provider or Agency seeking to request or disclose HHSI to a Provider shall do so in accordance with their applicable contract, grant, or similar agreement with the Provider which shall contain provisions governing the sharing of HHSI.

3003.2 A Provider seeking to obtain HHSI from an Agency or another Provider shall submit a written request to the Agency or Provider in possession of the HHSI describing in detail the HHSI sought and the purpose for the HHSI being requested.

3003.3 An Agency or Provider that receives a request for HHSI from another Provider shall maintain an accurate record, for a reasonable period of time:

(a) Of the date and purpose for any request for the HHSI;

(b) The date which the HHSI was disclosed; and

(c) A record of whom the HHSI was disclosed to.

3003.4 For purposes of this § 3003.3, the term "reasonable period of time" incorporates any applicable document retention requirements imposed by District or federal law.

3004 PRIOR WRITTEN CONSENT

3004.1 Unless Federal law states otherwise, an Agency or Provider disclosing HHSI in response to a request from another Agency or Provider pursuant to § 3000.1 shall obtain the Individual's prior written consent to disclose the HHSI requested if it involves:

(a) Alcohol and drug abuse patient records governed by 42 C.F.R. Part 2;

(b) Psychotherapy notes governed by 45 C.F.R. § 164.508(a)(2); and

(c) Any other HHSI requiring prior consent for disclosure as required by Federal law.

3004.2 Unless District or Federal law states otherwise, an Agency or Provider disclosing HHSI in response to a request from another Agency or Provider pursuant to § 3000.1 shall obtain the Individual's prior written consent to disclose the HHSI requested if it involves:

(a) Records governed by Section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131);

(b) Records which are incident to a case of HIV infection or AIDS as required by Section 6 of the AIDS Health-Care Response Act of 1986, effective June 10, 1986 (D.C. Law 6-121; D.C. Official Code § 7-1605);

(c) Records incident to a reported case of cancer as required by Section 2 of the Preventive Health Services Amendments Act of 1985 (D.C. Law 6-83; D. C. Official Code § 7-302);

(d) Substance abuse records governed by Section 7 of the Choice in Drug Treatment Act of 2000, effective July 18, 2000 (D.C. Law 13-146; D.C. Official Code § 7-3006);

(e) Registration and other records of a detoxification center governed by Section 4(c) of An Act To establish a program for the rehabilitation of alcoholics, promote temperance, and provide for the medical and scientific treatment of persons found to be alcoholics by the courts of the District, and for other purpose, approved August 4, 1947 (61 Stat. 745; D.C. Official Code § 24-604(c)).

(f) Information provided to a Domestic Violence counselor governed by Section 3 of the Domestic Violence Amendment Act of 2006, effective March 2, 2007 (D.C. Law 16-204; D.C. Official Code § 14-310);

(g) Information provided to a Human Trafficking counselor governed by Section 203 of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D. C. Law 18-239; D.C. Official Code § 14-311); and

(h) Any other HHSI requiring prior written consent for disclosure as required by District law.

3004.3 The prior written consent required by § 3004.1 and § 3004.2 shall comply with all applicable laws and regulations, and with any applicable District-wide, Agency, or Provider HIPAA policies and procedures, and shall use plain language.

3005 CIVIL AND CRIMINAL PENALTIES FOR UNLAWFUL USE OR DISCLOSURE OF INFORMATION IN ACCORDANCE WITH THE ACT

3005.1 A person who negligently uses or discloses HHSI in a manner not authorized by the Act or other District law shall be liable in an amount of five hundred dollars ($500) for each violation.

3005.2 For purposes of this section, “negligently” means that a person guided by ordinary considerations should have known, and by exercising reasonable diligence would have known, that the use or disclosure was not authorized.

3005.3 A person who willfully uses or discloses HHSI in a manner not authorized by the Act or other District law shall be liable in an amount of one thousand dollars ($1,000) for each violation.

3005.4 A person who knowingly obtains, uses, or discloses HHSI in a manner not authorized by the Act or other District law shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than two thousand five hundred dollars ($2,500), imprisoned not more than sixty (60) days, or both. If the offense is committed through deception or theft, the person shall be guilty of a misdemeanor and shall be fined not more than five thousand dollars ($5,000), imprisoned for not more than one hundred eighty (180) days, or both.

3005.5 If a civil or criminal penalty imposed by another law applies to an action that is also subject to a civil or criminal penalty under the Act, the greater penalty shall apply.

3099 DEFINITIONS

3099.1 The following terms shall have the meanings ascribed:

Act – Data-Sharing and Information Coordination Amendment Act of 2010, effective December 4, 2010 (D.C. Law 18-273; D.C. Official Code §§ 7-241, *et seq*.).

Agency – an agency, department, unit, or instrumentality of the District of Columbia government.

Department – District of Columbia Department of Human Services.

Disclosure – the release, transfer, provision of access to, or distribution of information in any manner by an entity holding the information to a person outside of the entity.

District-wide HIPAA Policy – the set of HIPAA policies and procedures issued by the District as a hybrid entity in accordance with 45 C.F.R. § 164.105(a)(2)(iii)(D). The District-wide HIPAA Policy applies to any District agency, and any subdivision of a District agency, that is subject to HIPAA as part of the District's hybrid entity.

Health and human services information (HHSI) – any information that relates to:

(a) The past, present, or future physical or mental health of an Individual or family;

(b) The provision of health care or human services, including benefits or supports, to an Individual or family;

(c) The past, present, or future payment for the provision of health care or human services to an Individual.

HIPAA – the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. §§ 1320d, *et seq*.), as amended; 45 C.F.R Parts 160, 162, and 164, as amended.

Identified individual – a natural person to whom health and human services information pertains.

Individually identifiable health information – shall have the same meaning as it does in HIPAA.

Person – a natural person, firm, company, association, corporation, service provider, or government instrumentality or agency authorized to receive HHSI in accordance with the Act.

Service provider (Provider) – an entity that provides health or human services to District residents pursuant to a contract, grant, or other similar agreement with an Agency.

Use – the sharing, employment, application, utilization, examination, or analysis of health and human services information.

All persons who desire to comment on these proposed rules should submit their comments in writing to David A. Berns, Director, DHS, 64 New York Avenue, N.E., Washington, D.C. 20002, **Attn:** Deborah A. Carroll, Administrator, Economic Security Administration (formerly known as the Income Maintenance Administration). All comments must be received by DHS not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, by calling the DHS Economic Security Administration at (202) 698-3900, or by sending an e-mail to deborah.carroll@dc.gov.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF EXTENSION OF PUBLIC COMMENT PERIOD FOR PROPOSED RULEMAKING

The District of Columbia Taxicab Commission voted to approve the publication of proposed rulemaking for Chapter 8 of DCMR Title 31 (regulations establishing a new class of service called Private Sedan Service) at the General Commission Meeting held on April 9, 2014. Proposed rulemaking for Chapter 8 (Operation of Taxicabs) was published on May 9, 2014 in the *D.C. Register* at 61 DCR 4737.

Through this Notice, the Commission extends the comment period for proposed rulemaking for Chapter 8 to June 16, 2014. This extension is being authorized pursuant to authority set forth in Sections 8(c)(2), (3), (4), (5), (7), (19), 14, 20, and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2) (3), (4), (5), (7), (19), 50-313, 50-319, and 50-320 (2012 Repl. & 2013 Supp.)), D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2013 Supp.), and Section 6(a) of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2012 Repl.)).

Copies of the proposed rulemakings for Chapter 8 can be obtained at www.dcregs.dc.gov or by contacting Juanda Mixon, Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020 or dctc@dc.gov.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2006 Repl. & 2012 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)) hereby gives notice of the intent to adopt a new Chapter 71 entitled, "Medicaid Reimbursement for Early Intervention Services" of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules set forth standards governing Medicaid reimbursement for Part C Early Intervention Services administered by the Office of the State Superintendent of Education (OSSE). In accordance with the Individuals with Disabilities Education Act (IDEA), approved April 13, 1970 (84 Stat.175; 20 U.S.C. § 1400 *et seq.*), these rules set forth the conditions of Medicaid reimbursement for Early Intervention services provided to eligible beneficiaries by OSSE.

A Medicaid beneficiary, from birth to age two (2), with an Individualized Family Service Plan is eligible to receive Early Intervention services. Medicaid reimbursement for Early Intervention services shall be available for Medicaid beneficiaries who have been assessed and found to have a fifty percent (50%) developmental delay in one, or a twenty-five percent (25%) developmental delay in two (2) or more of the following areas: cognitive development; physical development; communication development; social or emotional development; and/or adaptive development. Beginning on July 1, 2014, Medicaid reimbursement for the continuation of Early Intervention services shall be available for beneficiaries' ages three (3) until the beginning of the school year following the child's fourth (4^{th}) birthday. Medicaid reimbursement for the continuation of Early Intervention services shall not be provided beyond the age at which the child actually enters, or is eligible under District of Columbia law to enter kindergarten or elementary school.

Pursuant to 1 DCMR § 311.4(e), emergency rulemakings are undertaken only for the immediate preservation of the public peace, health, safety, welfare or morals. This emergency action is necessary for the immediate preservation of the health, safety and welfare of Medicaid enrolled children in need of early intervention services. Medicaid reimbursement for these services will reduce the pressures and avoid any possible delays placed upon the Office of the State Superintendent for Education (OSSE) in its quest to deliver early intervention services.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 28, 2013 at 60 DCR 009742. This emergency and proposed rulemaking responds to comments submitted after publication of the June 28, 2013 proposed rule, which resulted in minor nonsubstantive technical changes and two substantive changes regarding the rate table. The emergency rulemaking was adopted on March 21, 2014 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until July 18, 2014, unless superseded by

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

Title 29 (Public Welfare) of the DCMR is amended as follows:

Add a new Chapter 71, MEDICAID REIMBURSEMENT FOR EARLY INTERVENTION SERVICES, to read as follows:

7100 EARLY INTERVENTION SERVICES: GENERAL AND SPECIFIC STANDARDS

7100.1 Early Intervention (EI) services are specialized habilitative and rehabilitative services designed to promote the optimal development of infants and toddlers, aged birth to three, who have a delay in one or more areas of development. EI services are required under Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 *et seq.*).

7100.2 The Office of the State Superintendent of Education (OSSE) is the Lead Agency responsible for administering EI services to eligible infants and toddlers in the District of Columbia under Part C of the IDEA. The Department of Health Care Finance (DHCF) is the single state agency responsible for administering the Medicaid program under Title XIX of the Social Security Act (42 U.S.C. § 1396).

7100.3 DHCF will reimburse the Lead Agency for EI services provided to Medicaid beneficiaries in accordance with the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit and the requirements set forth in these rules.

7100.4 The Lead Agency shall be the qualified Medicaid enrolled provider for EI services and shall ensure the following:

(a) A multidisciplinary evaluation and assessment of the child's level of functioning as described in 34 C.F.R. § 303.371, in the following developmental areas:

(1) Cognitive development;

(2) Physical development, including vision, and hearing;

(3) Communication development;

(4) Social or emotional development; and

(5) Adaptive development.

(b) Consultation with the child's parent, authorized caregiver, or other service provider;

(c) Evaluation of the family's capacity to meet the developmental needs of the child;

(d) Development, review and evaluation of the child's Individualized Family Service Plan (IFSP) as described in 34 C.F.R §§ 303.342-303.344, which shall include initial and subsequent plans of care, assessments for services, IFSP team orders, medical conditions, functional losses, other pertinent documentation of the beneficiary's progress or lack of progress, and treatment goals and services provided in order to demonstrate that EI Services are reasonable and necessary;

(e) Service coordination as described in 34 C.F.R. § 303.34;

(f) Receipt of contact information for the child and their parent or other authorized caregiver;

(g) Completion of screenings pursuant to the Criminal Background Checks for the Protection of Children Act of 2004, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code §§ 4-1501.01 *et seq*.) and, if applicable, shall comply with any background check requirements established by the Department of Health Care Finance (DHCF) and/or the Lead Agency;

(h) On-site inspections to be conducted by the Centers for Medicare and Medicaid Services (CMS) and DHCF to determine provider compliance with all applicable laws; and

(i) Maintenance of documentation for at least ten (10) years from service initiation.

7100.5 DHCF will reimburse the Lead Agency for EI services provided to eligible Medicaid beneficiaries who are enrolled in the fee-for-service program, and have been assessed, pursuant to § 7100.4(a), and found to meet one (1) or more of the following requirements:

(a) Has a fifty-percent (50%) developmental delay in one (1) or more of the following areas:

(1) Cognitive development;

(2) Physical development, including vision and hearing;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development;

(b) Has a diagnosed physical or mental condition that has a high probability of resulting in a significant developmental delay; or

(c) Has a twenty-five percent (25%) developmental delay in two (2) or more of the following areas:

(1) Cognitive development;

(2) Physical development, including vision and hearing;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development.

7100.6 Transportation services for EI services shall be provided in accordance with the contract between DHCF and the District's Medicaid Non-Emergency Transportation Broker.

7100.7 Beginning on July 1, 2014, and in accordance with 34 C.F.R. § 303.211, Medicaid reimbursement for children who are eligible for preschool services under § 619 of Part B of IDEA (20 U.S.C. § 1419) and previously receiving EI services may continue after a child turns three (3) until the beginning of the school year following the child's fourth (4^{th}) birthday.

7100.8 The continuation of Medicaid reimbursement for EI services under Part C of IDEA for eligible children with disabilities is available from age three (3) until the first year for which the child enters or is eligible under District of Columbia law to enter pre-kindergarten or elementary school. The continuation of EI services shall not be provided beyond the age at which the child actually enters, or is eligible under District of Columbia law to enter pre-kindergarten or elementary school.

7100.9 Medical and health services shall be reimbursed by DHCF under the authority of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services benefit subject to any requirements set forth in the State Plan, implementing rules, and any subsequent amendments thereto.

7100.10 EI Services that are eligible for Medicaid reimbursement shall include the following:

(a) Assistive technology devices and services as described in 34 C.F.R. § 303.13(b)(1);

(b) Audiology services as described in 34 C.F.R. § 303.13(b)(2);

(c) Developmental therapy, also known as Special Instruction as described in 34 C.F.R. § 303.13(b)(14);

(d) Nursing services as described in 34 C.F.R. § 303.13(b)(6);

(e) Nutrition services as described in 34 C.F.R. § 303.13(b)(7);

(f) Occupational therapy as described in 34 C.F.R. § 303.13(b)(8);

(g) Physical therapy as described in 34 C.F.R. § 303.13(b)(9);

(h) Psychological services as described in 34 C.F.R. § 303.13(b)(10);

(i) Social work services as described in 34 C.F.R. § 303.13(b)(13);

(j) Speech-language pathology as described in 34 C.F.R. § 303.13(b)(15); and

(k) Vision services as described in 34 C.F.R. § 303.13(b)(17).

7100.11 In accordance with 20 USC § 1432(4)(G), to the maximum extent appropriate, EI services shall be provided in natural environments, including the home and community settings in which children without disabilities participate.

7101 ASSISTIVE TECHNOLOGY

7104.1 Medicaid reimbursable assistive technology devices shall be:

(a) Authorized through DHCF or its designee;

(b) Deemed medically necessary; and

(c) Included in the child's IFSP.

7104.2 Medicaid reimbursable assistive technology services shall directly assist the child and shall include the following:

(a) Selecting, designing, fitting, customizing, adapting, applying, maintaining, or replacing assistive technology devices;

(b) Training or technical assistance for a child or, if appropriate, that child's family; and

(c) Training or technical assistance for professionals or other individuals who are otherwise substantially involved in the major life functions of the child.

7104.3 Medicaid reimbursement for assistive technology devices shall be made according to the District of Columbia Medicaid fee schedule available online at: http://www.dc-medicaid.com.

7102 AUDIOLOGY SERVICES

7102.1 In accordance with 42 C.F.R § 440.110(c)(3), Medicaid reimbursable audiology services shall be provided by an audiologist. Each audiologist shall also comply with the requirements set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), implementing rules, and any subsequent amendments thereto.

7102.2 Each audiologist who provides Medicaid reimbursable EI Services shall also be certified by the Lead Agency in accordance with 5-E DCMR § 1663.

7102.3 Each audiologist who provides Medicaid reimbursable EI Services shall undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7102.4 Medicaid reimbursable audiology services shall include the following:

(a) Identification of auditory impairment, using at risk criteria and appropriate audiological screening techniques;

(b) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(c) Provision of auditory training, including, but not limited to:

(1) Language habilitation;

(2) Speech reading (lip-reading);

(3) Cued language services; and

(4) Listening device orientation, training, and other services.

(d) Evaluation, selection, fit and dispensation of hearing assistive technology devices, including hearing aids, dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices; and

(e) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with an auditory impairment.

(f) Provision of services for the prevention of hearing loss.

7103 DEVELOPMENTAL THERAPY SERVICES

7103.1 Providers of Medicaid reimbursable developmental therapy services, also known as Special Instruction, shall meet one (1) or more of the following requirements:

(a) Have a Teaching Endorsement in Early Childhood Education (ECE) or Special Education;

(b) Have a bachelor's degree in Early Childhood Development, Early Childhood Education, Early Childhood Special Education, Special Education, or a related health, human service, or education field with one (1) year of direct experience with children from birth to age three (3); or

(c) Be a licensed occupational therapist, physical therapist, or qualified speech pathologist subject to the requirements set forth in §§ 7107.1, 7108, and 7111, with one (1) year of direct experience with children age three (3) and under.

7103.2 Licensed occupational therapists, physical therapists, or qualified speech pathologists providing Medicaid reimbursable developmental therapy services shall comply with the requirements set forth in § 7103.1 and shall have documented completion of at least three (3) semester hours or thirty (30) continuing education units (CEU) in the following EI core knowledge content areas:

(a) The development of young children;

(b) Typical and atypical child development;

(c) Working with families of young children with disabilities; and

(d) Intervention strategies for young children with special needs.

7103.3 Applied Behavioral Analysis (ABA) therapy shall be provided by a provider with the credentialing requirements set forth in §§ 7103.1 and 7103.2 and shall also be certified as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board.

7103.4 Medicaid reimbursable developmental therapy services shall include the following:

(a) Assistance with developing and/or enhancing social and adaptive skills to enable the child to attain maximum functional level;

(b) Assistance with acquisition, retention, and/or improvement of skills related to activities of daily living, such as feeding, dressing communicating with caregivers, and the social and adaptive skills to enable the child to reside in his/her home or non-institutional community setting;

(c) Individual, group, or family therapy with the parents, other family members, or authorized caregivers;

(d) Family training, education, and support provided to assist the family of the child in understanding the special needs of the child as related to enhancing their skill development; and

(e) ABA for children suspected to have Autism Spectrum Disorders (ASD).

7104 NURSING SERVICES

7104.1 In accordance with 42 C.F.R. § 440.60(a), Medicaid reimbursable nursing services shall be provided by a registered nurse (RN). Each RN shall comply with the requirements set forth in the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), implementing rules, and any subsequent amendments thereto.

7104.2 Each RN providing Medicaid reimbursable nursing services shall:

(a) Be certified by the Lead Agency in accordance with 5-E DCMR § 1660; and

(b) Undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7104.3 Medicaid reimbursable nursing services provided within the scope of EI services and as described under the child's IFSP shall include the following:

(a) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(b) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(c) The administration of medications, treatments, and regimens prescribed by a licensed physician.

7105 NUTRITION SERVICES

7105.1 In accordance with 42 C.F.R. § 440.60(a), Medicaid reimbursable nutrition services shall be provided by a dietician or nutritionist. Each dietician or nutritionist shall also comply with the requirements set forth in the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*.), implementing rules, and any subsequent amendments thereto.

7105.2 Each dietician or nutritionist providing Medicaid reimbursable EI services shall undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7105.3 Medicaid reimbursable nutrition services shall include the following:

(a) Individual assessments, which shall include:

(1) Nutritional history and dietary intake;

(2) Anthropometric, biochemical, and clinical variables;

(3) Feeding skills and feeding problems; and

(4) Food habits and food preferences.

(b) Developing and monitoring appropriate plans to address the nutritional needs of the child, based on the individual assessments;

(c) Making referrals to appropriate community resources to carry out nutrition goals; and

(d) Family training, education, and support to assist the family of the child in understanding the special needs of the child as related to nutritional services.

7106 OCCUPATIONAL THERAPY

7106.1 In accordance with 42 C.F.R. § 440.110(b), Medicaid reimbursable occupational therapy (OT) services shall be provided and delivered by an occupational

therapist or OT assistant and shall comply with the requirements set forth in the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, as amended, (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), implementing rules, and any subsequent amendments thereto.

7106.2 Each provider of Medicaid reimbursable OT services shall:

(a) Be a licensed occupational therapist or be an OT assistant working under the direct supervision of a licensed occupational therapist; and

(b) Undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7106.3 Each provider of individual and group Medicaid reimbursable OT services shall:

(a) Prepare reports that measure the child's strength, range of motion, balance, coordination, posture, muscle performance, respiration, and motor functions;

(b) Develop and describe treatment plans that explain the treatment strategies including direct therapy and monitoring requirements, instruments, instructions, and anticipated outcomes;

(c) Address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development;

(d) Assist with selection, design, fabrication, and adaptation of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills;

(e) Provide individual and group services intended to prevent or minimize the impact of initial or future impairment, delay in development, or loss of functional ability; and

(f) Provide family training, education, and support provided to assist the family of the child in understanding the special needs of the child as related to OT services and the enhancement of the child's development.

7107 PHYSICAL THERAPY

7107.1 In accordance with 42 C.F.R. § 440.110(a), Medicaid reimbursable physical therapy (PT) services shall be provided by a qualified physical therapist or PT assistant and shall also comply with the requirements set forth in the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986,

as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*.), implementing rules, and any subsequent amendments thereto.

7107.2 Each provider of Medicaid reimbursable PT services shall:

(a) Be a licensed physical therapist or be a physical therapy assistant working under the direct supervision of a licensed physical therapist, and have a Bachelor's Masters, and/or Doctorate degree in Physical Therapy; and

(b) Undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7107.3 Each provider of Medicaid reimbursable individual and group PT services shall:

(a) Provide a comprehensive screening, evaluation, and assessment to measure the child's strength, range of motion, balance and coordination, posture, muscle performance, respiration, and motor functions;

(b) Develop and describe treatment plans that explain the treatment strategies including direct therapy and monitoring requirements, instruments, instructions, and anticipated outcomes;

(c) Address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation;

(d) Obtain, interpret, and integrate information appropriate to program planning, that is intended to prevent, alleviate, and/or mitigate movement dysfunction and related functional problems;

(e) Provide individual and group services intended to prevent, alleviate, and/or mitigate movement dysfunction and related functional problems; and

(f) Provide family training, education, and support provided to assist the family of the child in understanding the special needs of the child as related to PT services and enhancing the child's development.

7108 PSYCHOLOGICAL SERVICES

7108.1 In accordance with the 42 C.F.R. § 440.60(a), Medicaid reimbursable psychological services shall be provided by a clinical psychologist. Each clinical psychologist shall also comply with the requirements set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, as

amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.), implementing rules, and any subsequent amendments thereto.

7108.2 Each clinical psychologist providing Medicaid reimbursable EI services shall undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7108.3 Medicaid reimbursable psychological services shall include the following:

(a) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development;

(b) Administration and interpretation of psychological or other appropriate developmental tests;

(c) Diagnosis and assessment of social or emotional development of the child;

(d) Individual, group, or family counseling with the parents and other family members, including appropriate skill-building activities; and

(e) Family training, education, and support provided to assist the family of the child in understanding the special needs of the child as related to development, behavior or social-emotional functioning, and enhancement of the child's development.

7109 SOCIAL WORK SERVICES

7109.1 In accordance with 42 C.F.R § 440.60 (a) Medicaid reimbursable social work services shall be provided by social workers. Each social worker shall also comply with the requirements set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.), implementing rules, and any subsequent amendments thereto.

7109.2 Each social worker providing Medicaid reimbursable social work services shall be certified by the Lead Agency in accordance with 5-E DCMR § 1660.

7109.3 Each social worker providing Medicaid reimbursable EI services shall undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7109.4 Medicaid reimbursable social work services shall include the following:

(a) Home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(b) Individual and family group counseling with parents and other family members, and appropriate social skill-building activities with the child and parent;

(c) Working with the child and family to alleviate problems in the living situation that affect the child's maximum utilization of EI services; and

(d) Identifying, mobilizing, and coordinating community resources and services to enable the child to receive maximum benefit from EI services.

