VOL. 61 – NO. 27 FRIDAY, JUNE 27, 2014

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes Law 20-108, Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014
- DC Council schedules a public oversight hearing on the creation of the Homeless Prevention Program
- Department of Insurance, Securities and Banking updates guidelines for the operation of the foreclosure mediation program
- DC Taxicab Commission updates compliance standards for payment service providers
- Office of the State Superintendent of Education announces funding availability for Fiscal Year 2015 Out-of-School Time Services for children in the Temporary Assistance to Needy Families Program
- Department of Housing and Community Development solicits six offers for the development of 27 District-owned properties
- Department of Housing and Community Development updates home purchase assistance program income limits
- Department of Small and Local Business Development announces funding availability for the DC Clean Team Program

DISTRICT OF COLUMBIA REGISTER

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

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DISTRICT OF COLUMBIA
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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 20-108

"Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 20-181 on first and second readings February 4, 2014, and March 4, 2014, respectively. Following the signature of the Mayor on April 8, 2014, pursuant to Section 404(e) of the Charter, the bill became Act 20-307 and was published in the April 18, 2014 edition of the D.C. Register (Vol. 61, page 3892). Act 20-307 was transmitted to Congress on April 28, 2014 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 20-307 is now D.C. Law 20-108, effective June 10, 2014.

PHIL MENDELSON
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

April 28,29,30

May 1,2,5,6,7,8,9,12,13,14,15,16,19,20,21,22,23,27,28,29,30

June 2,3,4,5,6,9

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-350

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on an emergency basis, due to congressional review, the District of Columbia Traffic Act, 1925, to clarify the requirements for receipt of a limited purpose driver's license, permit, or identification card.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Driver's Safety Clarification Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Section 8c(a)(2) of the District of Columbia Traffic Act, 1925, effective January 17, 2014 (D.C. Law 20-62; D.C. Official Code § 50-1401.05(a)(2)), is amended to read as follows:

"(2)(A) Has not been assigned a social security number;

"(B) Has been assigned a social security number but cannot establish legal presence in the United States at the time of application; or

"(C) Is ineligible to obtain a social security number; and".

Sec. 3. Applicability.

This act shall apply as of June 10, 2014.

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

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
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-351

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on an emergency basis, due to congressional review, the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013 and the Department of Transportation Establishment Act of 2002 to clarify the authority of the Director of the District Department of Transportation ("DDOT") to enter into an agreement pursuant to 49 U.S.C. § 5310 and a payment agreement for services related to DDOT's review of proposed and existing projects.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Infrastructure Mitigation Clarification Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Section 2(a) of the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-68; 60 DCR 19), is amended to read as follows:

"(a) Section 3(f) D.C. Official Code 50-921.02(f)) is amended to read as follows:

"(f)(1) The Director may:

"(A) With respect to the program established pursuant to 49 U.S.C. § 5310 (the "5310 Program"):

"(i) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

"(ii) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

"(iii) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

"(iv) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

"(B) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment for:

"(i) The costs of DDOT's review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT's ability to manage and maintain the transportation infrastructure or public space in the District;

"(ii) The implementation of transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure or public space in the District or on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; or

"(iii) The cost of both review and the implementation of mitigation measures; and

"(C) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor's authority under the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

"(2) A payment, improvement, and mitigation measure required under an agreement authorized by paragraph (1)(B) of this subsection shall be reasonably related to:

"(A) The costs incurred by DDOT in reviewing the project;

"(B) The effects of the project on the transportation infrastructure or public space in the District; and

"(C) The effects of the project on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District.

"(3) A payment made pursuant to an agreement authorized by paragraph (1)(B) of this subsection shall be in addition to, and not in lieu of, a payment required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), or Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*).".

Sec. 3. Section 3(f) of The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14–137; D.C. Official Code § 50–921.02(f)), is amended to read as follows:

"(f)(1) The Director may:

"(A) With respect to the program established pursuant to 49 U.S.C. § 5310 (the "5310 Program"):

"(i) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

"(ii) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

"(iii) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program

guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

"(iv) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

"(B) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment for:

"(i) The costs of DDOT's review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT's ability to manage and maintain the transportation infrastructure or public space in the District;

"(ii) The implementation of transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure or public space in the District or on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; or

"(iii) The cost of both review and the implementation of mitigation measures; and

"(C) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor's authority under the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*).

"(2) A payment, improvement, and mitigation measure required under an agreement authorized by paragraph (1)(B) of this subsection shall be reasonably related to:

"(A) The costs incurred by DDOT in reviewing the project;

"(B) The effects of the project on the transportation infrastructure or public space in the District; and

"(C) The effects of the project on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District.

"(3) A payment made pursuant to an agreement authorized by paragraph (1)(B) of this subsection shall be in addition to, and not in lieu of, a payment required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10-1101.01 *et seq.*), or Title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*).".

Sec. 4. Applicability.

This act shall apply as of June 12, 2014.

Sec. 5. 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)).

ENROLLED ORIGINAL

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), 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
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-352

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on an emergency basis, due to congressional review, the Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004 to permit the information provided by District tobacco wholesalers to be shared with the multistate data clearinghouse created to implement a term sheet agreed to by the District and Participating Manufacturers and related to the Master Settlement Agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tobacco Product Manufacturer Reserve Fund Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Section 6(b) of the Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004, effective April 22, 2004 (D.C. Law 15-150; D.C. Official Code § 7-1803.05(b)), is amended as follows:

(a) Strike the phrase "Corporation Counsel" wherever it appears and insert the phrase "Attorney General" in its place.

(b) A new sentence is added at the end to read as follows:

"The Attorney General may also disclose the information received under this act with the data clearinghouse created to implement the term sheet agreed to by the District and Participating Manufacturers, and given effect by a March 12, 2013, arbitral award.".

Sec. 3. Applicability.

This act shall apply as of June