7110 SPEECH-LANGUAGE PATHOLOGY SERVICES

7110.1 In accordance with 42 C.F.R. § 440.110(c)(2), Medicaid reimbursable speech-language pathology (SLP) services shall be provided by qualified speech language pathologists. Each speech pathologist providing EI services shall also comply with the requirements set forth in the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*.), implementing rules, and any subsequent amendments thereto.

7110.2 Each provider of Medicaid reimbursable SLP services shall:

(a) Be a licensed SLP or be a licensed SLP assistant working under the direct supervision of a licensed speech pathologists;

(b) Be certified by the Lead Agency in accordance with 5-E DCMR § 1658; and

(c) Undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis; and

7110.3 Medicaid reimbursable SLP services shall include the following:

(a) Comprehensive diagnosis and assessment of communicative or oropharyngeal disorders and delays in the development of communication skills;

(b) The provision of services for the habilitation, rehabilitation, or the prevention of communicative or oropharyngeal disorders and delays in the development of communication skills;

(c) Assessment of need for augmentative and alternative speech devices, methods, strategies, and the use of adaptive equipment;

(d) Family training, education, and support provided to assist the family of the child in understanding the special needs of the child as related to speech-language pathology services and enhancing the child's development.

7111 VISION SERVICES

7111.1 In accordance with 42 C.F.R. § 440.130(d), Medicaid reimbursable vision services shall be provided by qualified orientation and mobility specialists. Each orientation and mobility specialist shall comply with the requirements set forth in the District of Columbia Health Occupations Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq*.), implementing rules, and any subsequent amendments thereto.

7111.2 Each orientation and mobility specialist providing Medicaid reimbursable EI services shall be certified as an Orientation/Mobility Specialist from the Association for Education and Rehabilitation of the Blind and Visually Impaired (AER) or the Academy for Certification of Vision Rehabilitation and Education.

7111.3 Each orientation and mobility specialist providing Medicaid reimbursable EI services shall undergo an annual purified protein derivative (PPD) skin test to confirm that he or she is free from tuberculosis.

7111.4 Medicaid reimbursable EI vision services shall include the following:

(a) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(b) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities; and

(c) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both.

7112 REIMBURSEMENT

7112.1 DHCF and the Lead Agency shall identify policies and procedures for allocating financial responsibility for EI services through a Memorandum of Understanding.

7112.2 The Lead Agency shall take all responsible measures to ascertain the legal liabilities of third-party payers prior to billing Medicaid. Rendering providers shall bill OSSE's EI program for Medicaid covered services.

7112.3 In accordance with 42 U.S.C. § 1396, the Lead Agency shall utilize public insurance, such as Medicaid's (Title XIX) and the EPSDT benefit, to the maximum extent possible within the limits of the program.

7112.4 The Lead Agency shall agree to accept as payment in full the amount determined by DHCF as Medicaid reimbursement for the authorized services provided to beneficiaries pursuant to § 7115. Rendering providers shall not bill the beneficiary or any member of the beneficiary's family for EI services.

7112.5 Reimbursement to the Lead Agency for EI services shall be available when:

(a) Described in the IFSP according to the amount, scope, and duration of services required;

(b) Ordered by qualified health care professionals who shall be licensed practitioners of the healing arts, as set forth in 42 C.F.R. §§ 440.60, 440.110, 440.130, and 440.167, the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, as amended (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.), implementing rules, and any subsequent amendments thereto; and

(c) The Lead Agency has provided a parent or authorized caregiver with written notification of IDEA no-cost protections and confidentiality provisions.

7112.6 Medicaid reimbursement for EI services shall not include:

(a) Traveling, training, waiting, or preparation of reports;

(b) Therapeutic services that are not developmentally-based, but required due to, or as part of, a medical procedure, a medical intervention, or an injury, unless the condition has become chronic or sub-acute;

(c) Services not documented in the IFSP, other than the initial and periodic assessments;

(d) Services rendered in a clinic or provider's office without justification for the location;

(e) Service coordination; and

(f) Services provided in the absence of the child, with the exception of IFSP team meetings, which do not include the child.

7113 PROGRAM OVERSIGHT AND INTEGRITY

7113.1 DHCF and the Lead Agency shall comply with the agreement set forth in the Memorandum of Agreement.

7113.2 All records shall be available for review by DHCF, OSSE, CMS, and the U.S. Department of Health and Human Services.

7114 MEDICAID REIMBURSEMENT RATES

Services	Procedure Codes	Rate
Assistive Technology Services	DME Procedure Codes	Varies depending on code
Assessments for Service Planning	T1023 R1 (RC1) T1023 R2 (RC2)	$37.50/15 min $28.50/ 15 min
Audiology	G0153 GP (group)	$25.13/15 min
	G0153 R1 (individual RC1) G0153 R2 (individual RC2)	$37.50/15 min $28.50/15 min
Developmental Therapy	T1027 R2 (individual RC2)	$27.50/15 min
Developmental Therapy– Applied Behavioral Analysis Method	T1027 R1 (individual RC1) T1027 R2 (individual RC2) T1027 GP (group)	$31.25/15 min $27.50/15 min $18.43/15 min
Group Therapy (two (2) or more children)	T1027 GP (group)	$18.43/15 min
Nursing Services	G0154 U1 (individual)	$37.50/15 min
	G0154 GP (group)	$25.13/15 min
Nutrition Services	97802 R2 (initial)	$30.41/15 min
	97803 R2 (subsequent)	$26.49/15 min
	97804 R2 (group)	$13.32/15 min
Occupational Therapy	G0152 U1 (individual)	$37.50/15 min
	G0152 GP (group)	$25.13/15 min
Social Work Services	90806	$70.94/50 min
	90846	$71.06/50 min
Psychological Services	90802	$146.76/dx interview
	90804	$54.06/30 min
	90806	$70.94/50 min
	90808	$103.32/80 min
	90810	$55.23/30 min
	96111	$108. 22
Physical Therapy	G0151 U1 (individual RC1) G0151 U1 (individual RC2)	$37.50/15 min $28.50/15 min
	G0151 GP (group)	$25.13/15 min
Speech-Language Pathology	G0153 U1 (individual RC1)	$37.50/15 min
	G0153 GP (group)	$25.13/15 min
Team Treatment Activities	T1024 R1 (individual RC1)	$37.50/15 min

(more than one professional providing services during same session for an individual child/family)		
Vision Services/Orientation	V2799 R2 (individual RC2)	$37.50/15 min

*Reimbursement Category 1 (RC 1) providers are physical therapists, occupational therapists, speech-language pathologists, nurses (registered nurses or nurse practitioners), psychologists, board certified behavior analysts (BCBAs), audiologists, certified assistive technology specialists, and certified auditory verbal therapists or educators.

*Reimbursement Category 2 (RC 2) providers are PT assistants, OT assistants, certified therapeutic recreational specialists, counselors, special educators, dietitians, family therapists, orientation and mobility specialists, social workers certified nurse aides, LPNs, ABA paraprofessionals, and board certified assistant behavior analysts (BCaBAs).

**Per professional.

7199 DEFINITIONS

For the purposes of this chapter, the following terms shall have the meanings ascribed as follows:

Applied Behavioral Analysis (ABA) **-** The science of applying interventions based on principles of learning and motivation to promote socially significant behavior changes by teaching new skills, promoting generalization of these skills, and reducing challenging behaviors with systematic reinforcement.

Assessment – Assessment refers to the process of determining the beneficiary's need, nature, amount, scope, and duration of treatment; determining the level of coordination between varying forms of treatment; and the detailed documentation of the assessment findings.

Autism Spectrum Disorder (ASD) – Refers to any of a group of developmental disorders marked by impairments in the ability to communicate and interact socially and by the presence of repetitive behaviors or restricted interests.

Department of Health Care Finance (DHCF) – Single State Agency for the administration of medical assistance programs.

Early and Periodic Screening, Diagnostic and Treatment (EPDST) services benefit – Services designed for Medicaid-eligible beneficiaries from birth through age twenty (20) that include periodic and inter-periodic screenings to identify physical and mental conditions, vision, hearing, and dental, as well as diagnostic and medically necessary treatment services to correct conditions identified during screenings.

Office of the State Superintendent of Education (OSSE) – The Lead Agency for IDEA Part C for the District of Columbia responsible for establishing District-wide policies, providing resources and support, and exercising accountability to ensure a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

Individualized Family Service Plan (IFSP) – A written plan for providing early intervention services to an infant or toddler who is eligible for EI services based on an evaluation and assessment, including outcome measurements, as required under Section 636 of the IDEA, 20 U.S.C. § 1436.

Individuals with Disabilities Education Act (IDEA) – 20 U.S.C. §§ 1432 *et seq.*

IFSP Team– Each initial and annual IFSP is required to have: the parent or parents of the child; other family members, as requested by the parent; an advocate ore person outside the family, if parent requests that person to participate; the service coordinator; a person or persons directly involved in conducting the evaluations or assessments, and; as appropriate, persons who will be providing early intervention services to the child or family. The team determines the frequency, intensity, method, duration, and location of EI services required in order to carry out the beneficiaries care plan.

Pre-Kindergarten – the year immediately preceding kindergarten.

Comments on these rules should be submitted in writing to Linda Elam, Ph.D., Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, NW, 9th Floor South, Washington DC 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.01, *et seq*. (2012 Repl.)), and Mayor's Order 2013-201, dated October 28, 2013, hereby gives notice of the adoption of, on an emergency basis, the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

This emergency action is being taken in order to enable the District to expeditiously meet the needs of those individuals who are suffering from serious medical conditions for which, based on their physician's recommendation, the use of medical marijuana may be beneficial.

On April 7, 2014, the Director received the first report of the Medical Marijuana Advisory Committee's Scientific Subcommittee ("Scientific Subcommittee"). The report addressed the Scientific Subcommittee's recommendations for the approval of additional qualifying medical conditions. Having considered the Scientific Subcommittee's report, and all information presented on this issue, the Director has determined that the following new qualifying medical conditions should be approved at this time for treatment with the use of medical marijuana.

This emergency rule was adopted on May 23, 2014, and became effective Thursday, May 29, 2014. The emergency rule will expire one hundred twenty (120) days from the date of adoption (September 21, 2014), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of his intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 2, CONDITIONS OF REGISTRATION, of Title 22-C, MEDICAL MARIJUANA, is amended by adding a new Section 201 as follows:

Section 201, QUALIFYING MEDICAL CONDITIONS AND TREATMENTS, is added to read as follows:

201 QUALIFYING MEDICAL CONDITIONS AND TREATMENTS

201.1 As of the effective date of this regulation, the qualifying medical conditions and qualifying medical treatments required for participation in the District's Medical Marijuana Program shall include both the statutorily-approved conditions set forth in the Act, and the Department-approved conditions set forth in this chapter.

201.2 The Director finds that the Department-approved conditions set forth in this chapter result in suffering or debility for which there is evidence or information that the medical use of marijuana could be of benefit. The Director accordingly approves these conditions for participation in the District's Medical Marijuana Program. Recognizing the evolving nature of the science, the Director reserves the right to re-evaluate the continued approval of each of the Department-approved conditions. In approving the addition of these medical conditions, the Director finds that each meets the requirements of the Act for the addition of new qualifying conditions.

201.3 The statutorily-approved qualifying medical conditions are:

(a) Human immunodeficiency virus;

(b) Acquired immune deficiency syndrome;

(c) Glaucoma;

(d) Conditions characterized by severe and persistent muscle spasm, such as multiple sclerosis; and

(e) Cancer.

201.4 The statutorily-approved qualifying medical treatments are:

(a) Chemotherapy;

(b) The use of azidothymidine or protease inhibitors; and

(c) Radiotherapy.

201.5 The Department-approved qualifying medical conditions are:

(a) Decompensated cirrhosis;

(b) Amyotrophic lateral sclerosis (Lou Gehrig's disease);

(c) Hospice patients with less than 6 months to live;

(d) Cachexia or wasting syndrome for individuals who are 18 years old and older;

(e) Alzheimer's Disease, which shall be diagnosed by a neurologist, but can be recommended by any qualified physician; and

(f) Seizure disorders; however, for individuals who are under the age of 18, the diagnosis of seizure disorders shall be made by a Board-certified pediatrician, but can be recommended by any qualified physician.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-111
May 15, 2014

SUBJECT: Reappointments and Appointment – Metropolitan Washington Regional Ryan White Planning Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), pursuant to section 2602(a)(1) and (b)(1) of the Public Health Service Act of 1944, as amended by section 101 of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, approved August 18, 1990, 104 Stat. 576, Pub. L. 101-381, 42 U.S.C. § 300ff-12(a)(1) and (b)(1), and in accordance with Mayor's Order 2008-75, dated May 16, 2008, as amended by Mayor's Order 2010-35, dated February 12, 2010, and Mayor's Order 2012-63, dated April 30, 2012, it is hereby **ORDERED** that:

1. **REAPPOINTMENTS**: The following persons are reappointed to the Metropolitan Washington Regional Ryan White Planning Council (hereinafter referred to as "Council") for a term to end two years from the effective date of this Order:

   CORNETT ROBERTS
   ALIS MARACHELIAN
   DEBRA FRAZIER
   RENEE KELLY
   WILLIAM DUNNINGTON, III

2. **LAURENCE SMITH** is appointed to the Council, replacing Yolanda Santirosa, for a term to end two years from the effective date of this Order.

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

VINCENT C. GRAY
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-112
May 15, 2014

SUBJECT: Appointment – Saint Elizabeths Redevelopment Initiative Advisory Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with Mayor's Order 2012-21, dated February 9, 2012, it is hereby **ORDERED** that:

1. **JACQUE PATTERSON** is appointed as a public member of the Saint Elizabeths Redevelopment Initiative Advisory Board for a term to end August 31, 2015.

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 2014-113
May 15, 2014

SUBJECT: Appointment – Board of Industrial Trades

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 1002(d) of the Second Omnibus Regulatory Reform Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(d), which established the Board of Industrial Trades, it is hereby **ORDERED** that:

1. **AUDRICK PAYNE**, who was nominated by the Mayor on February 24, 2014, and whose nomination was deemed approved by the Council of the District of Columbia on April 28, 2014 pursuant to Proposed Resolution 20-0665, is appointed as a licensed elevator inspector member of the Board of Industrial Trades, for a term to end June 26, 2016.

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 2014-114
May 19, 2014

SUBJECT: Reappointments and Appointments – State Early Childhood Development Coordinating Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Repl.), and pursuant to section 107 of the Pre-K Enhancement and Expansion Amendment Act of 2008, effective March 8, 2011, D.C. Law 18-285, D.C. Official Code § 38-271.07 (2012 Repl.), it is hereby **ORDERED** that:

1. **DANA JONES** is reappointed to the State Early Childhood Development Coordinating Council ("Coordinating Council"), as a representative of Head Start, and shall serve a term to end two (2) years from the effective date of this Order.

2. **JOHN MCKOY** is reappointed to the Coordinating Council, as a representative of the philanthropic community, and shall serve a term to end two (2) years from the effective date of this Order.

3. **CARRIE THORNHILL** is reappointed to the Coordinating Council, as a representative of an early childhood advocacy organization, and shall serve a term to end two (2) years from the effective date of this Order.

4. **MARIA GOMEZ** is reappointed to the Coordinating Council, as a representative of a community-based organization, and shall serve a term to end two (2) years from the effective date of this Order.

5. **LATOYA SMITH** is appointed to the Coordinating Council, as a representative of families whose children are receiving or have received pre-k education services, replacing Monica Holman Evans, and shall serve a term to end two (2) years from the effective date of this Order.

6. **SEAN COMPAGNUCCI** is appointed to the Coordinating Council, as a representative of public schools, replacing Nathan A. Saunders, and shall serve a term to end two (2) years from the effective date of this Order.

7. **PATRICIA STONESIFER** is appointed to the Coordinating Council, as a representative of a community-based organization, and shall serve a term to end two (2) years from the effective date of this Order.

8. **JENNIFER LOCKWOOD-SHABAT** is appointed to the Coordinating Council, as a representative of the philanthropic community, and shall serve a term to end two (2) years from the effective date of this Order.

9. **FRANCES ROLLINS** is appointed to the Coordinating Council, as a representative of a community-based organization, and shall serve a term to end two (2) years from the effective date of this Order.

10. **STACEY COLLINS** is appointed to the Coordinating Council, as a representative of the business community, and shall serve a term to end two (2) years from the effective date of this Order.

11. **LEE ANN BEERS** is appointed to the Coordinating Council, as a member representing an additional category identified by the Coordinating Council as necessary or appropriate, and shall serve a term to end two (2) years from the effective date of this Order.

12. **ELIZABETH GROGINSKY** is appointed to the Coordinating Council, as a member representing an additional category identified by the Coordinating Council as necessary or appropriate, and shall serve a term to end two (2) years from the effective date of this Order.

13. **JESÚS AGUIRRE** is appointed, as the State Superintendent of Education, to the Coordinating Council, and shall serve in that capacity at the pleasure of the Mayor.

14. **JESÚS AGUIRRE** is designated as the Vice-Chairperson of the Coordinating Council, and shall serve in that capacity at the pleasure of the Mayor.

15. **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 2014-115
May 19, 2014

SUBJECT: Appointment – Real Estate Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Horne Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 1002 of the Non-Health Related Occupations and Professions Licensure Act of 1998, effective April 20, 1999, D.C. Law 12-261, D.C. Official Code § 47-2853.06(h) (2012 Repl. and 2013 Supp.), and Mayor's Order 2009-11, dated February 2, 2009, it is hereby **ORDERED** that:

1. **HELEN MCMURDOCK DODSON**, who was nominated by the Mayor on March 11, 2014 and whose nomination was deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0692 on May 12, 2014, is appointed as a licensed real estate broker member of the Real Estate Commission, replacing Shari Barton, to complete the remainder of an unexpired term to end on December 13, 2015.

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JUNE 4, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On June 4, 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-CMP-00136 Combination Restaurant, 1772 COLUMBIA RD NW Retailer C Restaurant, License#: ABRA-075479

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2. Case#14-CC-00056 Ancora, 600 NEW HAMPSHIRE AVE NW Retailer C Restaurant, License#: ABRA-091312

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3. Case#14-CC-00054 ABC Grocery, 1401 6TH ST NW Retailer B Retail - Grocery, License#: ABRA-071204

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4. Case#14-CC-00057 L Street Market, 1100 4TH ST NE Retailer B Retail - Grocery, License#: ABRA-079164

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5. Case#14-251-00129 LOOK, 1909 K ST NW Retailer C Restaurant, License#: ABRA-077812

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6. Case#14-CC-00041 Stan's Restaurant, 1029 VERMONT AVE NW Retailer C Restaurant, License#: ABRA-072438

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7. Case#14-CC-00053 Woodward Table/WTF(Woodward Takeout Food), 1426 H ST NW Retailer C Restaurant, License#: ABRA-090596

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8. Case#14-CC-00050 Capitol Food Mart, 1634 North Capitol ST NW Retailer B Retail - Class B, License#: ABRA-088815

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9. Case#14-CMP-00222 Kenilworth Market, 1612 KENILWORTH AVE NE Retailer B Retail - Grocery, License#: ABRA-087818

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10. Case#14-PRO-00003 Little Miss Whiskey's Golden Dollar, 1104 H ST NE Retailer C Tavern, License#: ABRA-079090

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11. Case#14-PRO-00002 H Street Country Club, 1335 H ST NE Retailer C Tavern, License#: ABRA-076649

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12. Case#14-PRO-00013 Chuck & Bill Bison Lounge, 2718 GEORGIA AVE NW Retailer C Tavern, License#: ABRA-014759

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13. Case#14-PRO-00011 Penn Quarter Sports Tavern, 639 INDIANA AVE NW Retailer C Tavern, License#: ABRA-076039

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, JUNE 4, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of letter dated May 21, 2014 from Paul Pascal, Counsel for Espresso Inc. ***Ninnella,*** 106 13th Street SE, Retailer CR, Lic#: 29448.

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2. Review of Request for off-site storage of invoices dated May 22, 2014 from Theresa Bower, Controller for Matchbox Food Group.

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3. Review of Request for off-site storage of invoices dated May 21, 2014 from Andrew Kline, Counsel for Big Cheese, LLC. ***Comet Pizza,*** 5037 Connecticut Avenue NW, Retailer CR, Lic#: 74897.

   _____

4. Review of Request for off-site storage of invoices dated May 20, 2014 from Barbra Shapiro, President of Balance's Columbian Restaurant. ***Millie & Al's Restaurant,*** 2440 18th Street NW, Retailer CR, Lic#: 000460.

   _____

5. Review of Settlement Agreement dated May 21, 2014 between Andy Lee Liquor's and ANC 6A. ***Andy Lee Liquor,*** 914 H Street NW, Retailer B, Lic#: 94107.

   _____

6. Review of Settlement Agreement dated May 19, 2014 and Amendment to the Settlement Agreement dated May 22, 2014 between Nooshi Capitol Hill and ANC 6B. ***Nooshi Restaurant,*** 524 8th Street SE, Retailer CR, Lic#: 85618.

   _____

7. Review of one (1) request from E & J Gallo to provide retailers with products valued at more than $50 and less than $500.

   _____

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JUNE 4, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping. No Outstanding Fines/Citations. ANC 4C. SMD 4C08. No pending Enforcement matters. No Settlement Agreement. ***Davis Market***, 3819 Georgia Avenue NW, Retailer Grocery B, License No. 060094.

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2. Review Application for Safekeeping. No Outstanding Fines/Citations. ANC 6B. SMD 6B06. No pending Enforcement matters. No Settlement Agreement. ***Pennsylvania Avenue Market***, 1501 Pennsylvania Avenue SE, Retailer Grocery B, License No. 079255.

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3. Review letter from retailer requesting an increase in approved seating capacity. ANC 2E. SMD 2E05. No Outstanding or Pending Fines/Citations. No conflict with Settlement Agreement. ***Gypsy Sally's***, 3401 K Street NW, Retailer CT, License No. 090582.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

CEDAR TREE ACADEMY

INVITATION FOR BID
Food Service Management Services

Cedar Tree Academy is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2014-2015 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **May 30, 2014** from:

Dr. LaTonya Henderson, Executive Director/Principal
Cedar Tree Academy
701 Howard Road, SE
Washington, DC 20020
Tel: 202.610.4193
lhenderson@cedartree-dc.org

Bids will be accepted at the above address on Monday, June 30, 2014 no later than 2:00 P.M.

All bids not addressing all areas as outlined in the IFB will not be considered.

BA5/23/14

CENTER CITY PUBLIC CHARTER SCHOOLS, INC.

REQUEST FOR PROPOSAL

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

Center City PCS seeks to purchase 45 Samsung Model XE303C12 Chromebooks; each with a license for Google Chrome Management Console, Education Edition.

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

Contact person:

Scott Burns
sburns@centercitypcs.org

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOLS (CAPCS)

REQUEST FOR PROPOSALS

Bus Services

Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified vendors for bus services to transport 100+ students among its campuses, AM and PM, late Aug. 2014 – June 2015. Should include a minimum of 3 buses for morning and afternoon transport among 3 separate campus/locations, each bus with own driver and adult assistant. Must be licensed, insured and bonded. Proposals should include relevant licenses, experience, references and all costs. For further information, contact Michael Edwards at 202-545-1254 or michaeledwards@capcs.org. **Final proposals due electronically by COB June 13th, 2014.** CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

Software Support (Great Plains Dynamics)

Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified vendors to provide software support for Great Plains Dynamics financial accounting software package. Should have extensive experience in providing support for Great Plains Dynamics to include a Workplace Analytical Accounting Interface (purchase requisition module) and should be able to coordinate support for remote groups of users to include troubleshooting, providing upgrades/enhancements, routine maintenance and renewals. For further information, contact Michael Edwards at 202-545-1254 or michaeledwards@capcs.org. **Final proposals including references and all costs are due electronically by COB June 13th, 2014.** CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

COMMUNITY ACADEMY PUBLIC CHARTER SCHOOL (CAPCS)

REQUEST FOR PROPOSALS

Roofing services

Community Academy Public Charter Schools (CAPCS) is soliciting proposals from qualified contractors for roof repair of its campus building at 33 Riggs Road, NE. Contact Waydal Sanderson at waydalsanderson@capcs.org to schedule a site visit to determine scope of work. Contractor responsible for all necessary permits, must be licensed in DC, and provide proof of relevant experience and references. Detailed cost proposals are due electronically by COB Wednesday, June 11, 2014, to waydalsanderson@capcs.org. CAPCS RESERVES THE RIGHT TO CANCEL THIS RFP AT ANY TIME.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

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

AGENDA

June 3, 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, 1 July 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

June 9, 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 – July 7, 2014

DEPARTMENT OF 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

June 17, 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
b) District of Columbia Construction Codes Supplement of 2013

VI. New Business
Correspondence
a) Reciprocity with other Jurisdictions
Code Change
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

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

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

AGENDA

June 26, 2014
11:00 A.M.

1) Meeting Call to Order

2) Attendees

3) Comments from the Public

4) Minutes: Review draft of 24 April 2014

5) Old Business

6) New Business

7) Executive Session

   a) Pursuant to § 2-575(13) the Board will enter executive session to review application(s) for licensure
   b) Pursuant to § 2-575(9) the Board will enter executive session to discuss a possible disciplinary action

8) Application Committee Report

9) Adjournment

Next Scheduled Meeting – Thursday, 24 July 2014
Location: 1100 4th Street SW, Conference Room E300

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION
NOTICE OF PUBLIC MEETING

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

AGENDA

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June 18, 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, May 21, 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

8. New Business

9. Adjourn

Next Scheduled Regular Meeting, July 16, 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
JUNE 10, 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

- June 23, 2014 Pro-Wrestling: Promoter WWE at the Verizon Center
- June 28, 2014 Amateur Muy Thay: Promoter: Josef Pearson at the Thurgood Marshall Center for Service
- September 13, 2014 Dr. McKnight Amateur Event
- November 13, 2014 Pro-Boxing: Promoter Ollie Dunlap Fight For Children Fight Night at the Washington Hilton Hotel

OLD BUSINESS

1. DC Gym Assessment Status
2. Dr. McKnight Event
3.

NEW BUSINESS

1. Upcoming Amateur Events
2. Proposed Training September
3.

ADJORNMENT

NEXT REGULAR SCHEDULED MEETING IS SEPTEMBER 9, 2014

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SCHEDULED MEETING

The Construction Codes Coordinating Board will be holding the following scheduled meeting on:

- Special Meeting, Wednesday, June 18, 2014 – 10:00 a.m. – 12:00 p.m.
  Department of Consumer & Regulatory Affairs
  1100 4th Street, S.W. – Conference Room E390
  Washington, D.C. 20024

Board meeting agendas and minutes are available on the website of the Department of Consumer and Regulatory Affairs at http://dcra.dc.gov/, Construction Codes Coordinating Board (CCCB), http://dcra.dc.gov/service/construction-codes-coordinating-board

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

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

June 2013

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	9	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	18	8:30 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	NO MEETING	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	9	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	10	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	12	9:30am-2:00 pm
Daniel Burton	Board of Professional Engineering	26	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	10	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	17	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 Room 300B
Washington, D.C. 20024

AGENDA
June 10, 2014

1. Call to Order - 9:30 a.m.

2. Executive Session (Closed to the Public) – 9:30 am-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, May 13, 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

8. New Business

   A. Report - CLEAR Training – Sumner School- June 2, 2014
   B. Attendees – ARELLO Annual Conference – Philadelphia, Pa., Sept. 17-21, 2014

9. Adjourn

Next Scheduled Regular Meeting, July 8, 2014 - 1100 4th Street, SW, Room 300B, Washington, DC 20024

EARLY CHILDHOOD ACADEMY PUBLIC CHARTER SCHOOL

INVITATION FOR BIDS

Food Service Management Services

Early Childhood Academy PCS is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2014-2015 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack meal pattern requirements as well as the Healthy Schools Act of 2010. Additional specifications outlined in the Invitation for Bid (IFB) such as; student data, days of service, meal quality, etc. may be obtained beginning on **May 30, 2014** from **Yesenia Menjivar at 202-375-0035 or ymenjivar@ecapcs.org**

All bids not addressing all areas as outlined in the IFB will not be considered.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PUBLIC MEETING

Healthy Youth and Schools Commission Meeting Agenda

June 4th, 3:00-5:00 pm

810 1st Street, NE, Washington, DC 20002, Room 4002

4:00-4:05 Welcome and Introductions

4:05-4:20 OSSE Update

- School Meal Data
- HSA Activities Update

4:20-5:45 Healthy Youth and Schools Commission Business

5:45-6:00 Announcements/Closing

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

Notice of Funding Availability

Fiscal Year 2015 21st Century Community Learning Centers Grant

Request for Application Release Date: Monday, June 2, 2014

On-Line Application Training Session: Tuesday, June 24, 2014

Application Submission Deadline: Friday, July 18, 2014

Grant Award Notification (GAN): Friday, August 29, 2014

The Division of Elementary and Secondary Education, within the Office of the State Superintendent of Education (OSSE), will be soliciting grant proposals from eligible District of Columbia agencies, inclusive of local educational agency, community-based organization, another public or private entity, or a consortium of two or more of such agencies, organizations, or entities. States must give priority to applications that are jointly submitted by a local educational agency and a community-based organization or other public or private entity. The funding available is $2,375,459.28.

The purpose of the 21st Century Community Learning Centers Program (21st CCLC) is to establish or expand community learning centers that provide students with academic enrichment opportunities along with activities designed to complement the students' regular academic program. Along with student opportunities, 21st CCLC offers the students' families literacy and related educational development. 21st CCLC programs, which can be located in elementary schools, secondary schools, or other similarly accessible facilities, provide a range of high-quality services to support student learning and development. At the same time, centers help working parents by providing a safe environment for students during non-school hours or periods when school is not in session.

Authorized under Title IV, Part B, of the Elementary and Secondary Education Act (ESEA), as amended, the law's specific purposes are to:

- provide opportunities for academic enrichment, including providing tutorial services to help students (particularly students in high-poverty areas and those who attend low-performing schools) meet State and local student performance standards in core academic subjects such as reading and mathematics;
- offer students a broad array of additional services, programs, and activities, such as youth development activities; drug and violence prevention programs; counseling programs; art, music, and recreation programs; technology education programs; and character education programs that are designed to reinforce and complement the regular academic program of participating students; and
- offer families of students served by community learning centers opportunities for literacy and related educational development.

Program costs must be paid, not merely incurred, by the awardee to the payee prior to requesting reimbursement. All awards will be reviewed annually for consideration of continued funding. To receive more information or for a copy of the Request for Applications (RFA), please contact:

Sheryl Hamilton
Office of the State Superintendent of Education
810 First Street, NE, 8th Floor
Washington, D.C. 20002
Telephone: (202) 741-6404
Email: 21stcclc.info@dc.gov

Organizations interested in applying for 21st CCLC may use the following link to access OSSE's on-line Enterprise Grants Management System: https://osse.mtwgms.org/wdcossegmsweb/logon.aspx. The RFA and application submission guidance will also be available on OSSE's 21st CCLC webpage at http://osse.dc.gov/service/title-iv-part-b-21st-century-community-learning-centers.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

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

Allyson Carpenter
Single-Member District 1B10

Charles Ward
Single-Member District 6A03

Jennifer Cosby
Single-Member District 7C06

FICTITIOUS BALLOT

WARD 8 MEMBER OF THE
STATE BOARD OF EDUCATION
SPECIAL ELECTION

DISTRICT OF COLUMBIA
TUESDAY, JULY 15, 2014

INSTRUCTIONS TO VOTER

1. TO VOTE YOU MUST DARKEN THE OVAL (⬭) TO THE LEFT OF YOUR CANDIDATE COMPLETELY.
   An oval (⬬) darkened to the left of any candidate indicates a vote for that candidate.
2. Use only a pencil or blue or black medium ball point pen.
3. If you make a mistake DO NOT ERASE. Ask for a new ballot.
4. For a Write-in candidate, write the name of the person on the line and darken the oval.

DISTRICT OF COLUMBIA

WARD EIGHT
MEMBER OF THE STATE
BOARD OF EDUCATION
VOTE FOR NO MORE THAN ONE (1)

⬭ CANDIDATE A

⬭ CANDIDATE B

⬭ CANDIDATE C

⬭ Write-in _____

End of Ballot

All registered voters residing in Ward 8 are eligible to vote in the Special Election.

DISTRICT DEPARTMENT OF THE ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY

GRANTS FOR
Lead Screening Summer Outreach Project

The District Department of the Environment ("DDOE") is seeking a qualified entity to coordinate the planning and facilitation of a series of family–focused lead screening outreach events in census tracts or specific facilities selected by DDOE. These events would be designed to draw hundreds of residents with entertainment, health fair-style education, and would facilitate free, onsite lead screening by DDOE personnel.

Beginning 5/30/2014, the full text of the Request for Applications ("RFA") will be available online at DDOE's website. It will also be available for pickup. A person may obtain a copy of this RFA by any of the following means:

Download by visiting the DDOE's website, www.ddoe.dc.gov. Look for the following title/section, "Resources," click on it, cursor over the pull-down "Grants and Funding," click on it, then, on the new page, cursor down to the announcement for this RFA. Click on "read more", then choose this document, and related information, to download in PDF format.

Email a request to 2014LeadOutreachRFA.grants@dc.gov with "Request copy of RFA 2014-07-LHHD" in the subject line.

In person by making an appointment to pick up a copy from the DDOE offices 5th floor reception desk at 1200 First Street NE, 5th Floor, Washington, DC 20002 (call Harrison Newton at (202) 535-2624 and mention this RFA by name); or

Write DDOE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Request copy of RFA 2014-07-LHHD" on the outside of the letter.

The deadline for application submissions is 6/20/2014, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2014LeadOutreachRFA.grants@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;

☒-Faith-based organizations;

☐-Government agencies; and

☒-Universities/educational institutions.

Period of Awards: The end date for the work of this grant program will be 9/30/2014.

Available Funding: The total amount available for this RFA is approximately $70,000.00**.** There may be more than one recipient. The amount is contingent on availability of funding and approval by the appropriate agencies.

For additional information regarding this RFA, please contact DDOE as instructed in the RFA document, at 2014LeadOutreachRFA.grants@dc.gov.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

Notice of a Public Comment Period for Draft Revisions to the Total Maximum Daily Load of Bacteria for Watersheds in the District of Columbia

The Director of the District Department of the Environment (DDOE) is re-submitting for public review and comment, the Draft revisions to the Total Maximum Daily Loads (TMDLs) for fecal coliform bacteria in the following waterbodies in the District of Columbia (District):

> *2004 Final Total Maximum Daily Load for Fecal Coliform Bacteria in Upper Potomac River, Middle Potomac River, Lower Potomac River, Battery Kemble Creek, Foundry Branch, and Dalecarlia Tributary* (*Document is posted at http://ddoe.dc.gov/service/public-notices-hearings*).

The Draft revisions incorporate the new water quality standard for *Escherichia coli* (*E. coli*) that the District promulgated in October 2005 after the approval of the original TMDL for the above waterbodies, and provide a translation of those loads to *E. coli*, which is the current bacteria water quality standard. In addition, the daily loading expressions for the new *E. coli* allocations are also provided. The Draft revisions also satisfy the requirements of the settlement agreement reached between the United States Environmental Protection Agency (EPA) and Anacostia Riverkeeper, Friends of the Earth, and Potomac Riverkeeper (Case No.: 1:09-cv-00098-JDB of January 15, 2009) that certain District TMDLs did not have a daily load expression established as required by *Friends of the Earth vs. the Environmental Protection Agency, 446 F.3d 140, 144* (D.C. Cir. 2006). The settlement agreement requires the establishment of daily loads in District TMDLs by December 2014. The Draft revisions are presented as appendices to the existing TMDL and provide information and calculations regarding the translation from fecal coliform to *E. coli*, as well as methodologies for calculating the daily load expressions.

This public notice focuses on Draft revisions made to the load allocations assigned to Outfalls 001 and 002 for Blue Plains Wastewater Treatment Plant in the Draft publicly noticed on February 8th, 2013. Specifically, a revision has been made in *Appendix C* (Table 3; Table 4; Table 6; and the text under the sub-title: "Daily Load Calculations Approach for Blue Plains WWTP") and *Appendix D* (Table 2; Table 5), as follows:

> "*The revised Blue Plains Wastewater Treatment Plant (WWTP) wasteload allocation (WLA) is specified as a concentration based on the existing E. coli water quality standard (WQS). The TMDL considered aspects of DC Water's Long term Control Plan (LTCP). DC Water provided a demonstration that its LTCP is expected to meet the E. coli WQS. Post construction monitoring will be conducted to verify that those standards have been met. Both the WLA and the LTCP have the same goal, i.e. to meet WQS in-stream.*
>
> *For discharges from Blue Plains WWTP, the wasteload allocation and the maximum daily discharge shall not cause or contribute to an in-stream exceedance of the E. coli standard of 126 cfu/100ml determined by a rolling 30-day E. coli geometric mean.*"

All other aspects of the Draft TMDLs are the same as the Draft TMDLs of February 8th, 2013, for which public comments have previously been received and accepted by DDOE.

OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT

A 30-day public comment period for the revised draft appendices associated with this TMDL revision will take place from **June 2nd, 2014 to July 3rd, 2014**. Copies of the revised draft appendices are on file at the Martin Luther King, Jr. Library, 901 G. Street, NW, Washington, DC 20001, and may be inspected during normal business hours. You may also contact Mr. George Onyullo by mail at DDOE, 1200 First Street, NE, 5th Floor, Washington, DC 20002, or by telephone at 202-727-6529. Electronic copies of these revised draft appendices are also available at http://ddoe.dc.gov/service/public-notices-hearings.

DDOE requests that written comments concerning only the revisions in *Appendix C* (Table 3; Table 4; Table 6; wand the text under the sub-title: "Daily Load Calculations Approach for Blue Plains WWTP") regarding the load allocations assigned to Outfalls 001 and 002 for the Blue Plains Wastewater Treatment Plant may be submitted to DDOE **on or before July 3rd, 2014.** Comments should be sent to Mr. George Onyullo at the above address or emailed to george.onyullo@dc.gov. All comments received on this Draft TMDL revision during the comment period will be made part of the public record, and will be considered, as appropriate in any further revisions, prior to submitting a final draft to EPA for approval. A public hearing focusing only on the above described revisions may be held within the above stated 30-day comment period, if requested by interested parties.

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 permits (#6867 and #6868) to Skanska Jay Dee JV to construct and operate two identical Cummins model QSK60G natural gas fired non-emergency generator sets, to be located at the McMillan Reservoir site in Washington, DC. The units will be used as part of the DC Water First Street Tunnel project. The contact person for the applicant is Bianca Messina, Engineer, at (917) 299-1855.

Generators to be Permitted

Equipment Location	Address	Generator Size	Engine Size	Permit Nos.
Intersection of First Street NW and Channing Street NW	2507 First Street NW Washington, DC 20001	1,303 kW	1,747 bhp	6867 and 6868

The proposed emission limits are as follows:

a. Emissions from these units shall not exceed those in the following table. [20 DCMR 209 (for NOx), 40 CFR 60.4233(e) and Subpart JJJJ, Table 1 (for non-emergency spark ignition natural gas units manufactured after July 1, 2010)]:

Pollutant Emission Limits (g/HP-hr)		
NOx	CO	VOC[b]
0.6[a]	2.0	0.7

[a]Note that this is a streamlined emission limit. 40 CFR 60, Subpart JJJJ indicates a limit of 1.0 g/HP-hr, but based on the applicant's evaluation pursuant to 20 DCMR 209, it was determined that an emission limit of 0.6 g/HP-hr was appropriate and is therefore included here as the more stringent requirement.
[b]Note that per 40 CFR 60.4244(f), this VOC limit excludes formaldehyde.

b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator engines, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the two generator sets are as follows:

Pollutant	Emission Rate (lb/hr) Each Unit	Maximum Annual Emissions (tons/yr) Each Unit	Maximum Annual Emissions (tons/yr) Both Units Combined
Carbon Monoxide (CO)	1.16	5.06	10.12
Oxides of Nitrogen (NO_x)	2.31	10.12	20.24
Total Particulate Matter (PM, Total)	0.14	0.60	1.20
Volatile Organic Compounds (VOCs)	0.39	1.69	3.37
Sulfur Dioxide (SO_x)	0.01	0.04	0.07
Total Hazardous Air Pollutants (HAPs)	0.99	4.35	8.71

The application to construct and operate the generator sets and the draft permits and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 30, 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 Nos. 6908 and 6909 to Virginia Electric and Power Co. d/b/a Dominion Virginia Power to operate two 2,700 kW diesel-fired emergency generator sets at Fort Lesley J. McNair, Building 64, 4th and P Streets SW, Washington DC. The contact person for the applicant is Andy Gates at (804) 273-2950.

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a 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 June 30, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – Redacted – 1167-001

VIA EMAIL

May 20, 2014 (Revised)[1]

XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This responds to your April 2, 2014, request for advice. In our conversation on April 2, 2014, you stated that you are an attorney leaving your position at the Office of the Attorney General ("OAG"), where you, for the last six years, were the Assistant Section Chief for XXXXXXXXXXXXXXXX at the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"). While working at DMPED, your duties included negotiating and drafting real estate transaction and financial documents and providing legal advice on complex real estate transactions and finance. You intend to open your own private law firm, XXXXXXXXXXXX and want to know whether you can be hired by the District government as an outside vendor, working on the same particular matters involving specific parties that you worked on as a District employee. I conclude that, as long as you ensure that you meet the requirements set forth below, it is permissible for you to be hired by the District as an outside vendor and to work on the same particular matters on which you worked as a District employee, as long as you represent the interests of the District and only the District.

In our subsequent telephone conversations and email exchanges through May 9, 2014, you stated that you left District service and that your last day on payroll was April 18, 2014.[2] You also explained that you were not an OAG union member and that although you were paid directly by DMPED and your office was close to DMPED in the Wilson

[1] A written advisory opinion was issued to this requestor on April 24, 2014. Subsequent to that date, and before publication of the advisory opinion, however, the requestor contacted this Office with questions regarding the prohibition against appearing before OAG. In response to requests from this Office, the requestor provided additional factual information concerning her employment with the District. Accordingly, the written advisory opinion was revised and is being re-issued to the requestor.

[2] You provided that you gave notice of your departure on March 10, 2014, and submitted your formal resignation on April 10, 2014. You also explained that you used vacation time and assisted with the transition implementation in your final days, but your last day on the District's payroll was April 18, 2014.

Building, your direct supervisor was an OAG Deputy Attorney General who completed your personnel evaluations. In addition, research has shown, and you acknowledge, that your signature blocks on your outgoing emails reflected that you were an OAG employee, with no mention of your position at DMPED. For example, your signature block on a December 7, 2011, email was:

XXXXXXXXXX
Assistant Section Chief
XXXXXXXXXXXX
Office of the Attorney General for the District of Columbia
Office Phone: (202) XXXXXXX
Cell Phone: (202) XXXXXXX

Similarly, your signature block on a June 20, 2013, email was

XXXXXXXXXXX
Assistant Section Chief
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
Office of the Attorney General for the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite XXXX
Washington, DC 20004
Phone: (202) XXXXXXX
Cell Phone: (202) XXXXXXX
Fax: (202) XXXXXXX

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.[3]

Identifying your Former Employing Agency

The post-employment restrictions discussed below apply only to dealings with your former agency, or in your case both of the agencies for which you worked -- OAG and DMPED. As discussed above, you were hired by OAG, you represented yourself solely as an employee of OAG to anyone to whom you sent an email, even during the period you were assigned to DMPED, and you were directly supervised by an OAG supervisor who completed your performance evaluations. Accordingly, OAG retained control over your employment, even when it assigned you to DMPED, by continuing to supervise you directly, and only OAG could have terminated your employment with the District. With respect to DMPED, you were assigned to DMPED for six years, working on DMPED matters, and working with DMPED employees and OAG employees assigned to DMPED.

Permanent and Temporary Restrictions

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

[3] 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.

particular government matter pending before the agency or in which it has a direct and substantial interest. Specifically, 6B DCMR § 1811.10 provides:

> A former employee (other than a special government employee[4] 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.[5]

Therefore, you, as a former District employee, are prohibited for one year from the date of your separation from service, from having any transactions with OAG or DMPED[6] that are intended to influence OAG or DMPED on any particular government matter pending before OAG or DMPED or in which OAG or DMPED 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 an OAG 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 OAG or DMPED when you worked there or in which OAG or DMPED 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 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[7] if the employee participated personally and substantially in that matter as a government employee.[8]

---

[4] 6B DCMR Chapter 18 defines special government employee as, "any officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed one hundred and thirty (130) days during any period of three hundred and sixty five (365) consecutive days."

[5] 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."

[6] In our conversations, you mentioned working on matters for DMPED as an OAG attorney, so I refer to OAG and DMPED in this opinion. If, however, you worked on matters for other agencies, then those agencies are included in the same way that OAG and DMPED are.

[7] The phrase "particular government matter involving a specific party" is defined in 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."

[8] 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."

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.

You also asked whether you are prohibited from representing clients before other District government agencies, where you are likely to interact with attorneys from those agencies' Offices of General Counsel, given that most of those attorneys are OAG employees placed in those agencies. After reviewing 6B DCMR Chapter 18, I conclude that there is no prohibition against you, in your representation of clients, appearing before or communicating with employees of your former agency, OAG, who work in other agencies, whether they have transferred there or been placed there. The prohibitions in 6B DCMR §§ 1811.10 and 1811.12 are as to your "former agency," which in your situation I have interpreted to mean both OAG, your former employing agency, and DMPED, the agency at which you worked for six years. I do not, however, interpret the references to your "former agency" to mean every District agency in which an OAG attorney has been placed or every District agency in which a former OAG employee now works. Accordingly, you are not prohibited, pursuant to the restriction in 6B DCMR §§ 1811.10 and 1811.12 from representing clients before District agencies other than OAG and DMPED.

Acting "*on behalf*" of the District rather than Adverse to it

Notwithstanding what may seem like a blanket prohibition for dealing with your previous agencies 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 in a particular matter, such as a contract or lawsuit, in which the District is a party or has a direct and substantial interest, you would be prohibited from having any transactions with OAG or DMPED that are intended to influence OAG or DMPED, for one year from the date of your separation from District service. Similarly, you would be prohibited permanently from formal or informal appearances before OAG or DMPED, as well as oral or written communications to OAG or DMPED, if you participated personally and substantially in that matter as a District government employee.

You informed me, however, that the work you propose to do would be *on behalf of* the District, just as it was when you were employed by OAG. As such, the District would be your client, you would be both representing the District and acting on its behalf, and attorney-client confidentiality and representational rules would apply. 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 as an outside vendor 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.[9] In that situation, you would not be prohibited from having transactions

[9] 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.

with OAG or DMPED, having formal or informal appearances before OAG or DMPED, or having oral or written communications with OAG or DMPED.

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 yourself or another, such as your private law firm, in any negotiations with OAG or DMPED.[10] To the extent that a person is permitted to represent himself or herself before an agency, by appearance or through communications, such representation is limited to "matters of a personal and individual nature"[11] and do not apply to matters of a business nature, even if the former employee is a sole practitioner. I interpret 6B DCMR § 1811.10, however, to permit you to respond to a Request for Proposals ("RFPs") because 6B DCMR § 1811.17 states that 6B DCMR § 1811.10 also does not apply to appearances or communications by a former employee concerning "the application of these regulations to an undertaking proposed by a former employee." Responding to RFPs constitutes an undertaking proposed by you.

You are, however, prohibited under 6B DCMR § 1811.10 from handling, for yourself or your private law firm, matters such as contract negotiations and fee renegotiations. Similarly, you would be prohibited from calling, on behalf of yourself or your private law firm, an OAG or DMPED employee to request an extension, or sending an email complaining about a payment delay and requesting prompter payment.[12] In those situations, you would not be representing the District government. Instead, you would be representing your own interest or the interests of another entity, your private law firm, before your former employer, which is prohibited.[13] This restriction applies for one year for appearances before or communications with an agency that are intended to influence the agency in connection with any particular government matter pending before the agency or on which it has a direct and substantial interest, whether or not such matter involves a specific party.

You are permitted, however, to have another person in your firm, for example, a partner or associate, represent you in matters such as contract and fee negotiations, requests for extensions, and complaints about late payments. You also are permitted to hire an attorney or other representative to represent you in such matters. It is important to note that the restrictions in 6B DCMR §§ 1811.10, 1811.11, and 1811.12 are there to prevent former government employees from contacting former coworkers in an attempt to influence them in all situations where the former District government employee is

[10] *See* U.S. Office of Government Ethics, "Letter to a Former Government Attorney," 82 x 16, November 5, 1982.
[11] 6B DCMR § 1811.17 states that the "one-year (1-year) restriction stated in Subsection 1811.10 of this section shall not apply to appearances or communications by a former employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits, or the application of these regulations to an undertaking proposed by a former employee. A former employee also may appear *pro se* (on his or her own behalf) in any litigation or administrative proceeding involving the individual's former agency."
[12] 6B DCMR § 1811.12 states that the "restriction in Subsection 1811.10 of this section shall apply whether the former employee is representing another or representing him or herself, either by appearance before an agency or through communications with that agency."
[13] *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.)

representing interests that are not the District's. Having someone else from your firm, or someone you hire, deal with the District in such situations avoids that problem.

Effective Date of Rules and Date of Separation from the District

As noted above, the discussion of post-employment restrictions in this advisory opinion is based on 6B DCMR Chapter 18, which was revised and became effective on April 11, 2014. These revised rules are applicable to prohibited conduct occurring on and after April 11, 2014. For example, if you were to email DMPED in June 2014 to ask for an extension on work you were doing on behalf of DMPED, the one-year prohibition against communications with an 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, whether or not such matter involves a specific party, would apply. This would be the case regardless of whether you were still a District employee on April 11, 2014.[14] For example, if you had left District employment in December 2013, and were to email DMPED in June 2014 to ask for an extension on work you were doing on behalf of DMPED, the one-year prohibition described above would apply because June 2014 is within one year of your leaving DMPED and because the conduct, the email to DPMED with an intent to influence the agency, would occur after the revised 6B DCMR Chapter 18 took effect on April 11, 2014.

As a best practice, I recommend that if you obtain a contract with OAG or DMPED, you work with the appropriate agency to do the following:

1) Include in the contract documents a confidentiality clause[15] 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 the hiring agency that it is aware that you previously worked there and that, if applicable, you worked on a particular matter involving a specific party as a District employee that you will work on pursuant to your contract. The written statement also should include a determination, through the agency's own analysis, that the District is your client and your performance of services will involve your 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.[16]

Accordingly, you are not prohibited from obtaining a contract with OAG or DMPED where you will represent OAG's or DMPED's interests, as long as you do not represent

[14] Even if you were using District government annual leave for the days leading up to April 18, 2014, you were still a District government employee and the District Code of Conduct was applicable to you while you were on annual leave. *See* U.S. Office of Government Ethics, "Letter to a Designated Agency Ethics Official," 98 x 20, December 8, 1998, which states that an individual on terminal leave, which is a subset of annual leave, taken after submitting a request for separation, remains a government employee.

[15] I note that confidentiality clauses are not uncommon and that such a clause already may be required in your contract with the District.

[16] 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.

yourself or your private law firm before OAG or DMPED in any negotiations with OAG or DMPED where your interests or your private law firm'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.

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

1167-001

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 14-09: Hebrew Home for the Aged/Jewish Social Services Agency
1125-1131 Spring Road NW (Square 2902, Lots 804, 805 and part of 807)
Designated May 22, 2014

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

DISTRICT OF COLUMBIA GOVERNMENT

HOUSING PRODUCTION TRUST FUND ADVISORY BOARD

MEETING NOTICE

The Housing Production Trust Fund (HPTF) Advisory Board announces its next Meeting on **Monday, June 2, 2014, from 10:00 A.M. to Noon,** at the D.C. Department of Housing and Community Development, Housing Resource Center, 1800 Martin Luther King Jr., Avenue, SE, Washington, DC 20020. See Draft Agenda below.

For additional information, please contact Oke Anyaegbunam via e-mail at Oke.Anyaegbunam@dc.gov or by telephone at 202-442-7200.

DRAFT AGENDA *(as of 5.23.14):*

Call to Order, David Bowers, Chair

1) Approval of Prior Meeting Summaries

2) Discussion Item: Leveraging Options
   a. Leveraging Workgroup Updates
   b. Review Report from the April 7, 2014 HPTF Advisory Board Stakeholder Meeting
   c. Citi Community Capital Recommendations

3) Old Business
   a. DHCD: Update on the NOFA Pipeline Report

4) New Business

5) Announcements

6) Public Comments

7) Adjournment

DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Judicial Tenure Commission Begins Reviews Of Judges Frank E. Schwelb And Leonard Braman

This is to notify members of the bar and the general public that Judge Frank E. Schwelb of the District of Columbia Court of Appeals has requested a recommendation for reappointment as a Senior Judge. In addition, Judge Leonard Braman of the Superior Court of the District of Columbia has requested a recommendation for reappointment as a Senior Judge.

The District of Columbia Retired Judge Service Act P.L. 98-598, 98 Stat. 3142, as amended by the District of Columbia Judicial Efficiency and Improvement Act, P.L. 99-573, 100 Stat. 3233, §13(1) provides in part as follows:

> "…A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.
>
> (2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge of the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.
>
> (3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final."

The Commission hereby requests members of the bar, litigants, former jurors, interested organizations, and members of the public to submit any information bearing on the qualifications of Judges Schwelb and Braman which it is believed will aid the Commission. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting materials will be kept confidential unless expressly authorized by the person submitting the information.

All communications should be mailed or faxed, by **June 30, 2014**, and addressed to:

District of Columbia Commission on Judicial Disabilities and Tenure
Building A, Room 246
515 Fifth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 727-1363
FAX: (202) 727-9718

The members of the Commission are:

Hon. Gladys Kessler, Chairperson
Jeannine C. Sanford, Esq., Vice Chairperson
Michael K. Fauntroy, Ph.D.
Hon. Joan L. Goldfrank
William P. Lightfoot, Esq.
Anthony T. Pierce, Esq.

BY: /s/ Gladys Kessler
Chairperson

LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

LAMB PCS is seeking proposals to provide KOMPAN playground equipment, including freight, installation, and removal of existing equipment.

To obtain an electronic copy of the full Request for Proposal (RFP), send an email to anna@lambpcs.org.

The deadline for submission is June 6, 2014 at 5:00 pm.

Please e-mail proposals and supporting documents to anna@lambpcs.org.

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Paul Public Charter School seeks bids for:

Financial, accounting, and compliance services for Paul Public Charter School. For a copy of the full RFP and associated exhibits interested firms should contact **Haribo Kamara-Taylor** at **hkamara-taylor@paulcharter.org** or 202-378-2254.

Bids must be received by 5:00 PM, Monday, June 9th to the following location:

Paul Public Charter School
ATTN: Jami Dunham
5800 8th St NW
Washington, DC 20011

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Paul Public Charter School seeks bids for:

Office furniture for, conference rooms, offices, desks, chairs, conference tables, wardrobes, file cabinets credenzas, guest chairs.; For a copy of the full RFP and associated exhibits interested firms should contact James McDowell at **jmcdowell@paulcharter.org** or 202-378-2269.

Bids must be received by 12:00 PM, Monday, June 9th to the following location:

Paul Public Charter School
ATTN: James McDowell
5800 8th St NW
Washington, DC 20011

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO,	PERB Case No. 10-N-03
Complainant,	Opinion No. 1462
and	Decision and Order
District of Columbia Child and Family Services Agency,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On June 11, 2010, American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME" or "Union") filed a Negotiability Appeal in accordance with PERB Rule 532. On May 6, 2010, the District of Columbia Child and Family Services Agency ("CFSA" or "Agency") announced that it would, as part of a realignment, conduct a Reduction-in-Force ("RIF") of approximately 57 employees, represented by the Union, holding the position of Social Service Assistant ("SSA"), and replace them with employees who could meet the qualifications for the approximately 35 newly created Family Support Worker ("FSW") positions[1], which would require a Bachelor's degree. (Appeal at 1-2). Thereafter, AFSCME and CFSA engaged in impact and effects ("I&E") bargaining.

During I&E negotiations, AFSCME proposed that the Agency rehire employees who previously occupied SSA positions in the newly created FSW positions contingent upon those employees obtaining a Bachelor's degree "at a later date." *Id.* CFSA counter-proposed that the

[1] SSAs were positions in Grades 6, 7, and 8, whereas FSWs are Grade 9. (Response, at 1).

Agency rehire the former SSA employees into FSW positions contingent upon those employees obtaining a Bachelor's degree within six (6) months. *Id.* AFSCME proposed that the Agency give the employees four (4) years to obtain the degree, to which CFSA counter-proposed that the Agency give the employees until the end of the calendar year (approximately seven (7) months). *Id.*, at 2-3. As a final counter offer, AFSCME proposed that the Agency give the former SSA employees seven (7) semesters (or approximately three and a half (3.5) years) to obtain the degree. *Id.*, at 3. CFSA rejected AFSCME's final proposal and stated it was unwilling to deviate from its final proposal to give the employees until the end of the calendar year to obtain the degree. *Id.* On May 27, 2010, AFCSME filed with the Public Employee Relations Board ("PERB") a Declaration of Impasse and Request for Impasse Resolution (PERB Case No. 10-I-06).[2] *Id.*

On June 10, 2010, CFSA, through its representative, the D.C. Office of Labor Relations and Collective Bargaining ("OLRCB"), notified AFSCME by letter that AFSCME's proposal to give the employees three and a half (3.5) years to obtain a Bachelor's degree constituted an "extensive delay of a management right" and was "equal to nullifying that right" and was therefore nonnegotiable. *Id.*, Exhibit 3.[3]

On June 11, 2010, AFSCME filed the instant Negotiability Appeal noting that "[a]lthough the Agency considered the issue negotiable when it made its two proposals on the issue, the Agency now contends that the Union's proposal is too far reaching and the issue is therefore nonnegotiable." *Id.*, at 3. AFSCME contends the parties' compensation agreement "addresses the process the parties must follow to alter employee classifications and requirements." *Id.* AFSCME further argued that the parties' collective bargaining agreement ("CBA") addresses "numerous issues implicated in the impact and effect negotiations." *Id.* Last, AFSCME asserted that its "aforementioned proposals are negotiable." *Id.*

In its Response, CFSA asserts that AFSCME's proposal violated D.C. Official Code § 1-617.08[4] and other PERB precedents. CFSA states:

> Petitioner's proposal to extend the timeline for new employees to meet the new positions' qualification requirements violates management's right to assign and direct employees and is nonnegotiable. Under its right to assign employees, management has the right to set qualifications and skills. While a union may reasonably be thought to be protecting the interests of employees affected by a change in required qualifications with its proposal, it

[2] On July 1, 2010, AFSCME also filed an Unfair Labor Practice Complaint against CFSA (PERB Case 10-U-37) alleging CFSA violated the CMPA when it, among other things, declared that AFSCME's final proposal during impact and effects bargaining was nonnegotiable, which AFSCME claims forced it to file a negotiability appeal (the instant case) after it initiated impasse proceedings (PERB Case No. 10-I-06).

[3] The pertinent part of the letter stated as follows: "One of the Union's demands during our impact and effect bargaining was to have the Agency delay implementation of its degree requirement for three and one half years. This extensive delay of a management right is equal to nullifying that right. Therefore, I am giving you formal notice that that proposal is nonnegotiable and the Agency will not consider it during impasse."

[4] Governing management rights.

> cannot interfere with management's rights. The Board has held a seven-month delay to be unreasonable, therefore a three and a half year extension would surely be unreasonable and an excessive burden on management's rights.

(Response, at 2-3) (*citing American Federation of Government Employees, Local 1403, and District of Columbia Office of the Corporation Counsel*, Slip Op. No. 709, PERB Case No. 03-N-02 (July 25, 2003)[5]; *National Association of Government Employees and Department of Veteran Affairs Medical Center*, 53 FLRA 403 (1997)[6]; *and American Federation of Government Employees, Locals 383, 1015, 2737 and 2798, and District of Columbia Department of Human Services*, 28 D.C. Reg. 5106, Opinion No. 21, PERB Case No. 80-U-11 (1981)[7]).

CFSA further notes that seventeen (17) individuals who formerly held SSA positions met the new degree requirement and were rehired as FSWs. *Id.*, at 1-2. AFSCME's Appeal is before the Board for consideration.

II. Discussion

Under D.C. Official Code § 1-617.08, RIFs are a management right. *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013). Generally, a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management decisions. *American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO, v. District of Columbia Department of General Services*, 59 D.C. Reg. 12682, Slip Op. No. 1320 at ps. 2-3, PERB Case No. 09-U-63 (2012); *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections.*, 52 D.C. Reg. 2496, Slip Op. No. 722 at ps. 5-6, PERB Case Nos. 01-U-21, 01-U-28 and 01-U-32 (2003); *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02; *and International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992). Notwithstanding, D.C. Official Code § 1-624.08 ("Abolishment Act") narrows this

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[5] Holding that management rights include the rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the agency's mission and functions. (*See* p. 8).

[6] Holding that a proposal that required an agency to delay filling a detail until the conclusion of the negotiation process was not within the duty to bargain because it impermissibly affected management's right to assign work. (*See* ps. 419-421).

[7] Holding that while an agency's failure to reproduce and distribute copies of a negotiated agreement to its employees over a period of seven (7) months "appear[ed]" to constitute an unreasonable delay, the parties had never negotiated a timeline for the distribution of the agreement, so the agency did not commit an unfair labor practice by waiting seven (7) months to do so. (*See* p. 2). The Board notes that in the case CFSA cites, it only stated that it "appeared" a seven (7) month delay was unreasonable, but ultimately did not find that the delay constituted an unfair labor practice. *Id.* Therefore, the Board rejects CFSA's contention in its Response that the Board "has held a seven-month delay to be unreasonable" because that is not what the Board actually found in the case. (Response, at 3).

duty as it relates to RIFs. Congress enacted the Abolishment Act as Section 2408 of the District of Columbia Appropriations Act of 1998, 111 Stat. 2160 (1998). The District of Columbia Council amended the Act to cover the 2000 fiscal year and subsequent fiscal years. *Washington Teachers' Union, Local 6, v. District of Columbia Public Schools*, 960 A.2d 1123, 1126 n.6 (D.C. 2009). The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment. *See* D.C. Official Code § 1-624.08(a)-(i), and (k). The Abolishment Act further provides, "[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Official Code § 1-624.08(j). *See also* Omnibus Personnel Reform Amendment Act, 1998 D.C. Law 12-124 (Act 12-326) ("An Act To . . . eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining . . ."). As a result, a proposal that attempts to affect or alter RIF procedures is not within the scope of impact and effects bargaining and is therefore nonnegotiable. *American Federation of Government Employees, Local 631, and District of Columbia Water & Sewer Authority*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009); *and Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002).

In the instant case, the Board agrees with CFSA that AFSCME's proposal to give the RIF'd employees three and a half (3.5) years to obtain a Bachelor's degree constituted an attempt to affect or alter the RIF procedures, and further constituted a violation of CFSA's rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the agency's mission and functions. *AFGE and WASA, supra*, Slip Op. No. 982 at ps. 2 and 6, PERB Case No. 08-N-05; *and AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 8, PERB Case No. 03-N-02.

In *AFGE and WASA, supra*, Slip Op. No. 982, PERB Case No. 08-N-05, the Board considered the negotiability of a proposal by a union that would require the agency, employing bargaining unit members, to first attempt "furloughs, reassignment, retaining or restricting recruitment" and/or "utilize attrition and other cost saving measures to avoid or minimize the impact on employees of a RIF." P. 2. The union argued the proposal was negotiable because it did not: 1) mandate that the agency take any "specific" action when conducting a RIF; 2) require the agency to maintain any specific number of employees during or after a RIF; or 3) interfere with the agency's right to implement or conduct a RIF. *Id.* The Board found that the union's proposal constituted an attempt to alter the agency's RIF procedures and was therefore nonnegotiable pursuant to the Omnibus Personnel Reform Amendment Act. *Id.*, at 6. Here, AFSCME's proposal similarly attempts to minimize the effects of CFSA's RIF on bargaining unit employees by asking CFSA to retain, reassign, or rehire the RIF'd employees for three and a half (3.5) years in order to give them time to meet the new Bachelor's degree requirement. (Appeal, at 2-3). The Board finds that AFSCME's proposal constitutes an attempt to alter or affect CFSA's RIF procedures. *AFGE and WASA, supra*, Slip Op. No. 982, PERB Case No. 08-N-05. Additionally, the Board finds the proposal constitutes an attempt to frustrate CFSA's

purposes for conducting the RIF, as well as an attempt to interfere with CFSA's rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the Agency's mission and functions. *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 8, PERB Case No. 03-N-02.

Therefore, based on the foregoing, and in accordance with PERB Rule 532.7(a), the Board finds that AFSCME's proposal is nonnegotiable.[8]

ORDER

IT IS HEREBY ORDERED THAT:

1. The proposal by American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME"), made during impact and effects bargaining with the District of Columbia Child and Family Services Agency ("CFSA"), which proposes that CFSA rehire RIF'd employees for three and a half (3.5) years in order to give them time to meet a new Bachelor's degree requirement, is nonnegotiable.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Ann Hoffman

April 30, 2014

[8] The Board finds it is not necessary to address AFSCME's argument that CFSA "considered the issue negotiable when it made its two proposals" but then considered AFSCME's final three and a half (3.5) year proposal to be "too far reaching" and therefore nonnegotiable because the only question before the Board in the instant matter is whether AFSCME's final proposal is negotiable, not whether any or all of the proposals made by any of the parties during I&E bargaining are negotiable. (Appeal, at 3). PERB Rule 532.1 states: "[i]f in connection with collective bargaining, ***an issue*** arises as to whether ***a proposal*** is within the scope of bargaining, the party presenting the proposal may file a negotiability appeal with the Board" (emphasis added). *See also FOP v. DOC., supra*, Slip Op. No. 692 at p. 4, PERB Case No. 01-N-01 (in which the Board only considered the negotiability of the union's proposal that the agency declared to be nonnegotiable). Additionally, the Board finds it is not necessary to address AFSCME's contentions that the parties' compensation agreement states the processes that must be followed to alter employee classifications and requirements and that the parties' CBA addresses "numerous issues implicated in the impact and effect negotiations" because similarly, whether or not CFSA followed the correct processes to alter the applicable employee classifications and/or whether or not the parties' CBA addresses issues the parties discussed during I&E bargaining (which AFSCME failed to identify with any particularity in its Appeal) are not the subjects at issue in the instant case. *Id.*

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-N-03, Slip Op. No. 1462, was transmitted via U.S. Mail and e-mail to the following parties on this the 5th day of May, 2014.

Brenda C. Zwack, Esq. **VIA U.S. MAIL AND EMAIL**
O'Donnell, Schwartz & Anderson, P.C.
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Colby J. Harmon
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO,	PERB Case No. 10-U-37
Complainant,	Opinion No. 1463
v.	Decision and Order
District of Columbia Child and Family Services Agency,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO ("AFSCME" or "Union"), filed an Unfair Labor Practice Complaint against the District of Columbia Child and Family Services Agency ("CFSA" or "Agency"), alleging CFSA interfered with, restrained and coerced employees in violation of D.C. Official Code § 1-617.04(a)(1) and discriminated against and refused to bargain in good faith with the Union in violation of D.C. Official Code § 1-617.04(a)(1) and (5) (Hearing Examiner's Report, at 1).

Specifically, AFSCME alleged CFSA violated the CMPA when it: 1) failed to respond to several parts of an information request; 2) declared in bad faith that AFSCME's final proposal during impact and effects ("I&E") bargaining was nonnegotiable, which forced the Union to file a negotiability appeal[1] and initiate impasse proceedings[2]; and 3) engaged in direct dealing with members of the bargaining unit.[3] *Id.*, at 15, 19.

[1] PERB Case No. 10-N-03.

CFSA denied the allegations. (Answer). On January 25, 2013, a hearing was held, and on July 17, 2013, the Hearing Examiner issued his Report and Recommendations ("Hearing Examiner's Report"), which recommended that the Complaint be dismissed with prejudice. (Hearing Examiner's Report, at 22).

On August 2, 2013, AFSCME filed Exceptions to the Hearing Examiner's Report. (Exceptions). The Hearing Examiner's Report and AFSCME's Exceptions are before the Board for consideration.

II. Background

On May 6, 2010, CFSA notified AFSCME that it would terminate the employment of more than 100 employees (including 57 Social Service Assistants ("SSAs") that were represented by AFSCME) via a Reduction-in-Force ("RIF") on June 11, 2010, and that it would then create 35 positions with the new job title, Family Support Worker ("FSW"). (Hearing Examiner's Report, at 3). The new FSW positions required a Bachelor's degree whereas the previous SSA positions did not. *Id.* The parties met three (3) times in May 2010 to bargain the impact and effects of the RIF and the creation of the new positions. *Id.*

A. Information Request

After the second I&E bargaining meeting, AFSCME emailed an information request to CFSA seeking:

> 1) Copies of all letters sent to employees, by certified mail or otherwise, on or after May 6, 2010;
>
> 2) A description of the process by which CFSA will contact riffed employees if further vacancies arise over the course of the next two years;
>
> 3) Copies of all supervisors' transitional plans, such as staffing plans regarding covering workload; [and]
>
> 4) Citations to the regulations CFSA contends support the need to require employees to hold a Bachelor's degree, or otherwise condition federal funding or reimbursement on employees having a BA/BS degree.

Id., at 3-4 (internal citations omitted).

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[2] PERB Case No. 10-I-06.

[3] The Complaint originally alleged that CFSA also discriminated against bargaining unit employees, but AFSCME withdrew that allegation at the hearing. (Hearing Examiner's Report, at 2).

In the Complaint, AFSCME alleged CFSA committed an unfair labor practice by not providing all of the requested information. *Id.*, at 4. Based on witness testimony and other evidence, the Hearing Examiner found that CFSA provided all of the information related to AFSCME's request for "[c]opies of all letters sent to employees, by certified mail or otherwise, on or after May 6, 2010." *Id.*, at 17.

AFSCME asserted that CFSA failed to provide descriptions of the processes that CFSA would use to contact the RIF'd employees about vacancies as requested. The Hearing Examiner noted that AFSCME's only witness, Stephen White, testified that AFSCME never received this information, but that CFSA's witness, Dexter Starkes, testified the information was provided at one of the I&E bargaining sessions, and that as of the date of the hearing, 17 RIF'd employees had been rehired as a result of the process established and described by the Agency. *Id.*, at 6, 17-18. The Hearing Examiner found that "Starkes testimony was more forthright and his demeanor more credible on this issue" and that, as a result, "the record establishes that CFSA responded to AFSCME's information request for 'a description of the process by which CFSA will contact riffed employees if further vacancies arise....'" *Id.*, at 18.

The Hearing Examiner likewise found that "the unrebutted testimony of Debra Porchia-Usher established that, all the transitional plans that CFSA had, were given to AFSCME." *Id.* For this reason, and others, the Hearing Examiner found "the record establishes that CFSA responded to AFSCME's request for 'all supervisors' transitional plans, such as staffing plans regarding covering workload.'" *Id.*

Addressing AFSCME's request for regulatory authority supporting the Bachelor's degree requirement, the Hearing Examiner noted that Dean Aqui, an attorney with the District of Columbia Office of Labor Relations and Collective Bargaining ("OLRCB"), informed AFSCME that the Agency mistakenly claimed that such a regulation existed, but that the Agency still intended to keep the degree requirement for the new FSWs. *Id.* Based on this evidence, the Hearing Examiner found that "AFSCME's assertion that CFSA [had] not responded to [this part of] AFSCME's information request [was] without merit." *Id.*

AFSCME did not except to any of the Hearing Examiner's findings regarding the information request.

B. Negotiability

During I&E bargaining, AFSCME proposed that the CFSA rehire the displaced SSA workers into the newly created FSW positions on the condition that the rehired workers obtain a Bachelor's degree at a later date. (Hearing Examiner's Report, at 4). CFSA counter-proposed that the displaced SSA employees be hired into FSW positions contingent upon those employees obtaining a Bachelor's degree within six (6) months. *Id.* AFSCME counter-proposed that the employees be given four (4) years to obtain the degree, to which CFSA proposed that the employees be given until the end of the calendar year (approximately seven (7) months). *Id.*, at 4-5. Finally, AFSCME proposed that the employees be given seven (7) semesters (or

approximately three and a half (3.5) years) to obtain the degree. *Id.*, at 5. CFSA rejected AFSCME's final proposal and stated it was unwilling to deviate from its final proposal to give employees until the end of the calendar year to obtain the degree. *Id.* On May 27, 2010, AFCSME filed with the Public Employee Relations Board ("PERB") a Declaration of Impasse and Request for Impasse Resolution. *Id.*; *and* PERB Case No. 10-I-06.

On June 10, 2010, CFSA, through its representative at OLRCB, notified AFSCME that AFSCME's proposal to give the employees three and a half (3.5) years to obtain a Bachelor's degree constituted an "extensive delay of a management right" that was "equal to nullifying [that] right" and was therefore nonnegotiable. *Id.* On June 11, 2010, AFSCME filed with PERB a negotiability appeal challenging CFSA's declaration that AFSCME's final proposal was nonnegotiable. *Id.*; *and* PERB Case No. 10-N-03.

The Hearing Examiner summarized AFSCME's positions in this ULP case as: 1) "CFSA's declaration that the Union's final proposal was nonnegotiable was a baseless tactic which forced AFSCME to file a negotiability appeal after initiating impasse proceedings"; and 2) issuing the declaration constituted "bad faith bargaining under the CMPA." *Id.*, at 19. The Hearing Examiner noted that AFSCME did not present any testimony or evidence at the Hearing to support these allegations. *Id.*

CFSA conceded that it was obligated to engage in I&E bargaining, but argued that AFSCME's specific proposals were nonnegotiable because they would have created an extended delay that would have prevented CFSA from conducting the RIF of the SSAs and/or filling the new FSW positions. *Id.*, at 20.

Based on the parties' arguments and AFSCME's failure to present any testimony or evidence at the Hearing to support its allegation, the Hearing Examiner found that he could not conclude that CFSA's reasoning for the declaration was "baseless", or that the declaration itself was made in bad faith in violation of the CMPA. *Id.*, at 19-20. *Id.*, at 20. The Hearing Examiner noted that "there is no evidence of bad faith on CFSA's part during bargaining." *Id.*, at 20. Furthermore, the Hearing Examiner stated he could not analyze the substance of whether AFSCME's proposal was negotiable because that duty lies exclusively with PERB as per PERB Rule 532.4, and because the question of negotiability was outside of his authority on grounds that he was only assigned to resolved the ULP case. *Id.* The Hearing Examiner noted that the ULP case record nevertheless "establishes that AFSCME has not advanced its negotiability appeal [in PERB Case No. 10-N-03] or sought resolution of the negotiability dispute through a PERB determination regarding AFSCME's proposal." *Id.* For these reasons, the Hearing Examiner recommended that PERB dismiss AFSCME's allegation that CFSA acted in bad faith by declaring AFSCME's proposal nonnegotiable. *Id.*

AFSCME excepts to three (3) of the Hearing Examiner's findings. (Exceptions, at 1).

First, AFSCME excepts to the Hearing Examiner's finding that he was not authorized to determine whether AFSCME's proposal was negotiable. *Id.*, at 2. AFSCME argues PERB precedent empowers hearing examiners in ULP proceedings to resolve questions of negotiability

when necessary. *Id.* (citing *Teamsters, Local Unions No. 639 and 730 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO v. District of Columbia Public* Schools, 38 D.C. Reg. 96, Slip Op. No. 249 at p. 5 n. 4, PERB Case No.89-U-17 (1990)[4]). AFCSME contends the Hearing Examiner should have resolved the negotiability question in AFSCME's favor because its specific proposal was "similar to proposals addressing wages and bonuses to be paid to employees whose positions are slated to be abolished...[which] PERB has held...are negotiable in the context of impact and effects bargaining." *Id.*, at 5 (citing *Unions in Compensation Unions 20, i.e., AFSCME, NUHHCHE, Local 1033, and SEIU, District 1199E-DC v. District of Columbia Department of Health,* 50 D.C. Reg. 6801, Slip Op. No. 715, PERB Case No. 02-N-01 (2003)[5]; and *Unions in Compensation Unions 21, i.e., AFSCME Local 2097 and IBPO Local 446, v. District of Columbia Department of Health*, 49 D.C. Reg. 7756, Slip Op. No. 674, PERB Case No. 02-N-02 (2002)[6]). AFSCME further argues its proposal was negotiable because it addressed the implementation of the RIF, not the decision to conduct the RIF itself. *Id.*, at 6. By declaring AFSCME's proposal to be nonnegotiable, AFSCME claims CFSA took the position that AFSCME had no right to make the proposal in the first place. *Id.* AFSCME asserts, however, the reasonableness of the proposal's merits was "irrelevant" to the question of "whether [AFSCME] had the right to make the proposal and to bargain over the implementation of the new job requirement." *Id.* AFSCME avers it had every right to engage in I&E bargaining over CFSA's decision, and that any issues about the reasonableness of its proposal would have been resolved during arbitration through PERB Case No. 10-I-06. *Id.* AFSCME further argues that the Hearing Examiner erred when he failed to address whether CFSA waived its right to declare AFSCME's proposal nonnegotiable by making "substantially similar (though quantitatively different)" counterproposals during I&E bargaining; and whether CFSA acted in bad faith by first engaging in negotiations and then declaring the issue to be nonnegotiable. *Id.*

In its Opposition to Exceptions, CFSA argues the Hearing Examiner's lack of authority to determine whether AFSCME's proposal was or was not negotiable "was only one of the reasons he gave for rejecting the Union's arguments." (Opposition to Exceptions, at 3). CFSA notes the Hearing Examiner also reasoned that: 1) based on CFSA's argument that AFSCME's proposal would cause an extended delay and prevent CFSA from being able to conduct the RIF and fill the new FSW positions, he could not conclude that CFSA's declaration was "baseless" or made in bad faith; and 2) AFSCME had not done anything to advance the process in PERB Case No. 10-N-03, in which the question of whether the proposal was negotiable would be resolved. *Id.* Further, CFSA contends it complied with all of PERB's rules and precedents governing

[4] Footnote 4 in the case states: "We similarly reject [the respondent agency's] contention that the only way to raise issues concerning the negotiability of a subject matter is through a negotiability appeal. Such determinations may also be made in unfair labor practice proceedings as is the case herein."

[5] Holding that proposals concerning wages and bonuses and severance pay for employees affected by a RIF are negotiable.

[6] Holding that "absent language removing a matter from the scope of all matters otherwise negotiable under the CMPA, the [unions' proposals concerning wages and bonuses and severance pay for employees affected by a RIF]...are negotiable." *See* p. 7.

declarations of nonnegotiability and therefore cannot have acted in bad faith by simply availing itself of the right to do so. *Id.*, at 3-4.

Second, AFSCME excepts to the Hearing Examiner's finding that "there is no evidence [on the record] of bad faith on CFSA's part during bargaining." (Exceptions, at 1). AFSCME contends CFSA's admitted implementation of the RIF after AFSCME initiated impasse proceedings while the case was still pending constitutes bad faith in violation of the *status quo* provision in D.C. Official Code § 1-617.17(f)(4)[7] *Id.*, at 7-8 (citing *University of the District of Columbia Faculty Association/NEA v. University of the District of Columbia*, 46 D.C. Reg. 7228, Slip Op. No. 485, PERB Case No. 96-U-14 (1996)[8]). AFSCME then again argues the Hearing Examiner erred by failing to address whether CFSA acted in bad faith when it engaged in I&E bargaining, exchanged proposals, and then reversed its initial position by declaring the matter nonnegotiable. *Id.*, at 8.

CFSA contends AFSCME's reliance on D.C. Official Code § 1-617.17(f)(4) is misplaced because that provision, as well as the applicability of the case AFSCME cited, are limited to compensation negotiations, which D.C. Official Code § 1-617.17(b) defines as bargaining with respect to "...salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters." (Opposition to Exceptions, at 5). CFSA argues that management's right to determine job qualifications is not a compensation matter and is therefore not subject to the *status quo* provision in D.C. Official Code § 1-617.17(f)(4). *Id.* As a result, CFSA avers it did not act in bad faith by conducting the RIF and creating and filling the new FSW positions. *Id.*, at 5-6.

Third, AFSCME excepts to the Hearing Examiner's statement that "[t]he case record establishes that AFSCME has not advanced its negotiability appeal [PERB Case No. 10-N-03] or sought resolution of the negotiability dispute through a PERB determination regarding AFSCME's proposal." (Exceptions, at 9) (quoting Hearing Examiner's Report, at 20). AFSCME excepts to this statement for the reasons that: 1) "PERB Case 10-N-03 is not and was not before the Hearing Examiner and it was inappropriate for him to go outside the record in the case before him by examining other case files to support his determination in this matter"; and 2) it was prejudicial for the Hearing Examiner to review the record in 10-N-03 without also reviewing the record of 10-I-06; and 3) according to PERB Rule 532 *et seq.*, it is up to PERB to advance the process of 10-N-03, not AFSCME. *Id.*, at 9-10.

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[7] D.C. Official Code § 1-617.17(f)(4): "If the procedures set forth in paragraph (1), (2), (3), or (3A) of this subsection [governing 'collective bargaining concerning compensation'] are implemented, no change in the *status quo* shall be made pending completion of mediation and arbitration, or both."

[8] Holding that, in accordance with D.C. Official Code § 1-617.17(f)(4), it is a violation of the duty to bargain in good faith and therefore an unfair labor practice for an agency to, without legal justification, change the *status quo* in the compensation of bargaining unit employees while engaged in the bargaining of a new compensation agreement, or while compensation negotiations are at an impasse, or until the completion of the mediation or arbitration of the compensation issues that are at an impasse. *See* p. 6.

CFSA contends the Hearing Examiner appropriately considered PERB Case No. 10-N-03 in his analysis of the instant ULP case in light of the fact that AFSCME's reference to PERB Case No. 10-N-03 in paragraph 24 of its ULP Complaint made it part of the instant ULP case's record. (Opposition to Exceptions, at 6). Further, CFSA argues that nothing prevented AFSCME from inquiring why PERB had not yet addressed that case when this matter was scheduled for a hearing. *Id.*

C. Bypass and Direct Dealing

AFSCME alleged that on June 7, 2010, Roque Gerald, CFSA's Director, sent an email to all CFSA staff stating that CFSA had already hired 17 people into the FSW positions and that it would hire approximately 18 more in the next 30 days. (Hearing Examiner's Report, at 20-21). AFSCME contended that by so doing, CFSA violated the CMPA by interfering with, restraining, and coercing employees in the exercise of their rights under D.C. Official Code § 1-617.06(a)(1) and by refusing to bargain in good faith as required by D.C. Official Code §§ 1-617.04(a)(1) and (5). *Id.* The Hearing Examiner noted that while AFSCME quoted some of the email's text in its Complaint, it never introduced the actual email into evidence at the Hearing other than to briefly reference it in its opening statement and in its post-hearing brief. *Id.*, at 21. AFSCME's only witness, Mr. White, did not testify about the email. *Id.*, at 21. Further, the Hearing Examiner noted that AFSCME's Complaint asks that CFSA be ordered to "[c]ease and desist from dealing directly with employees represented by the Union with regard to wages, hours, or other terms and conditions of employment", yet the request was not expressly linked to AFSCME's allegation regarding the email. *Id.* (quoting Complaint, at 6). The Hearing Examiner found that because AFSCME "did not introduce evidence, testimony or supporting arguments supporting the allegation in its Complaint that CFSA sought to bypass the Union or deal directly with bargaining unit employees with the Gerald email", the allegation was deemed "abandoned and waived." *Id.*, at 21-22.

Notwithstanding, the Hearing Examiner reasoned that even if AFSCME's allegation had been supported by evidence at the hearing, "a fair reading" of Gerald's email reveals that it was simply CFSA communicating with its staff about the 17 new FSWs it had hired, the additional FSWs it wanted to hire, CFSA's then upcoming fiscal year budget, and another unrelated matter dealing with Court supervision. *Id.*, at 22. Therefore, the email did not, by itself, constitute a violation of the CMPA. *Id.* Further, the Hearing Examiner found there was nothing in the email that "manifests an effort by CFSA to deal directly with bargaining unit employees, or disparage or undermine AFSCME as the bargaining unit employee's exclusive representative." *Id.* (citing *American Federation of State, County and Municipal Employees, District Council 20, et al, v. Government of the District of Columbia, et al.*, 36 D.C. Reg. 427, Slip Op. No. 200, PERB Case No. 88-U-32 (1988)). Consequently, the Hearing Examiner found that AFSCME's direct dealing and bypass allegation was without merit and recommended it be dismissed with prejudice. *Id.*

AFSCME did not except to any of the Hearing Examiner's findings regarding the email. (Exceptions).

III. Discussion

The Board will affirm a Hearing Examiner's findings if the findings are reasonable, supported by the record, and consistent with Board precedent. *See American Federation of Government Employees, Local 872 v. District of Columbia Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003). Determinations concerning the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner. *Hoggard v. District of Columbia Public Schools*, 46 D.C. Reg. 4837, Slip Op. No. 496 at 3, PERB Case No. 95-U-20 (1996). Issues concerning the probative value of evidence are reserved to the Hearing Examiner. *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07 (1998). Mere disagreements with a Hearing Examiner's findings and/or challenging the Examiner's findings with competing evidence do not constitute proper exceptions if the record contains evidence supporting the Hearing Examiner's conclusions. *Hoggard v. DCPS, supra*, Slip Op. No. 496 at 3, PERB Case No. 95-U-20.

A. Information Request

In the instant matter, the Board holds that the Hearing Examiner's finding that CFSA complied with AFSCME's information request is reasonable, supported by the record, and consistent with Board precedent. *AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12. In regard to AFSCME's request for all of the correspondence CFSA sent to its employees on or after May 6, 2010, witness testimony as well as Union Exhibit 2 and Agency Exhibit 3 show that CFSA complied with the request when Mr. Starkes sent the requested information to Mr. White on May 12, 2010. (Hearing Transcript, at 23-24, 36). Concerning AFSCME's request for a description of the process CFSA would use to contact RIF'd employees about vacancies, Mr. Starkes testified that he shared CFSA's plan at the May 19, 2010, bargaining session and further testified that 17 RIF'd SSAs had been rehired as FSWs because of that process. *Id.*, at 35-36. Addressing AFSCME's request for legal authority demonstrating the necessity for FSW's to hold a Bachelor's degree, Union Exhibit 2 shows that Mr. Aqui responded to the request on June 10, 2012, stating that CFSA's former assertion that such authority existed "appears to have been an error." In regard to AFSCME's request for CFSA's transitional plans, Mr. White testified he did not remember receiving the information, but Debra Porchia-Usher, who testified for CFSA, testified that on May 26, 2010, CFSA sent AFSCME the information in two (2) documents: the first dated May 24, 2010, titled Congregate Care Contract Management Division Transition Plan Update; and the second dated May 24, 2010, titled Child and Family Services Agency Programs Transition Plan Summary and Update. (Hearing Transcript, at 23, 30). Ms. Porchia-Usher testified that no other plans had been developed beyond those two (2) reports. *Id.*, at 31.

The Hearing Examiner correctly noted that Mr. White's testimony sometimes conflicted with that of Mr. Starkes. (Hearing Examiner's Report, at 18). The Hearing Examiner credited "Starkes' testimony over that of White because, even on direct examination, when White was asked whether information was provided to him during bargaining, he admitted '[i]t's been a

long time' [and] 'I would have to try to remember that.'" *Id.* (quoting Hearing Transcript, at 23). The Hearing Examiner found Mr. Starkes' testimony to be "more forthright and his demeanor more credible on this issue." *Id.* Since determinations regarding the admissibility, relevance, and weight of evidence are reserved to the Hearing Examiner, the Board finds no error in his crediting of Mr. Starkes' testimony over Mr. White's. *Hoggard v. DCPS, supra*, Slip Op. No. 496 at 3, PERB Case No. 95-U-20. The Board further finds, based on its own review of the record and the evidence presented at the Hearing, that the Hearing Examiner's conclusion that CFSA complied with AFSCME's information request and therefore did not commit an unfair labor practice was reasonable, supported by the record, and consistent with Board precedent. *AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

B. Negotiability

Under D.C. Official Code § 1-617.08, RIFs are a management right. *Doctors' Council of the District of Columbia v. District of Columbia Department of Youth and Rehabilitation Services*, 60 D.C. Reg. 16255, Slip Op. No. 1432 at p. 8, PERB Case No. 11-U-22 (2013). Generally, a management right does not relieve management of the duty to bargain over the impact and effects of, and procedures concerning, the exercise of management decisions. *American Federation of State, County and Municipal Employees, District Council 20, Local 2921, AFL-CIO, v. District of Columbia Department of General Services*, 59 D.C. Reg. 12682, Slip Op. No. 1320 at ps. 2-3, PERB Case No. 09-U-63 (2012); *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections.*, 52 D.C. Reg. 2496, Slip Op. No. 722 at ps. 5-6, PERB Case Nos. 01-U-21, 01-U-28 and 01-U-32 (2003); *AFGE v. DCOCC, supra*, Slip Op. No. 709 at p. 6, PERB Case No. 03-N-02; *and International Brotherhood of Police Officers, Local 446, AFL-CIO v. District of Columbia General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312 at p. 3, PERB Case No. 91-U-06 (1992). Notwithstanding, D.C. Official Code § 1-624.08 ("Abolishment Act") narrows this duty as it relates to RIFs The Abolishment Act authorizes agency heads to identify positions for abolishment, establishes the rights of existing employees affected by the abolishment of a position, and establishes procedures for implementing and contesting an abolishment. *See* D.C. Official Code § 1-624.08(a)-(i), and (k). The Abolishment Act further provides, "[n]otwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable." D.C. Official Code § 1-624.08(j). *See also* Omnibus Personnel Reform Amendment Act, 1998, D.C. Law 12-124 (Act 12-326) ("An Act To . . . eliminate the provision allowing RIF policies and procedures to be appropriate matters for collective bargaining . . ."). As a result, a proposal that attempts to affect or alter RIF procedures is not within the scope of impact and effects bargaining and is therefore nonnegotiable. *American Federation of Government Employees, Local 631, and District of Columbia Water & Sewer Authority*, 59 D.C. Reg. 5411, Slip Op. No. 982 at p. 6, PERB Case No. 08-N-05 (2009); *and Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections*, 49 D.C. Reg. 11141, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01 (2002).

In regard to AFSCME's contention that the Hearing Examiner erred when he stated he could not evaluate the substance of whether AFSCME's proposal was negotiable as part of the ULP proceeding before him, the Board notes that the issue in the *Teamsters* case that AFSCME cited in its Exceptions[9] was whether the agency had a duty to bargain the impact and effects of a new drug testing policy. (Exceptions, at 2). The Board's statement in that case that issues concerning the negotiability of a subject may be resolved in ULP proceedings was made in response to the hearing examiner's finding in the matter that a ULP could not be proven because PERB had not previously determined *via* a negotiability appeal that drug testing was a mandatory subject of bargaining. *Teamsters v. DCPS, supra*, Slip Op. No. 249 at f. 4, PERB Case No. 89-U-17. The Board rejected the hearing examiner's finding and reasoned that D.C. Official Code § 1-618.8(b) presumes that almost all topics are subject to bargaining except those few that the CMPA specifically says are not. *Id.* Unlike the instant case, the parties in the *Teamsters* case had not engaged in the bargaining process, and neither of the parties had declared a specific proposal to be nonnegotiable. *Id.* Additionally, a negotiability appeal concerning the very subject in question was not concurrently pending before the Board when the *Teamsters* case was decided. *Id.* Further, while the CMPA does not specifically proscribe the negotiability of a drug testing policy, the Abolishment Act, *supra*, and the Omnibus Personnel Reform Amendment Act, *supra*, do proscribe the negotiability of RIF procedures. Also, the Board notes that its opinion in the *Teamsters* case merely stated that questions of negotiability "may" be decided in ULP proceedings, not that they must be. *Id.* Therefore, while the Board agrees that generally, issues of negotiability can be considered in ULP proceedings when appropriate, the Hearing Examiner in the this case did not err when he elected not to do so on grounds that: 1) a concurrent negotiability appeal (PERB Case No. 10-N-03) addressing the very issue in question was still pending before the Board at the time of the Hearing; 2) PERB Case No. 10-N-03 had not been assigned to the Hearing Examiner; and 3) the question before the Hearing Examiner was not whether AFSCME's specific proposal was negotiable, but whether CFSA acted in bad faith during negotiations when it declared AFSCME's proposal nonnegotiable. The Board finds that the record demonstrates the Hearing Examiner adequately resolved the bad faith question before him when he noted that "AFSCME presented no testimony and no evidence" at the hearing to support its allegation that CFSA acted in bad faith during I&E negotiations, and when he found that, based on the record before him, he could not conclude that CFSA's declaration that the proposal was nonnegotiable was done in bad faith in violation of the CMPA. (Hearing Examiner's Report, at 19-20).

Addressing AFSCME's argument that its proposal was negotiable because it was similar to proposals concerning wages and bonuses for RIF'd employees that PERB has held are negotiable in the context of I&E bargaining, the Board disagrees because negotiating wages, bonuses, and severance pay does not constitute an attempt to alter an agency's RIF procedures. (Exceptions, at 5) (citing *Unions in Compensation Unions 20, v. DOH, supra*, Slip Op. No. 715, PERB Case No. 02-N-01 (2003); and *Unions in Compensation Unions 21, v. DOH, supra*, Slip Op. No. 674, PERB Case No. 02-N-02 (2002)). Instead, the Board considers AFSCME's proposal in this case to be much more similar to that which was proposed in *AFGE and WASA*,

[9] *Teamsters v. DCPS, supra*, Slip Op. No. 249, PERB Case No.89-U-17.

supra, Slip Op. No. 982, PERB Case No. 08-N-05. In that case the Board considered the negotiability of a proposal by a union that the agency be required to first attempt "furloughs, reassignment, retaining or restricting recruitment" and/or "utilize attrition and other cost saving measures to avoid or minimize the impact on employees of a RIF." *Id.* The union in the case argued its proposal was negotiable because it did not: 1) mandate that the agency take any "specific" action when conducting a RIF; 2) require the agency to maintain any specific number of employees during or after a RIF; or 3) interfere with the agency's right to implement or conduct a RIF. *Id.* The Board found that the union's proposal constituted an attempt to alter the agency's RIF procedures and was therefore nonnegotiable pursuant to the Omnibus Personnel Reform Amendment Act. *Id.*, at 6. In *American Federation of State, County and Municipal Employees, District Council 20, Local 2401, AFL-CIO and District of Columbia Child and Family Services Agency*, Slip Op No. 1462 at ps. 4-5, PERB Case No. 10-N-03 (April 30, 2014), which, as stated previously, is directly related to this ULP case, the Board, relying on *AFGE and WASA*, *supra*, Slip Op. No. 982, PERB Case No. 08-N-05, held that AFSCME's proposal similarly attempted to minimize the effects of CFSA's RIF on bargaining unit employees by demanding that CFSA keep all of the SSAs on for three and half (3.5) years in the new FSW positions regardless of the degree requirement. The Board further found that AFSCME's proposal "constituted an attempt: 1) to alter or affect CFSA's RIF procedures; 2) to frustrate CFSA's purposes for conducting the RIF; and 3) to interfere with CFSA's rights to direct and assign employees, establish work priorities, and establish job requirements that fulfill the Agency's mission and functions." *Id.* (also citing *AFGE v. DCOCC*, *supra*, Slip Op. No. 709 at p. 8, PERB Case No. 03-N-02).[10] Based on the foregoing, the Board finds that AFSCME's proposal that CFSA ignore its degree requirement for FSWs for three and a half (3.5) years is not similar to negotiating the past wages, bonuses, or severance pay of RIF'd employees, as AFSCME contends.

Additionally, the Board rejects AFSCME's contention that by declaring its specific proposal nonnegotiable, CFSA took the position that the entire matter was nonnegotiable. (Exceptions, at 6). Indeed, AFSCME implies in a number of its arguments[11] that CFSA's position was that it had no obligation to participate in I&E bargaining over its decision to conduct the RIF and to create the new FSW positions and that any proposal made by the Union would have therefore been nonnegotiable. *See* Footnote 11, herein. The Board finds nothing in the record or the Hearing Examiner's Report to support that conclusion. Indeed, the Hearing Examiner noted that it was "undisputed between the parties that they met three times to negotiate

[10] The Board applies this same reasoning as its basis for rejecting AFSCME's argument that its proposal was negotiable because it addressed the implementation of the RIF, not the decision to conduct the RIF itself. (Exceptions, at 6).

[11] i.e. AFSCME's contentions that: 1) the reasonableness of its proposal's merits was "irrelevant" to the question of "whether [AFSCME] had the right to make the proposal and to bargain over the implementation of the new job requirements"; 2) it had every right to engage in I&E bargaining over CFSA's decision even if its proposal was unreasonable; 3) the Hearing Examiner erred when he failed to address whether CFSA waived its right to declare AFSCME's proposal nonnegotiable by making "substantially similar (though quantitatively different)" counterproposals during I&E bargaining; and 4) the Hearing Examiner erred when he failed to address whether CFSA acted in bad faith by first engaging in negotiations and then reversing its initial position and declaring the matter to be nonnegotiable. (Exceptions, at 6-8).

[the] impact and effects of the RIF and the creation of the FSW positions on May 13, 19 and 25, 2010." (Hearing Examiner's Report, at 3). In addition, everything in CFSA's pleadings and statements at the Hearing indicates that it only declared AFSCME's specific proposal nonnegotiable, not the entire I&E process. Indeed, the letter CFSA initially sent declaring the proposal nonnegotiable makes this point very clear. It stated:

> ***One*** of the Union's demands during our impact and effect bargaining was to have the Agency delay implementation of its degree requirement for three and one half years. This extensive delay of a management right is equal to nullifying that right. Therefore, I am giving you formal notice ***that that proposal*** is nonnegotiable and the Agency will not consider ***it*** during impasse.

See AFSCME and CFSA, ***supra***, Slip Op No. 1462 at f. 3, PERB Case No. 10-N-03 (emphasis added). PERB precedent well documents that specific proposals can be declared nonnegotiable during the bargaining process. *See* PERB Rule 532.4[12]; *AFGE and WASA*, ***supra***, Slip Op. No. 982, PERB Case No. 08-N-05; ***and*** *FOP v. DOC*, ***supra***, Slip Op. No. 692 at p. 5, PERB Case No. 01-N-01. While the Board agrees that CFSA was obligated to participate in I&E bargaining,[13] based on the foregoing the Board rejects AFSCME's arguments that CFSA reversed its initial position regarding that obligation and/or that CFSA waived its ability to invoke the nonnegotiability of AFSCME's proposal when it initially engaged in the process and exchanged counterproposals.[14]

Concerning AFSCME's contention that the Hearing Examiner erred when he found there was no evidence on the record to show CFSA acted in bad faith by implementing the RIF and creating the FSW positions before 10-I-06 was fully resolved, the Board agrees with CFSA that D.C. Official Code § 1-617.17(f)(4) and *UDCFA/NEA v. UDC*, ***supra***, Slip Op. No. 485, PERB Case No. 96-U-14 are only applicable to compensation negotiations. (Opposition to Exceptions, at 5-6). The Board notes that although D.C. Official Code § 1-617.17(f)(3A) permits parties to request that disputed non-compensation matters be mediated or arbitrated concurrently with disputed compensation-related matters, a plain reading of the statute and Slip Op. No. 485 suggests that there must first be a compensation-related dispute as described in D.C. Official Code § 1-617.17(b) and §§ 1-617.17(f)(1)-(3) in order for the ***status quo*** provision in D.C. Official Code § 1-617.17(f)(4) to have any effect on non-compensation disputes. Because there is no evidence on the record showing that the parties were also negotiating a compensation issue related to D.C. Official Code § 1-617.17(b) or §§ 1-617.17(f)(1)-(3) during their I&E sessions, the Board finds the Hearing Examiner did not err, as AFSCME alleges.

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[12] Which states, in part, that: "...a negotiability appeal shall be filed within thirty (30) days after a written communication from the other party to the negotiations asserting that ***a proposal*** is nonnegotiable or otherwise not within the scope of collective bargaining under the CMPA." (Emphasis added).

[13] *See AFSCME v. DCDGS*, ***supra***, Slip Op. No. 1320 at ps. 2-3, PERB Case No. 09-U-63.

[14] The Board applies this same reasoning to reject AFCSME's similar contention in its second exception that CFSA acted in bad faith when it reversed its initial position and declared AFSCME's proposal nonnegotiable. (Exceptions, at 8).

In response to AFSCME's exception to the Hearing Examiner's statement that "[t]he case record establishes that AFSCME has not advanced its negotiability appeal [PERB Case No. 10-N-03] or sought resolution of the negotiability dispute through a PERB determination regarding AFSCME's proposal", the Board agrees with AFSCME that there is no Rule that required AFSCME to advance its appeal in PERB Case No. 10-N-03 any further than it had already proceeded. (Exceptions, at 9). Notwithstanding, the Board finds that the Hearing Examiner's statement is moot because the case in question has since been decided in CFSA's favor. *See AFSCME and CFSA, supra*, Slip Op No. 1462, PERB Case No. 10 N-03.

Additionally, the Board rejects AFSCME's contentions that the Hearing Examiner erred by referring to the record in PERB Case 10-N-03 because, as CFSA noted, AFSCME made reference to PERB Case No. 10-N-03 in paragraph 24 of its ULP Complaint, and thus made it part of this case's record. (Opposition to Exceptions, at 6). Because issues concerning the probative value of evidence are reserved to the Hearing Examiner, the Board rejects AFSCME's argument that it was prejudicial for the Hearing Examiner to reference the record in PERB Case No. 10-N-03 but not that of PERB Case No. 10-I-06 because AFSCME failed to demonstrate that there was anything in the record of PERB Case No. 10-I-06 that would have negated the Hearing Examiner's findings in this case. *American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority*, 45 D.C. Reg. 4022, Slip Op. No. 544 at p. 3, PERB Case No. 97-U-07.

The Board notes that upon its review of the Hearing Transcript, none of the arguments or authority AFSCME relied on in its Exceptions were presented as exhibits or established by testimony at the Hearing. Indeed, while the crux of AFSCME's exceptions are that the Hearing Examiner erred by failing to find that CFSA acted in bad faith by declaring AFSCME's proposal nonnegotiable, the Hearing Transcript shows that AFSCME only mentioned the words "bad faith" once during the entire Hearing, and only then mentioned it to state it would discuss the issue more fully in its post-hearing brief. (Hearing Transcript, at 16). Therefore, the Board finds that the Hearing Examiner's conclusion that "AFSCME presented no testimony and no evidence in support of [its] allegation at [the] hearing" was reasonable and supported by the record. *AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12. Furthermore, upon examining the record, and in consideration of the foregoing analysis of AFSCME's exceptions, and based on the undisputed fact that CFSA complied with all of the requirements of PERB Rule 532 *et seq.* when it declared AFSCME's proposal nonnegotiable, the Board holds that the Hearing Examiner's findings that "there is no evidence of bad faith on CFSA's part during bargaining" and that CFSA did not act in bad faith when it declared AFSCME's proposal nonnegotiable were reasonable, supported by the record, and consistent with Board precedent. (Hearing Examiner's Report, at 19-20); *and AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

C. Bypass and Direct Dealing

Employers have a right to communicate with their employees, but cannot in those communications: invite the employees to abandon their representatives; indicate that the employees can achieve better terms of employment by dealing directly with the employer; make threats regarding a loss of a wage increase or collection of wages already paid; disparage or undermine the union as the employees' exclusive representative; or induce the employees to put pressure on union leadership. *AFSCME, et al, v. D.C. Gov't, et al., supra*, Slip Op. No. 200 at ps. 5-6, PERB Case No. 88-U-32.

In the instant case, the Board agrees with the Hearing Examiner that "a fair reading" of the June 7, 2010, Gerald email demonstrates that it did not, by itself, amount to a violation of the CMPA because it did not "manifest an effort by CFSA to deal directly with bargaining unit employees, or disparage or undermine AFSCME as the bargaining unit employee's exclusive representative." *Id.*; *and* (Hearing Examiner's Report, at 22). Additionally, the Board has confirmed by its own examination of the record that AFSCME did not present any evidence or testimony at the Hearing to support its allegation and that, indeed, the only time AFSCME mentioned the email at the Hearing was during its opening statement. (Hearing Transcript, at 15). Therefore, the Board finds that the Hearing Examiner's conclusion that the email did not constitute a violation of the CMPA was reasonable, supported by the record, and consistent with Board precedent. (Hearing Examiner's Report, at 22); *and AFGE v. WASA, supra*, Slip Op. No. 702, PERB Case No. 00-U-12.

D. Decision

Based on all of the foregoing, and in consideration of the record as a whole, the Board agrees with the Hearing Examiner's recommendation that AFSCME's Complaint be dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant's Unfair Labor Practice Complaint is dismissed with prejudice.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, and Members Donald Wasserman and Ann Hoffman

April 30, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 10-U-37, Slip Op. No. 1463, was transmitted via U.S. Mail and e-mail to the following parties on this the 5th day of May, 2014.

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Colby J. Harmon
PERB

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Service Employees International Union, Local 500	
Petitioner,	PERB Case No. 13-RC-06
and	Opinion No. 1464
University of the District of Columbia	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On September 30, 2013, the Service Employees International Union, Local 500 ("SEIU" or "Petitioner"), in accordance with Section 502 of the Board Rules, filed a Recognition Petition ("Petition"). The Petitioner seeks to represent, for purposes of collective bargaining:

> Including, all part-time faculty paid by the course, employed by the University of the District of Columbia;
>
> But Excluding (sic) all other employees, full-time faculty, visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, administrators regardless of whether they have teaching responsibilities, deans, registrars, volunteers, managerial employees and supervisors.

(Petition at 1). The Petition was accompanied by a showing of interest meeting the requirement of Board Rule 502.1. On December 11, 2013, a Notice was issued by PERB to the University of

the District of Columbia ("UDC" or "Respondent"). The matter was referred to Hearing Examiner Leonard M. Wagman ("Hearing Examiner"), who issued a Report and Recommendation.

After several informal conferences with the parties and receiving the parties' positions on the type of election the Executive Director determined that a mail ballot election was the most effective and efficient manner of voting that effectuated the purposes of the CMPA.

II. Hearing Examiner's Report and Recommendation

On April 9, 2014, a hearing was held. The Parties stipulated to the following bargaining unit:

> INCLUDED:
>
> All part-time faculty paid by the course, employed by the University of the District of Columbia other than through the Law School.
>
> EXCLUDED:
>
> All other employees, including all employees in positions within other collectively-bargained bargaining units, including all full-time faculty; all employees of the Law School including adjunct faculty of the law school; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees.

(Report at 2). No issues were raised by the Parties before the Hearing Examiner. The Hearing Examiner recommended that the Board order an election for the above-described unit. (Report at 2-3).

III. Discussion

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the

record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

The Board finds the Hearing Examiner's findings and recommendation is reasonable and supported by the record. Therefore, the Board adopts the Hearing Examiner's recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

   INCLUDED:

   All part-time faculty paid by the course, employed by the University of the District of Columbia other than through the Law School.

   EXCLUDED:

   All other employees, including all employees in positions within other collectively-bargained bargaining units, including all full-time faculty; all employees of the Law School including adjunct faculty of the law school; visiting faculty, full-time employees, graduate students, lab assistants, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, research assistants, librarians, registrars, volunteers and degree seeking students of the University including those with adjunct appointments, administrators and other employees whose primary position is not teaching but may have teaching responsibilities and may be classified by the University as adjuncts when they teach, office clerical employees, guards and security personnel, managerial and supervisory employees.

2. A mail ballot election shall be held in accordance with the provisions of D.C. Official Code § 1-617.10 (2001 ed.) and Board Rules 510-515, in order to determine whether or not all eligible employees desire to be represented for bargaining on terms and conditions of employment by either the Service Employees International Union, Local 500 or no Union.

3. Pursuant to Board 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 30, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-RC-06 was transmitted to the following Parties on this the 1st day of May, 2014:

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/ Metropolitan Police Department, Labor Committee	
Complainant,	PERB Case No. 08-U-14
v.	Opinion No. 1465
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On January 3, 2008, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") filed an Unfair Labor Practice Complaint ("Complaint") against the District of Columbia Metropolitan Police Department ("MPD" or "Agency"). On January 23, 2008, MPD filed an Answer ("Answer"). On June 3, 2013, a Hearing Examiner's Report and Recommendation ("Report") was issued to the Parties. No Exceptions were received by the Board. The Hearing Examiner's Report and Recommendation is before the Board for disposition.

II. Hearing Examiner's Report and Recommendation

The Hearing Examiner found that "[t]he relevant facts largely are undisputed...." (Report at 5). The Hearing Examiner was presented with the following issues:

1. Whether the Board is precluded from considering this complaint as untimely filed?
2. If not, whether the MPD committed an unfair labor practice, and retaliated against a union official, when a captain outside of the chain of command for that official advised him of media inquiries concerning his 20-year-old trial and acquittal on unrelated charges.
3. If so, whether Chief Lanier and Captain Hoey properly are named as respondents in their individual capacities.

(Report at 8).

The underlying facts of the Complaint arise from interactions between a union official and a MPD captain. For twenty-five years, Officer Cunningham had been employed in the Special Operations Division, Emergency Response Team. (Report at 6). From 2003 until the time of the hearing, Officer Cunningham was the Vice Chairman of FOP. *Id.* Officer Cunningham interacted with the then-Sixth District Commander Captain Hoey, regarding "manpower issues, the accuracy of crime statistics and grievances over officer discipline, between 2004 and 2006." *Id.*

From June 19 through July 2, 2007, "Officer Cunningham was designated as Acting Chairman of the FOP, as he often was when the FOP Chairman Christopher Baumann was unavailable." (Report at 6-7). On June 26, 2007, Captain Hoey notified Officer Cunningham that Captain Hoey had received some inquiries about Officer Cunningham from news reporters. (Report at 7). Captain Hoey asked Officer Cunningham to discuss the issue. *Id.* On June 28, 2007, Captain Hoey telephoned Officer Cunningham to discuss the media inquiries. *Id.* Captain Hoey also informed the MPD Information Department about the media requests. *Id.*

On July 2, 2007, Captain Hoey and Officer Cunningham had an in-person conversation. *Id.* "The parties agree that Captain Hoey believed that the media requests pertained to the preparation of an article on the MPD 'Lewis lists'."[1] *Id.* The Hearing Examiner found that Officer Cunningham thought that Captain Hoey was attempting to "blackmail" Officer Cunningham for Officer Cunningham talking to the community about Captain Hoey. *Id.*

On July 9, 2007, "FOP filed a misconduct complaint with the MPD Office of Professional Responsibility" concerning Captain Hoey's actions. *Id.* MPD opened an Internal Affairs Division ("IAD") complaint against Captain Hoey, and concluded its investigation on August 13, 2013. (Report at 8). On September 5, 2007, FOP received notice that the investigation was completed and that MPD's IAD did not conclude that "Captain Hoey either retaliated or attempted to coerce Officer Cunningham from fulfilling his obligations as Vice Chairman of the FOP." *Id.* On January 3, 2008, FOP filed the present Complaint.

[1] The Hearing Examiner found that the parties did not dispute "the existence of a widespread belief within the MPD that the Office of the United States Attorney for the District of Columbia (OUSA) maintains a 'Lewis list.'" (Report at 5). According to testimony at the hearing, the "Lewis list" is a list "that the OUSA tracks the in-court testimony of officers, records the names of those committing perjury, and declines to call those officers as witnesses in subsequent cases." *Id.*

FOP argued before the Hearing Examiner that "a finding of retaliatory activity by the MPD is supported by the claimed 'threat' by Captain Hoey to disclose to the media information that would be damaging to Officer's Cunningham's personal career and to the FOP generally." (Report at 9). On the issue of timeliness, FOP asserted that FOP's Complaint was not "ripe" until FOP received notice on September 5, 2007, that the IAD's investigation was completed, making the January 3, 2008, filing timely. (Report at 9).

MPD argued that "the complaint should have been filed 120 days from the interactions between Captain Hoey and Officer Cunningham and, accordingly, the FOP filed the complaint 65 days too late." (Report at 9). Further, MPD denied the unfair labor practice allegations, asserting that "FOP does not identify any statements made by Captain Hoey in the context of labor negotiations or which interfered with formation of a union or with Officer Cunningham's representational activities." (Report at 10). In addition, MPD asserted that no reprisal action was identified by FOP. *Id.*

The Hearing Examiner rejected FOP's assertion that the Complaint did not become ripe until September 5, 2007, when FOP received the results of the IAD investigation. (Report at 11). The Hearing Examiner found that FOP was attempting to "[ingraft onto PERB Rule 520.4 what is, in essence, an'exhaustion' standard. (Report at 12-13). The Hearing Examiner found that "FOP had clear notice of all actions complained of by July 2, 2007 and was required to file its complaint by October 30, 2007." (Report at 12). The Hearing Examiner recommended that the Complaint be dismissed as untimely filed. (Report at 12-13).

III. Discussion

No Exceptions to the Hearing Examiner's Report and Recommendation were received by PERB. "Whether exceptions have been filed or not, the Board will adopt the hearing examiner's recommendation if it finds, upon full review of the record, that the hearing examiner's 'analysis, reasoning and conclusions' are 'rational and persuasive.'" *Council of School Officers, Local 4, American Federation of School Administrators v. D.C. Public Schools*, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08 (2010) (quoting *D.C. Nurses Association and D.C. Department of Human Services*, 32 D.C. Reg. 3355, Slip Op. No. 112, PERB Case No. 84-U-08 (1985)).

The Board determines whether the Hearing Examiner's Report and Recommendation is "reasonable, supported by the record, and consistent with Board precedent." *American Federation of Government Employees, Local 1403 v. District of Columbia Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012). The Board will affirm a hearing examiner's findings if they are reasonable and supported by the record. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (2003).

The Board has held that "issues of fact concerning the probative value of evidence and credibility resolutions are reserved to the Hearing Examiner." *Council of School Officers, Local*

4, American Federation of School Administrators v. District of Columbia Public Schools, 59 D.C. Reg. 6138, Slip Op. No. 1016 at p. 6, PERB Case No. 09-U-08; *Tracy Hatton v. FOP/DOC Labor Committee*, 47 D.C. Reg. 769, Slip Op. No. 451 at p. 4, PERB Case No. 95-U-02 (1995).

The Board finds that the Hearing Examiner's factual conclusion that the Complaint's allegations occurred on or before July 2, 2007, is reasonable and supported by the record. It is also undisputed.

Board Rule 520.4 provides: "Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred." The Board has held that the 120-day period for filing a complaint begins when the Complainant knew or should have known of the acts giving rise to the violation. *Pitt v. D.C. Dep't of Corrections, et. al*, 59 D.C. Reg. 5554, Slip Op. No. 998, PERB Case No. 09-U-06 (2009). PERB's rule contains no requirement of exhaustion of administrative remedies.

The Complaint was filed 185 days after July 2, 2007, on January 3, 2008. FOP does not assert that it did not know of the actions leading to the Complaint at a date later than July 2, 2007. Therefore, the Board finds that the Complaint was untimely filed, and dismisses the Complaint with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Unfair Labor Practice Complaint is dismissed with prejudice.
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 30, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order for PERB Case No. 08-U-14 was transmitted to the following parties via U.S. Mail on this the 5th day of May, 2014.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Local 36, International Association of Firefighters, AFL-CIO,	
Petitioner,	PERB Case No. 13-N-04
v.	Opinion No. 1466
	Motion for Reconsideration
District of Columbia Department of Fire and Emergency Medical Services,	
Respondent.	

DECISION

Local 36, International Association of Firefighters, AFL-CIO ("Union" or "Petitioner") seeks reconsideration, in part, of the Board's decision and order in *Local 36, International Association of Firefighters v. District of Columbia Department of Fire and Emergency Medical Services*, 60 D.C. Reg. 17359, Slip Op. No. 1445, PERB Case No. 13-N-04 (2013) ("Opinion No. 1445") on the grounds that the Board (1) erroneously made a decision on a proposal addressing the selection of technicians that was not before it and (2) erred in finding nonnegotiable the Union's proposal that "The basic workweek for members working in the Fire Fighting Division shall be 42 hours averaged over a 4-week period" and "[t]he work schedule for members working in the Fire Fighting Division shall be 24 hours on duty and 72 hours off duty." (Appeal Ex. 3 at 24.)

I. Statement of the Case

During negotiations for a successor collective bargaining agreement ("CBA"), the negotiator for the D.C. Department of Fire and Emergency Medical Services ("Agency" or "Respondent") sent his counterpart at the Union a letter asserting the nonnegotiability of proposals made by the Union. The Union filed with the Board a negotiability appeal ("Appeal") with respect to the thirteen proposals that the Agency had asserted were nonnegotiable. The Agency filed an answer. At the request of the Petitioner, the Acting Director, pursuant to Rule 532.5(a), directed the parties to submit written briefs regarding the Appeal. The parties filed their respective briefs July 8, 2013.

The Board issued a decision and order finding all proposals except Proposal 12 and Proposal 13 negotiable. Opinion No. 1445. The Union filed a Motion for Reconsideration with respect to the proposals that the Board found nonnegotiable. The Union requested that the two proposals be found negotiable for the reasons stated in the motion and the Union's July 8, 2013, brief. (Mot. for Recons. 9-10.) The Agency filed an opposition and requested a decision on the motion before April 21, 2014, the deadline by which the Agency was required to transmit a related arbitration award to the City Council. In view of that deadline, the Board issued its order on April 17, 2014, denying the motion for reconsideration and noting that a decision would follow. *Local 36, Int'l Ass'n of Firefighters v. D.C. Dep't of Fire & Emergency Med. Servs.*, Slip Op. No. 1461, PERB Case No. 13-N-04 (2014). The Board's decision and the reasons therefor are as follows.

II. Discussion

A. Proposal 12

Eight of the Union's thirteen proposals concerned the selection of technicians. The Union discussed the proposals concerning the selection of technicians collectively at pages 8-10 of its brief. Opinion No. 1445 reproduced the text of each of the Union's proposals, including those concerning selection of technicians, and assigned to the proposals individual numbers, which the Motion for Reconsideration declines to use. One of the Union's proposals regarding selection of technicians, Proposal 12, was a new article XX of the CBA entitled "Selection Criteria of Special Operations Companies (Rescue Squads, Hazardous Materials Unit, Fireboat)." The Board held Proposal 12 to be nonnegotiable. The Motion for Reconsideration claims that the Union was referring to that proposal when it stated in the introduction to its brief:

> The Department's March 5 letter declared non-negotiability as to multiple issues contained in five separate articles under discussion in the parties' negotiations. The Union has since withdrawn one of the proposals, Special Operations Selection, and the issues relating to that proposal are therefore no longer before the PERB.

(Br. for Union at 2.) On that ground, the Motion for Reconsideration asserts that "PERB should vacate that portion of its Opinion relating to this proposal." (Mot. for Recons. 2.) The Agency responds that Proposal 12 was squarely before the Board, not removed from the Board's consideration, and remained before the Board until the decision. (Opp'n 11-12.)

The issue of the negotiability of the proposed article XX was joined as a result of the Agency's letter asserting nonnegotiability (Appeal Ex. 1 at 2), the Union's Appeal (Appeal ¶ 6), and the Agency's answer (Answer at 3). The Agency's letter asserting nonnegotiability inquired, "The Union had withdrawn Article XX (new article) Selection Criteria for Special Operations Companies – and has now revived it, I believe based on my October 26 letter. Is that correct?" (Appeal Ex. 1 at 2). The Appeal responded by presenting to the Board the issue of the negotiability of that proposal. (Appeal ¶ 6.) If the Union, having revived the proposal, withdrew

it again after filing the Appeal, it appears the Agency was not informed. The Agency's brief, filed the same day as the Union's, addresses the proposal and contends that it is nonnegotiable. (Br. for Agency at 10-11.)

Further, the Union did not seek leave to amend the appeal or request to withdraw the appeal regarding any proposal. *See Int'l Ass'n of Firefighters Local 36 v. D.C. Dep't of Fire & Emergency Med. Servs*, Slip Op. No. 754, PERB Case No. 04-N-02 (May 26, 2004) (granting a request to withdraw a negotiability appeal).

The Motion for Reconsideration fails to show if, when, and how Proposal 12 was withdrawn a second time, and the Union cannot claim that the Board granted leave to withdraw the negotiability appeal regarding the proposal. Therefore, the Motion for Reconsideration with respect to the Board's determination regarding Proposal 12 is denied.

B. Proposal 13

Proposal 13 is the Union's proposed section B of article 45 of the CBA. It has two parts as follows:

Section B(1): "The basic workweek for members working in the Fire Fighting Division shall be 42 hours averaged over a 4-week period."

Section B(2): "The work schedule for members working in the Fire Fighting Division shall be 24 hours on duty and 72 hours off duty." (Appeal Ex. 3 at 24.)

Two sections of the Comprehensive Merit Personnel Act ("CMPA") are particularly relevant to the negotiability of Proposal 13. In pertinent part, those sections provide:

> **§ 1-617.08. Management rights; matters subject to collective bargaining.**
>
> (a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:
>
> . . .
>
> (5) To determine:
>
> (A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;
>
> (B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty. . . .
>
> . . .

> (b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in § 1-617.16.
>
> **§ 1-617.17. Collective bargaining concerning compensation.**
>
> . . .
>
> (b) As provided in this section, the Mayor, the Board of Education, the Board of Trustees of the University of the District of Columbia, and each independent personnel authority, or any combination of the above ("management") shall meet with labor organizations ("labor") which have been authorized to negotiate compensation at reasonable times in advance of the District's budget making process to negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters. . . .

Based on its interpretation of those sections, the Union contends that Proposal 13 is a mandatory subject of bargaining pursuant either to section 1-617.17(b) because it involves hours or to section 1-617.08(b) because it does not involve a management right. The Motion for Reconsideration asserts that the Board did not fully address these arguments in its opinion. The Respondent's Opposition to the Petitioner's Motion for Reconsideration replies that the Motion for Reconsideration is based on a mere disagreement with the Board's decision. It demonstrates using multiple examples that the Union's arguments in the Motion for Reconsideration were made, considered, and then rejected by the Board (Opp'n 4), as the Union acknowledges by using the phrase "as we noted in our brief" and similar expressions as a refrain throughout its Motion for Reconsideration. (Opp'n 8.)

The outcome the Union desires—retention of existing language in the CBA—would have been permissible but for a 2005 amendment to the CMPA adding to section 1-617.08(a)(5) the management right to establish the tour of duty. In Proposal 13, the Union proposes a tour of duty for members working in the Fire Fighting Division. Therefore, Proposal 13 is nonnegotiable.

The Union argues that the law does not make establishing the tour of duty of employees a management right but instead makes establishing the tour of duty of *an agency* a management right. Proposal 13, the Union argues, involves hours, not tour of duty. These arguments are without merit as will be discussed below. We first address the Union's argument concerning section 1-617.08(a)(5)(A) and tour of duty, and we address second the Union's argument concerning section 1-617.17(b) and hours.

1. The Management Right to Establish the Tour of Duty pursuant to D.C. Official Code § 1-617.08(a)(5)(A)

Since its adoption in 1979, the CMPA has contained a list of management rights, which are permissive subjects of bargaining. The list is codified in the D.C. Official Code at section 1-617.08(a). One of the management rights the CMPA has recognized is the right to determine "[t]he number, types, and grades of positions of employees assigned to an agency's . . . tour of duty." D.C. Official Code § 1-617.08(a)(5)(B). In the Labor Relations and Collective Bargaining Amendment Act of 2004, which became effective April 12, 2005, the D.C. Council added the management right "to establish the tour of duty" (D.C. Official Code § 1-617.08(a)(5)(A)) to the list of management rights. D.C. Law 15-334 (Act 15-747), 52 D.C. Reg. 2012, 2013 (Mar. 4, 2005); *D.C. Fire & Emergency Med. Servs. and AFGE, Local 2721*, 54 D.C. Reg. 3167, Slip Op. No. 874 at p. 5 n.4, PERB Case No. 06-N-01 (2007).

The Union's argument that Proposition 13 is negotiable notwithstanding the management right to establish the tour of duty begins with the usage of "tour of duty" and related terms in the singular in subsection A and subsection B of section 1-617.08(a)(5).

> That provision references each agency individually, not collectively, and accordingly refers to "tour of duty" *in the singular for each agency*, and of a piece with the agency's "mission," its "budget," and its "organization." Thus, § 1-617.08(a) provides that "management" (singular) "shall retain the right . . . (5) [t]o determine [] (A) *the* mission of the agency" (singular), "its budget" (singular), "its organization" (singular) "the number of employees" (a single number) "and to establish *the* tour of duty" (singular).

(Mot. for Recons. 6.)

The Union contends that "the repeated references in subsection (a)(5) to 'the' tour of duty of an agency suggest that the Council contemplated adoption of a *single* 'tour of duty' by each agency- just as it contemplated adoption of a single mission, budget, and organization -- and confirms that the Council intended 'the tour of duty' to mean something other than the multiple work schedules or shifts with which most agencies operate." (Br. for Union 14-15.) What is a single tour of duty to be adopted by each agency? The Union proposes that it is "the agency's overall calendar of operations- the general periods during which it will need employees to work. . . ." (Br. for Union 19.) Proposal 13 does not affect the Agency's overall calendar of operations. (*Id.*) Thus, the Union maintains that "[n]one of the subjects addressed in the proposal constitute 'the establish[ment] of the tour of duty,' as that term is used in the management rights provision of the CMPA. . . ." (Mot. for Recons. 2.)

The foundation of the Union's argument is something that normally should be disregarded in statutory interpretation. The first canon of statutory interpretation enunciated in the D.C. Official Code provides, "Words importing the singular number shall be held to include

the plural, and vice versa, except where such construction would be unreasonable." D.C. Official Code § 45-602. The exception to this rule clearly does not apply to this case as a construction of "tour of duty" that includes the plural is reasonable whereas a construction of tour of duty that does not include the plural is unreasonable.

a. Construing tour of duty as used in § 1-617.08(a)(5(A) to include the plural is reasonable.

Construing the management right to establish the tour of duty to include the right to establish the tours of duty is reasonable because that construction allows the term to apply to the tours of duty of individual employees, a usage that is the ordinary—actually universal—usage. For example, the very phrase used in the statute, "establish the tour of duty," was used in the singular to refer to the tours of duty of a group of employees of an agency in *Social Security Administration Baltimore, Maryland and AFGE Council 220*, 58 F.L.R.A. 630 (2003). In that case, the Federal Labor Relations Authority ("FLRA") stated, "The Arbitrator's grant to these employees of 4 hours of administrative leave does not establish the tour of duty of these employees or change their regularly scheduled administrative workweek." *Id.* at 633.

Words that the legislature uses but does not define are to be given their ordinary, contemporary, and common meaning. *Wynn v. United States*, 80 A.3d 211, 218 (D.C. 2013); *W.H. v. D.W.*, 78 A.3d 327, 337 (D.C. 2013). The term tour of duty has a consistent meaning in the civilian public employee context. Everyone in the field—indeed including, as will be shown, the Union—uses tour of duty to refer to the tour of duty of an employee. The U.S. Office of Personnel Management has defined tour of duty to "mean[] the hours of a day (daily tour of duty) and the days of an administrative workweek (weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek." 5 C.F.R. §§ 550.103, 610.102. The FLRA has adopted this definition for purposes of 4 U.S.C. § 7106(b)(1), an analogous provision in the Federal Service Labor-Management Relations Statute. *U.S. Dep't of Justice Fed. Bureau of Prisons Mgt. & Specialty Training Center and AFGE Council Prison Locals C-33*, 56 F.L.R.A. 943, 945 (2000). Similarly, the Comptroller General defined "regular tour of duty during each administrative workweek," as used in the Annual and Sick Leave Act of 1951, to mean "a definite and certain time, day and hour of any day, during the workweek when the employee regularly will be required to perform duty." 31 Comp. Gen. 581, 584 (1952). The Department of Labor's definition of tour of duty for purposes of the Fair Labor Standards Act also focuses on the individual employee. 5 C.F.R. § 553.220(a).

More than one employee can be assigned to the same tour of duty just as more than one employee can be assigned to the same shift. *See* 19 U.S.C. § 1451 ("Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at night or on Sundays or holidays. . . .") Thus, the CMPA gives management the right to determine "[t]he number, types, and grades of positions of employees assigned to an agency's . . . tour of duty. . . ." D.C. Official Code § 1-617.08(a)(5)(B). Similar provisions make assignment of employees to a tour of duty a permissive subject of bargaining in the federal civil service, 5 U.S.C. § 7106(b)(1), and in the foreign service. 22 U.S.C. § 4105(b)(1).

In Opinion No. 1445 at pages 19-20, the Board gave examples from its opinions and from the D.C. Official Code in which tour of duty is used in a context making unmistakable that the term referred to the tour of duty of an employee or employees.[1] The Motion for Reconsideration responds that the Board "relies on a diffuse jumble of PERB decisions" (Mot. for Recons. 2) and a "moribund provision." (Mot. for Recons. 4.) That response does not even rise to the level of a mere disagreement. It is mere name-calling. The Union is correct, however, in noting that the cited cases do not have a holding on the meaning of tour of duty. (Mot. for Recons. 4-5.) Nonetheless, the cited cases reflect the ordinary and common meaning of tour of duty with which the Council would have been familiar. Because the ordinary and common meaning is being sought, the Union's remark that in some of the cited opinions "the term was used colloquially by the parties" (Mot. for Recons. 4) does not diminish the significance of those cases.

The Union tries unsuccessfully to explain away D.C. Official Code section 1-612.01, which uses the plural "tours of duty" four times. The Union claims that the statute deals with all agencies under the mayor and "[t]hus, the use of the plural 'tours' to refer collectively to the calendars of all agencies, is appropriate." (Mot. for Recons. 6.) Two of the uses of "tours of duty" in section 1-612.01 belie that claim. First, section 1-612.01(b) provides that "tours of duty shall be established to provide, *with respect to each employee* in an organization" (emphasis added) that certain parameters involving advance scheduling, hours of the day, hours of the workweek, and payment of overtime are met. An agency would not be paid overtime or receive its calendar of operations in advance. Second, section 1-612.01(c) provides, "Special tours of duty, of not less than 40 hours, may be established to enable employees to take courses in nearby colleges, universities or other educational institutions. . . ." Employees, not agencies, are given special tours of duty because employees, not agencies, will take courses in nearby educational institutions.

To the examples already given may be added countless cases from the D.C. Court of Appeals,[2] regulations of the District of Columbia,[3] federal cases,[4] federal regulations,[5] and state

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[1] *Police Dep't Labor Comm. v. Metro. Police Dep't*, 60 D.C. Reg. 9186, Slip Op. No. 1388 at p. 2, PERB Case No. 11-U-01 (2013); *AFGE, Local 3721 (on behalf of Chasin) v. D.C. Fire & Emergency Med. Servs. Dep't*, 59 D.C. Reg. 7288, Slip Op. No. 1251 at p. 4, 10-A-13 (2012); *D.C. Fire & Emergency Servs. Dep't and AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728 at pp. 2, 4 PERB Case No. 02-A-08 (2003); *Metro. Police Dep't and FOP, Metro. Police Dep't Labor Comm. (on behalf of Dolan)*, 45 D.C. Reg. 1468, Slip Op. No. 394 at p. 2, PERB Case No. 94-A-04 (1994); D.C. Code §1-612.01(b); D.C. Code § 5-501.02(b)(1)(D), (F).

[2] *E.g., Barnes v. United States*, 614 A.2d 902, 908, 910 (D.C. 1992); *Robinson v. United States*, 506 A.2d 572, 573 (D.C. 1986); *Grant v. D.C. Dep't of Employment Servs.*, 490 A.2d 1115, 1118 (D.C. 1985); *Hickenbottom v. D.C. Unemployment Comp. Bd.*, 273 A.2d 475, 476 (D.C. 1971).

[3] *E.g.*, D.C. Mun. Regs. tit. 6-B §§ 1133, 1137, 1204.2, 1205.3, 1205.6, 1210.3, 1263, 1616; D.C. Mun. Regs. tit. 30 § 5891.

[4] *E.g., United States v. Myers*, 320 U.S. 561, 569 (1944); *Hertz v. Woodbury County, Iowa*, 566 F.3d 775, 778-79 (8th Cir. 2009); *Curdy v. Dep't of Agric.*, 291 F.3d 1371, 1373 (Fed. Cir. 2002); *Swanks v. Washington Metro. Area Transit Auth.*, 179 F.3d 929, 936 n.8 (D.C. Cir. 1999); *Theiss v. Witt*, 100 F.3d 915, 917 (D.C. 1996); *Cutright v. United States*, 953 F.2d 619 (Fed. Cir. 1992).

[5] *E.g.*, 5 C.F.R. §§ 213.104(a)(2), 315.804(b), 531.403, 531.403, 531.405, 531.607, 532.504, 532.505(c), 550.143(b)(3); 7 C.F.R. § 354.1(a)(1), 9 C.F.R. §§ 97.1(a), 130.7(b), 149.8(a); 29 C.F.R. §§ 553.221(f), 553.225, 1615.605(f); 31 C.F.R. § 29.105(c)(3).

cases[6] that unambiguously speak of the tour of duty of an employee or employees and not the tour of duty of an agency or agencies.

The final example of the ordinary usage of the term is the very proposal the Union has placed at issue here. The Union's proposal is entitled "Tour of Duty." Proposal 13—section B of article 45, dated 9/26/12—appears in Exhibit 1 to the Appeal as follows:

> **Section B – Tour of Duty:**
>
> (1) The basic workweek for members working in the Fire Fighting Division shall be 42 hours averaged over a 4-week period.
>
> (2) The work schedule for members working in the Fire Fighting Division shall be 24 hours on duty and 72 hours off duty.

(Appeal Ex. 3 at 24.) Proposal 13 may retain existing contract language (Br. for Union 11), but in so doing it reflects the understanding of the parties on the actual meaning of tour of duty. Nothing prevented the Union from changing the title of its proposal if it honestly believed that the proposal does not fall under the rubric of tour of duty.

In addition, construing tour of duty in section 1-617.08(a)(5)(A) to include the plural is reasonable because doing so makes the phrase consistent with associated words in the section. The section refers to an agency's mission (§1-617.08(a)(5)(A)), organizational unit, and work project (§1-617.08(a)(5)(B)). Although those are singular nouns, an agency will have more than one of all of them. It is possible, but unlikely, that an agency could have only one mission, but that cannot be said of the Department of Fire *and* Emergency Medical Services.

b. Construing tour of duty as used in § 1-617.08(a)(5(A) to exclude the plural is unreasonable.

The meaning of tour of duty that the Union devised so that an agency could be said to have only one is purely fictional. The Board has cited numerous examples of tour of duty being used in caselaw and positive law where the context unambiguously shows that the tour of duty being discussed is the tour of duty of an employee or employees. The Union has cited no authority from any jurisdiction suggesting that tour of duty can refer to an agency's hours rather than an employee's, and the Board has found none. On the contrary, the Board notes that the FLRA held that establishing employees' tours of duty is "distinguishable from the determination of an agency's office hours." *Nat'l Labor Relations Bd. Union Local 21 v. Nat'l Labor Relations Bd.*, 36 F.L.R.A. 853, 860 (1990).

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[6] *E.g., City of Laredo v. Buenrostro*, 357 S.W.3d 118, 123 (Tex. App. 2011); *S. Park Twp. Police Ass'n v. Pa. Labor Relations Bd.*, 789 A.2d 874, 876 (Pa. Commw. Ct. 2002); *Kelly v. Safir*, 747 N.E.2d 1280, 1283 (N.Y. 2001); *Amalgamated Transit Union, Div. 1300 v. Mass Transit Admin.*, 504 A.2d 1132 (Md. App. 1986); *Valan v. Cuyahoga Cnty. Sheriff*, 499 N.E.2d 377, 378 (Ohio App. 1985).

If the Council had wanted to make establishing the calendar of agency operations a management right, it would not have used the term tour of duty, which means something else. Moreover, it is unclear why the Council would have wanted to amend the CMPA to make establishing "the general periods during which [an agency] will need employees to work" (Br. for Union 19) a management right, particularly in the case of agencies such as the Respondent. As the Union states, the Department of Fire and Emergency Medical Services must "operate 24 hours a day, seven days a week, every day of the year." (Br. for Union 10.) That duty leaves nothing for management to establish in the way of a "calendar of operations" of when the Respondent will need employees to work. Further, if tour of duty as used in section 1-617.08(a)(5)(B) also excludes the plural, then there is no content to the management right to determine "[t]he number, types, and grades of positions of employees assigned to an agency's . . . tour of duty" because there would be one tour of duty for all. The Union's statutory analysis is a transparent effort to nullify the 2005 amendment that made establishing the tour of duty a management right. "An interpretation of the statute that nullifies some of its language is neither reasonable nor permissible." *Goba v. D.C. Dep't of Employment Servs.*, 960 A.2d 591, 594 (D.C. 2008).

In conclusion, the interpretation of tour of duty proposed by the Union in which the singular does not include the plural and in which the term refers to the calendar of operations of an agency is unreasonable. Conversely, an interpretation of tour of duty in which the singular includes the plural and in which the term refers to the hours of the day and the days of the week when an employee or employees regularly perform duty is reasonable and consistent with canons of statutory interpretation.

2. Management's Duty to Negotiate Hours pursuant to D.C. Official Code § 1-617.17(b)

The Union's second argument for its position that "tour of duty" does not include Proposal 13 is that "tour of duty" must be distinguished from "hours" and "workweek," terms also used in the CMPA. Section 1-617.17(b) makes "hours" a mandatory subject of collective bargaining concerning compensation. The Union argues:

> The "tour of duty" is *not* "hours," a term included within the list of subjects specifically made negotiable by § 1-617.17(b). Nor is it either "the basic workweek" or employees' "hours of work." This latter point is confirmed by the Council's use of all three terms – "tour of duty," "basic workweek," and "hours of work" – in a *different* provision of the CMPA, § 1-612.01(a)(2), and its distinction of each term from the other.

(Br. for Union 15.) Section 1-612.01(a)(2) gives the Board of Education and the Board of Trustees of the University of the District of Columbia a statutory right to establish "[t]he basic workweek, hours of work, and tour of duty for all employees. . . ." The Union argues that

"whatever an agency's 'tour of duty' may include, it denotes something distinctly different from the 'basic workweek' and employees' 'hours of work.'" (Br. for Union 18.)

The Union does not explain its assumption that the terms cannot overlap in this statutory scheme. The statute the Union relies on reveals that they do. Section 1-612.01(b) and (c) demonstrate that hours are a component of tour of duty. Subsection (b) requires that tours of duty be established so that "[t]he basic 40 hour workweek is scheduled on 5 days, Monday through Friday" with the same working hours in each day. Subsection (c) provides that "[s]pecial tours of duty, of not less than 40 hours, may be established. . . ."

From the premise that hours and tour of duty must denote something distinctly different, the Union then gives the terms meanings that are not just distinctly different but mutually exclusive. The Union does this by proposing an expansive, but inaccurate, definition of the hours of an employee and a fictitious definition of tour of duty that does not involve the employee.

With regard to hours, the Union asserts that there is "no basis to give the term 'hours,' as used in this provision of the CMPA, anything other than its ordinary meaning under labor law, which includes not only the quantity of hours but 'the particular hours of the day and the particular days of the week during which employees shall be required to work.'" (Mot. for Recons. 8) (quoting *Local Union No. 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676, 691 (1965)). In reality, what the Supreme Court defined in *Meat Cutters* was "wages, hours, and other terms and conditions of employment" (section 8(d) of the National Labor Relations Act) rather than just "hours." The Union concealed that fact by omitting without ellipses the second half of the quoted sentence in its Motion for Reconsideration (Mot. for Recons. 8) and by replacing "wages, hours, and other conditions of employment" with "[subjects]" in its original brief. (Br. for Union 16.) The Court actually said, "[W]e think that the particular hours of the day and the particular days of the week during which employees shall be required to work are subjects well within the realm of 'wages, hours, and other terms and conditions of employment' about which employers and unions must bargain." *Meat Cutters*, 381 U.S. at 691 (quoting National Labor Relations Act, § 8(d)).[7]

With regard to tour of duty, the Union invents a meaning that is not only distinctly different from hours and workweek but also, as discussed, distinctly different from the actual meaning of tour of duty and from any useful management prerogative. *See supra* pp. 5-9. The result of the Union's distinction between hours and tour of duty is that the duty to bargain over hours provided by section 1-617.17(b) reduces the management right to establish the tour of duty provided by section 1-617.08(a)(5)(A) to the meaningless function of establishing a calendar of operations. "[O]ne part of a statute must not be construed so as to render another part meaningless." *Matter of T.L.J.*, 413 A.2d 154, 158 (D.C. 1980).

[7]The National Labor Relations Act, it should be added, is not analogous to the CMPA on the subject of management rights as it lacks a corresponding provision granting management rights. *AFGE, Local 1000 v. D.C. Dep't of Employment Servs.*, 60 D.C. Reg. 16455, Slip Op. No. 1434 at p. 4, PERB Case No. 13-U-07 (2013).

Section 1-617.17(b) can be harmonized with section 1-617.08(a)(5)(A) without rendering the management right meaningless or rendering tour of duty and hours of work "redundant." (Br. for Union 18-19.) Section 1-617.17 is entitled "Collective bargaining concerning compensation." It requires negotiation "with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and *any other compensation matters*." D.C. Official Code § 1-617.17(b) (emphasis added). Thus, a proposal regarding hours or any other subject matter listed in section 1-617.17(b) is negotiable to the extent it addresses or determines compensation. *Int'l Ass'n of Firefighters, Local 36 v. D.C. Fire & Emergency Med. Servs. Dep't*, 45 D.C. Reg. 8080, Slip Op. No. 505 at p. 4, PERB Case No. 97-N-01 (1997); *Teamsters Local No. 639 and D.C. Pub. Schs.*, 38 D.C. Reg. 6693, Slip Op. No. 263 at p. 12, PERB Case Nos. 90-N-02, 90-N-03, and 90-N-04 (1990). The Board has recognized that the duty to negotiate hours in collective bargaining concerning compensation is subject to statutory exceptions:

> While, generally, "hours" has been statutorily prescribed as a compensation matter subject to negotiations, other provisions of the CMPA except from the duty to negotiate, certain aspects of both compensation and noncompensation terms and conditions of employment for certain personnel authorities. . . . This dichotomy under the CMPA --subjecting matters to the collective bargaining process and providing exceptions or reservations to those matters-- has been addressed by the Board more often under D.C. Code Sec. 1-618.8 [the present D.C. Official Code § 1-617.08] entitled "Management rights; matters subject to collective bargaining".

Teamsters Local Unions No. 639 and 730 v. D.C. Pub. Schs., 43 D.C. Reg. 3545, Slip Op. No. 377 at p. 6 n.5, PERB Case No. 94-N-02 (1994). *See also Washington Teachers' Union Local 6 v. D.C. Pub. Schs.*, 46 D.C. Reg. 8090, Slip Op. No. 450 at p. 17, PERB Case No. 95-N-01(1995) (holding a compensation matter subject to management rights under D.C. Code § 1-618.8(a)(3) (now D.C. Official Code § 1-617.08(a)(3))).

An exception to the duty to bargain over hours applies in the present case. As noted, the Council amended section 1-617.08(a)(5) in 2005 to add the management right to establish the tour of duty. D.C. Law 15-334 (Act 15-747), 52 D.C. Reg. 2012, 2013 (Mar. 4, 2005). This amendment was adopted after section 1-617.17(b). In adopting the amendment, the Council exempted the right to establish the tour of duty from the obligation of personnel authorities to negotiate the compensation matters set forth in section 1-617.17(b) and exempted that right from matters deemed negotiable pursuant to section 1-617.08(b).

The tour of duty exception leaves intact the duty to bargain over any other aspect of hours that relates to compensation but not to tour of duty, such as a proposal providing for additional compensation when an employee's days off or the hours of his tour of duty are temporarily rescheduled to meet manpower requirements. In addition, a proposal that "establishes the hours for which overtime will be paid . . . is negotiable." *Int'l Ass'n of Firefighters, Local 36 and D.C.*

Fire & Emergency Med. Servs. Dep't, 45 D.C. Reg. 8080, Slip Op. No. 505 at p. 4, PERB Case No. 97-N-01 (1997).

Citing the foregoing case, Case No. 97-N-01, the Union implies in a footnote in its brief that the first part of Proposal 13, section B(1) of article 45, is a proposal establishing the hours for which overtime will be paid:

> As the PERB has previously noted, the language of Section B.1 is intended to establish the number of regular non-overtime hours members must work before they are entitled to overtime pay. The PERB has agreed that this is a negotiable matter. *Local 36 v. DCFEMS*, Opinion No. 505, 97-N-01 (1997) at p. 2 (1997). *See also Local 36 v. DCFEMS*, Opinion No. 515, 97-N-01 (1997) (on reconsideration), at p. 3 (1997) ("the subject(s) of a negotiability appeal, and the context in which its negotiability is appealed is determined by the petitioner, not the party declaring the matter nonnegotiable.") This previous ruling is dispositive of the issue.

(Br. for Union 12 n.5.) Case No. 97-N-01 cannot be dispositive because it was decided before the enactment of the Labor Relations and Collective Bargaining Amendment Act of 2004. Contrary to the Union's characterization of Case No. 97-N-01, the Board did not, and could not, opine at that time on what the language of Proposal 13 in the present case is "intended to establish." Rather, the Board noted what the Union expressly contended in that case: "IAFF contends that this provision establishes when a member is entitled to overtime pay, i.e., hours worked during a work week that exceed 42 hours." *Int'l Ass'n of Firefighters*, Slip Op. No. 505 at 2. Similarly, in the present case the Board accepted the Union's interpretation of Proposal 4 and held the proposal negotiable as so interpreted. Opinion No. 1445 at p. 12. In denying a motion for reconsideration filed in Case No. 97-N-01, the Board explained, "Our Decision does not ignore the Respondent's authority to establish basic hours of work for employees, rather, the Respondent's authority was simply not the issue of negotiability presented by the Petitioner's Appeal." *Int'l Ass'n of Firefighters, Local 36 and D.C. Fire & Emergency Med. Servs. Dep't*, 45 D.C. Reg. 4760, Slip Op. No. 515 at p. 2, PERB Case No. 97-N-01 (1997).

In contrast, the Union herein expressly raised the non-compensation issue of the Agency's authority to establish the hours in question: "[T]he Union's proposal to retain the current 24/72 work schedule is either expressly negotiable as a compensation matter under § 1-617.17(b), or, in the alternative, is not excepted from the scope of negotiations by 1-617.08(a)(5)(A), and is therefore negotiable as a non-compensation matter." (Br. for Union 22-23.) The Agency argued that the Union did not frame the issue as being an issue of when an employee is entitled to overtime, noting that the Appeal did not reference overtime, and further argued that the proposal should be treated as a proposal to establish hours of work. (Br. for Agency 11-12.) In the absence of a reference to overtime pay in the proposal or an explanation from the Union of how the proposal is confined to overtime pay, the Board concludes that Section B(1) cannot be given a construction limiting it to the determination of when a member is entitled to overtime pay.

3. Negotiability

Proposal 13 falls into the exception to the duty to bargain created by the management right to establish the tour of duty as construed herein. Proposal 13 establishes the hours of the day and the days of the week when members in the Fire Fighting Division would regularly be required to perform their duty. Section B(2) of article 45 sets the hours of the day and the days of the week as being a 24-hour day followed by three days off duty. Over a four-week period, this tour of duty averages to 42 hours a week because in three of the weeks two 24-hour days would fall and in one week only one 24-hour day would fall. Section B(2) precludes any other daily tour of duty (such as 12-hour days or 8-hour days) or weekly tour of duty (such as two or more consecutive days of work). Section B(1) precludes tours of duty that do not average 42 hours per week over a four-week period.

The Union argues that its proposal cannot be regarded as establishing a tour of duty because it does not specify the starting and ending time of shifts:

> [T]he term "tour of duty" as used *in the very decisions PERB cites* involves only the *starting and ending times* of shifts – not the total number of hours in a "basic workweek," or the length or frequency of shifts worked by employees, either individually or collectively. Nothing in the Union's proposed Article 45, Section B specifies the starting and ending times of shifts; and, if as PERB suggests, that is what "tour of duty" means, the Union's proposal is obviously negotiable.

(Mot. for Recons. 5.) Actually, in two of the cases cited in Opinion No. 1445 tour of duty is used without reference to the starting and ending time of shifts. One of the cases quotes a collective bargaining agreement providing, "Emergency Ambulance Bureau personnel shall work twelve (12) hour shifts as their normal scheduled daily tour of duty. . . ." *D.C. Fire & Emergency Servs. Dep't and AFGE, Local 3721*, 51 D.C. Reg. 4158, Slip Op. No. 728 at p. 2 n.5, PERB Case No. 02-A-08 (2003). Another case involved "MPD's decision to temporarily alter the tour of duty of all sworn staff members of the Department's Training division, by changing their hours of work on Fridays." *Metro. Police Dep't and FOP, Metro. Police Dep't Labor Comm. (on behalf of Dolan)*, 45 D.C. Reg. 1468, Slip Op. No. 394 at p. 2, PERB Case No. 94-A-04 (1994). The Union characterizes that case as involving "alteration of precise hours to be worked on Fridays." (Mot. for Recons. 5.) The adjective "precise" is the Union's interposition. It is not supported by anything in the opinion.

As those cases reflect, it is not necessary to specify a starting and ending time to specify a tour of duty. The FLRA has discussed tours of duty whose terms are very much like Proposal 13's and whose terms do not specify starting and ending times. Those tours of duty include "tours of duty consisting of 24 hours on duty and 48 hours off duty," *AFGE Local 1770 and U.S. Department of the Army Headquarters, XVIII Airborne Corps*, 48 F.L.R.A. 117, 117-18 (1983), a "biweekly tour of duty of 90 hours, consisting of five 18-hour days of Monday, Wednesday,

and Friday of one week and Tuesday and Thursday of the other week," *AFGE Local 1815 and U.S. Department of the Army, Army Aviation Center Fort Rucker, Alabama*, 56 F.L.R.A. 992, 992 (2000), and a "tour of duty of 53 hours in a 7-day work period, 212 hours in a 28-day work period, or the same ratio of tour of duty to work periods for any period between 7 and 28 days." *U.S. Dep't of the Navy Naval Air Station Corpus Christi, Tex. and Nat'l Fed'n of Fed. Employees Local 797*, 36 F.L.R.A. 935, 938-39 (1990). In addition, the FLRA held an eight-hour day as well as five calendar days of eight hours each to be tours of duty. *U.S. Dep't of Justice Fed. Bureau of Prisons Mgt. & Specialty Training Center and AFGE Council Prison Locals C-33*, 56 F.L.R.A. 943, 945 (2000); *Gen. Servs. Admin. and Journeyman Pipefitters & Apprentices Local No. 602*, 42 F.L.R.A. 121, 128 (1991) (respectively). Similarly, 24 hours on duty followed by 72 hours off duty, averaging 42 hours a week across four weeks is, as the title of the Union's proposal announces, also a tour of duty.

Therefore, Proposal 13 infringes upon the management right to establish the tour of duty provided by section 1-617.08(a)(5)(A). As result, it is not negotiable as a compensation matter pursuant to section 1-617.17(b), nor is it negotiable as a non-compensation matter pursuant to section 1-617.08(b) because it is, in the words of that section, a matter "proscribed by this subchapter."

In light of the above, we find that the Motion for Reconsideration has failed to provide a basis for reversal of the Board's order in Opinion No. 1445. Therefore, we deny the Petitioner's Motion for Reconsideration.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

May 7, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 13-N -04 was transmitted via File & ServeXpress to the following parties on this the 7th day of May 2014.

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NOTICE OF PUBLIC MEETING

Wednesday, June 4, 2014
200 I Street SE Washington, DC 20001

The District of Columbia Commission on the Martin Luther King, Jr. Holiday will hold its open public meeting on Wednesday, June 4, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission will be in attendance to discuss program events being planned for 2014 and for January 15, 2015.

The regular monthly meetings of the District of Columbia Commission on the Martin Luther King, Jr. Holiday are held in open session on the first Wednesday of the month, except for the month of August. If you have any questions or concerns, please feel free to contact Sharon Anderson at sharond.anderson@dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DC TAXICAB COMMISSION

NOTICE OF GENERAL COMMISSION MEETING

The District of Columbia Taxicab Commission will hold its regularly scheduled General Commission Meeting on Wednesday, June 11, 2014 at 10:00 am. The meeting will be held in the Old Council Chambers at 441 4th Street, NW, Washington, DC 20001.

The final agenda will be posted no later than seven (7) days before the General Commission Meeting on the DCTC website at www.dctaxi.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Commission on any issue of concern; the Commission generally does not answer questions. Statements are limited to five (5) minutes for registered speakers and two (2) minutes for non-registered speakers. To register, please call 202-645-6018 (ext. 4) no later than 3:30 pm on June 10, 2014. Registered speakers will be called first, in the order of registration. A fifteen (15) minute period will then be provided for **all** non-registered speakers. **Registered speakers must provide ten (10) printed copies of their typewritten statements to the Secretary to the Commission no later than the time they are called to the podium.**

DRAFT AGENDA

I. Call to Order

II. Commission Communication

III. Commission Action Items

IV. Government Communications and Presentations

V. General Counsel's Report

VI. Staff Reports

VII. Public Comment Period

VIII. Adjournment

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

Audit & Tax Preparation

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor to audit year-end financial statements and prepare tax filings for the school.

Bidders must be listed on the DC Public Charter School Board's **Approved Auditor List** for Fiscal Years 2014 and 2015.

The **full RFP is available** at http://www.thurgoodmarshallacademy.org/about/71/employment-opportunities

Note also:

CBE Registration (optional/a plus): Contractors may submit their registration number as a DC Community Business Enterprise ("CBE") if registered with the DC Department of Small & Local Business Development.

Non-debarment: By submitting a bid, contractors affirm that they (and lessors/subcontractors, if any) are not an excluded party by or disbarred from doing business with or accepting funds from either the U.S. federal government or the government of the District of Columbia.

RFP Amendments: Amendments and extensions of the RFP—if any—will be published exclusively on the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

Contact: For further information regarding the RFP contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit proposals—including signed contract, contact information, and website address—no later than **5:00 pm Washington, DC, time, on Friday, June 13, 2014,** via e-mail to **dschlossman@tmapchs.org**.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

Building Engineering, Housekeeping, and Security

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor or vendors to provide one or all of the following:

1) building engineering,
2) housekeeping, and/or
3) security services.

The school will consider bids that cover only one of these services or a combination of services. **All bids must identify which of the three services it covers and itemize fees.**

Full RFP Instructions

- **Building Engineering & Housekeeping:** The **full RFP is available** at http://www.thurgoodmarshallacademy.org/about/71/employment-opportunities
- **Security Services:** E-mail request for full RFP to **dschlossman@tmapchs.org** no later than 5 pm on June 12, 2014 along with (1) business license or comparable document; (2) current insurance certificate; and (3) e-mail address and contact name to which RFP should be sent.

Note also:

CBE Registration (optional/a plus): Contractors may submit their registration number as a DC Community Business Enterprise ("CBE") if registered with the DC Department of Small & Local Business Development.

Non-debarment: By submitting a bid, contractors affirm that they (and lessors/subcontractors, if any) are not an excluded party by or disbarred from doing business with or accepting funds from either the U.S. federal government or the government of the District of Columbia.

RFP Amendments: Amendments and extensions of the RFP—if any—will be published exclusively on the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

Contact: For further information regarding the RFP contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit proposals—including signed contract, contact information, and website address—no later than **5:00 pm Washington, DC time, on Friday, June 13, 2014,** via e-mail to **dschlossman@tmapchs.org**.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

Information Technology (IT) Support

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor to maintain information technology services and provide helpdesk services.

The **full RFP is available** at http://www.thurgoodmarshallacademy.org/about/71/employment-opportunities

Note also:

CBE Registration (optional/a plus): Contractors may submit their registration number as a DC Community Business Enterprise ("CBE") if registered with the DC Department of Small & Local Business Development.

Non-debarment: By submitting a bid, contractors affirm that they (and lessors/subcontractors, if any) are not an excluded party by or disbarred from doing business with or accepting funds from either the U.S. federal government or the government of the District of Columbia.

RFP Amendments: Amendments and extensions of the RFP—if any—will be published exclusively on the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

Contact: For further information regarding the RFP contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit proposals—including signed contract, contact information, and website address—no later than **5:00 pm Washington, DC time, on Friday, June 13, 2014,** via e-mail to **dschlossman@tmapchs.org**.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

IT Hardware Access Management Lockers

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor to design, fabricate, and install an intelligent access management system (a.k.a. "smart lockers") for on-campus student access to IT hardware such as laptops or tablets.

The **full RFP is available** at http://www.thurgoodmarshallacademy.org/about/71/employment-opportunities

Note also:

CBE Registration (optional/a plus): Contractors may submit their registration number as a DC Community Business Enterprise ("CBE") if registered with the DC Department of Small & Local Business Development.

Non-debarment: By submitting a bid, contractors affirm that they (and lessors/subcontractors, if any) are not an excluded party by or disbarred from doing business with or accepting funds from either the U.S. federal government or the government of the District of Columbia.

RFP Amendments: Amendments and extensions of the RFP—if any—will be published exclusively on the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

Contact: For further information regarding the RFP contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit proposals—including signed contract, contact information, and website address—no later than **5:00 pm Washington, DC time, on Friday, June 13, 2014,** via e-mail to **dschlossman@tmapchs.org**.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF REQUEST FOR PROPOSALS

Special Education Services

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks a vendor to provide special education services.

The **full RFP is available** at http://www.thurgoodmarshallacademy.org/about/71/employment-opportunities

Note also:

CBE Registration (optional/a plus): Contractors may submit their registration number as a DC Community Business Enterprise ("CBE") if registered with the DC Department of Small & Local Business Development.

Non-debarment: By submitting a bid, contractors affirm that they (and lessors/subcontractors, if any) are not an excluded party by or disbarred from doing business with or accepting funds from either the U.S. federal government or the government of the District of Columbia.

RFP Amendments: Amendments and extensions of the RFP—if any—will be published exclusively on the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

Contact: For further information regarding the RFP contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

Deadline & Submission: Submit proposals—including signed contract, contact information, and website address—no later than **5:00 pm Washington, DC time, on Friday, June 13, 2014,** via e-mail to **dschlossman@tmapchs.org**.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

The Washington Latin Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors for each of the 8 services listed below.

Business Services:

1. Technology consulting – support the school's technology needs with installation, maintenance, repair, and professional development
2. Accounting services – accounting consulting services
3. Auditing services – DCPCSB approved auditor to perform annual audit and OBM Circular A-133 Audit for the School and its QALICB.
4. Copier Services–provide copier contract, service and maintenance

Insurance services:

5. Employee Benefits – provide health and life insurance for 85+ employees
6. Business Insurance – business insurance coverage for public charter school

School services:

7. Cleaning services with the implementation of green cleaning program – daily cleaning services after school for school's newly renovated 67,000 sf facility
8. Bus service – daily round trip bus service from three DC locations to the school in morning and afternoon; and additional services as needed

Questions and proposals may be e-mailed to gizurieta@latinpcs.org with the subject line in the type of service. Deadline for submissions is **12pm June 9, 2014**. Appointments for presentations will be scheduled at the discretion of the school office after receipt of proposals only. No phone calls please.

E-mail is the preferred method for responding but you can also mail proposals and supporting documents to the following address:

Washington Latin Public Charter School
Attn: Finance Office
5200 2nd Street NW
Washington, DC 20011

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, June 5, 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 May 1, 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18723 of 2101 Morning Bright LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy (§ 772) rear yard (§ 774) and off-street parking location (§ 2116.12) requirements, and a special exception from the rooftop structure requirements under § 770.6(b), to allow the construction of a mixed-use residential building with ground floor retail in the Arts/C-2-B District at 2105 10th Street, N.W. (Square 358, Lots 5, 6 and 802).[1]

HEARING DATES: March 11, 2014[2] and May 20, 2014
DECISION DATE: May 20, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (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") 1B, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a timely report dated May 9, 2014, indicating that at a regularly scheduled, properly noticed meeting of the ANC on May 1, 2014, with a quorum present, the ANC voted 8:0:2 to support the application. (Exhibit 46.) The ANC also submitted a report dated May 2, 2014, indicating its support of the application for variance and special exception relief. (Exhibit 41.) The Office of Planning ("OP") submitted a timely supplemental report in support of the application. (Exhibit 45.) In its original report, OP had stated that it could not recommend approval. (Exhibit 33.) OP noted in its report of May 13, 2014, that subsequent to OP's original report, the Applicant had received a postponement of the BZA hearing and worked with Historic Preservation staff and the Public Space Committee staff to revise the submission and that OP supported the application as revised. (Exhibit 45.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application. (Exhibit 34.)

Letters of support for the application were submitted by ANC 1B Design Review Committee (Exhibits 40, 31), Councilmember Jim Graham (Exhibit 40), four letters from area neighbors and businesses (Exhibit 40), and from neighbors Matt Sloan and William

[1] The Applicant amended the application by adding the requests for a variance under § 2116.12 (Exhibit 28) and for special exception under § 770.6(b). (Exhibit 32.) The caption has been revised accordingly.

[2] This application was postponed from the March 11, 2014 public hearing. (Exhibit 37.)

Lange (Exhibit 38). A witness Jerry Johnson testified in support of the application at the hearing.

There were two party status applications in opposition. The application for party status in opposition from Urbaniak LLC was affirmatively withdrawn. (Exhibit 47.) The application for party status in opposition from Dave Stirpe (Exhibit 29) was implicitly withdrawn as Mr. Stirpe was not present at the hearing.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances under § 3103.2 from the strict application of the lot occupancy (§ 772) rear yard (§ 774) and off-street parking location (§ 2116.12) requirements under those provisions of the Zoning Regulations. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

The Applicant satisfied the burden of § 3119.2 in its request for special exception relief from the rooftop structure requirements under § 770.6(b), to allow the construction of a mixed-use residential building with ground floor retail in the Arts/C-2-B District pursuant to § 3104.1. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 770.6(b) that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 40 AND THE FOLLOWING CONDITION:**

1. The Applicant shall have the design flexibility to change approved plans after a review by the historic preservation office, provided there is no new zoning relief required or any increase in the approved relief.

VOTE: **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to APPROVE; S. Kathryn Allen, not present or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 23, 2014

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18744 of SB-Urban LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the court width requirements under § 536.3, a variance from the requirement to maintain existing parking under § 2100.10, a special exception from the requirement to provide additional parking for an addition to an historic resource under § 2120.6, and a special exception from the roof structure setback and uniform enclosing wall height requirements under § 411.11, for an apartment building in the DC/SP-1 District at premises 15 DuPont Circle, N.W. (Square 136, Lot 34).[1]

HEARING DATE: May 6, 2014
DECISION DATE: May 6, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 3.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 2B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2B, which is automatically a party to this application. ANC 2B submitted a timely written report, dated March 17, 2014, in which the ANC stated that at a properly noticed, regularly scheduled public meeting held on March 12, 2014, with a quorum present, the ANC voted unanimously (7:0) to support the application's request for zoning relief. (Exhibit 21.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 25.) The District Department of Transportation ("DDOT") submitted a letter recommending "no objection" subject to conditions. (Exhibit 26.)

Two witnesses testified in opposition to the project.

Variance Relief

[1] The Applicant amended the relief requested by eliminating the request for a variance from the parking requirements of § 2101.1 and adding a special exception from the requirement to provide additional parking for an addition to an historic resource under § 2120.6. (Exhibit 24.) The caption reflects those changes.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application of the court width requirements under § 536.3 and a variance from the requirement to maintain existing parking under § 2100.10 for an apartment building in the DC/SP-1 District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the requirement to provide additional parking for an addition to an historic resource under § 2120.6, and a special exception from the roof structure setback and uniform enclosing wall height requirements under § 411. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 2120.6, and 411 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 24A AND THE FOLLOWING CONDITIONS**:

1. The Applicant shall have flexibility to modify the design of the building to address any comments from the D.C. Historic Preservation Review Board

(HPRB), or HPRB staff, during final review of the project so long as such modifications do not require any additional areas of relief or substantial impact on the Approved Plans submitted to the BZA.

2. The Applicant shall implement the following Transportation Demand Management measures which shall:

   a. Designate a member of the property management team as a Transportation Management Coordinator (TMC). The TMC shall provide information to residents identifying the available alternative modes of transportation and other supportive programs.

   b. Direct new residents to the property's website, which will include information on transportation options.

   c. Provide a transportation information screen in a common, shared space in the building that will show real time availability information for nearby trains, buses, and other transportation alternatives.

   d. Restrict tenants from eligibility for Residential Parking Permit (RPP) for the blocks surrounding the property. The Applicant shall record this restriction in a covenant that runs with the land with the Recorder of Deeds.

   e. Provide at least 31 secured, covered bicycle parking spaces within the building and at least four bicycle parking spaces in public space near the building's entrance, the latter subject to approval by public space officials.

   f. Provide a bicycle repair facility within the building.

   g. Provide a minimum of 10 bicycle helmets for use by the residents of the building.

   h. Offer Capital Bikeshare to all new tenants who do not otherwise own a bicycle for the initial term of each lease in perpetuity.

   i. Offer membership in a car-share program to all new tenants for the initial term of their lease in perpetuity.

   j. Designate a loading management coordinator to coordinate all loading activities of the building and require all tenants to notify the loading management coordinator before moving in or out. Tenants requiring a moving truck shall provide the loading management coordinator the following information: time and date that the truck is anticipated to arrive, size of truck being used, and name of moving service, if applicable; and in the event that a moving truck is required, the loading management coordinator or tenant shall

apply for DDOT Emergency No Parking signs to establish a temporary loading area. "Emergency No Parking" permits for loading are only eligible to be located in legal parking spaces, which are currently not located immediately adjacent to the subject site.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

VOTE: **4-0-1** (Robert E. Miller, Marnique Y. Heath, Lloyd L. Jordan, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen, not participating or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 20, 2014

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

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART

THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18750 of Abraham Oonnoonny, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory apartment within an existing one-family dwelling under subsection 202.10, in the R-2 District at premises 1005 Otis Street, N.E. (Square 3882, Lot 39).

HEARING DATE: May 13, 2014
DECISION DATE: May 13, 2014

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 5B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5B, which is automatically a party to this application. ANC 5B did not file a report or participate in this application. The Office of Planning ("OP") submitted a report in support of the application. (Exhibit 25.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 210. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 210, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 8**.**

VOTE: 4-0-1 **(**Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Robert E. Miller to Approve; S. Kathryn Allen not present, not voting.)

BZA APPLICATION NO. 18750
PAGE NO. 2

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 21, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18756 of Robert D. and Siska Shaw, pursuant to 11 DCMR § 3104.1, for a special exception for an addition to an existing semi-detached dwelling under section 223, not meeting the lot area (section 401), lot occupancy (section 403) and side yard (section 405) and nonconforming structure (subsection 2001.3), in the R-4 District at premises 630 A Street, S.E. (Square 869, Lot 57).

HEARING DATE: May 20, 2014
DECISION DATE: May 20, 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") 6B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a letter in support of the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application.

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 7 - Plans) be **GRANTED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Peter G. May, Marnique Y. Heath and Jeffrey L. Hinkle

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: May 20, 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18758 of James T. Mahoney, pursuant to 11 DCMR § 3104.1, for a special exception for a third floor addition to an existing one-family row dwelling under section 223, not meeting the lot area/width requirements under section 401, the lot occupancy requirements under section 403, and the nonconforming structure requirements under subsection 2001.3, in the R-4 District at premises 1402 E Street, S.E. (Square 1042E, Lot 43).

HEARING DATE: May 20, 2014
DECISION DATE: May 20, 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") 6B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a letter in support of the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application. The Capitol Hill Restoration Society submitted a letter in opposition 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 7 - Plans) be **GRANTED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle and Peter G. May 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: May 20, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18761 of Michael Knipe and Rosemary Harold, pursuant to 11 DCMR §§ 1202.1 and 3104.1, for a special exception for a rear addition to an existing one-family dwelling under section 223, not meeting the lot area (section 401), lot occupancy (section 403), court (section 406) and nonconforming structure (subsection 2001.3) requirements in the CAP/R-4 District at premises 103 4th Street, N.E. (Square 34, Lot 815).

DECISION DATE: May 20, 2014

SUMMARY ORDER

SELF-CERTIFIED

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

Pursuant to 11 DCMR § 3181 this application was tentatively placed on the Board's expedited calendar for decision without hearing as a result of the applicant's waiver of their right to a hearing. The Board waived the late filing of the affidavit of posting.

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") 6C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C did not participate in 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 letter of no objection. The Architect of the Capitol submitted a report of no objection to the application.

No objections to expedited calendar consideration were made by any person or entity entitled to do by §§ 2118.6 and 2118.7 and no requests for party status were received. The matter was therefore called on the Board's expedited calendar for the date referenced above and the Board voted to grant 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.

Based upon the record before the Board and having given great weight to the OP report, 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 Exhibits 9 – Plans) be **GRANTED.**

VOTE: **5-0-0** (Lloyd J. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, S. Kathryn Allen and Peter G. May to APPROVE.

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: May 20, 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.

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PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

PUBLIC NOTICE OF CLOSED MEETING

In accordance with § 405(c) of the Open Meetings Act, D.C. Official Code § 2-575 (c), on May 20, 2014, the Board of Zoning Adjustment voted 4-0-1, to hold closed meetings telephonically on Monday, June 2, 9, 16, and 24, 2014, beginning at 4:00 pm for the purpose of obtaining legal advice from counsel and/or to deliberate upon, but not voting on the cases scheduled to be publicly heard or decided by the Board on the day after each such closed meeting, as those cases are identified on the Board's agendas for June 3, 10, 17, and 24, 2014; and in accordance with § 407 of the District of Columbia Administrative Procedure Act, the Board will hold a closed meeting on Tuesday, May 13, 2014, at 1:00 p.m. for the purpose of conducting internal training, pursuant to § 405(b)(12) of the Open Meetings Amendment Act of 2010, following which will be a closed meeting for the purpose of obtaining legal advice from counsel and to deliberate upon, but not voting on Appeal Number 17109, as permitted by Sections 405(b)(4) and (b)(13) of the Act.

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

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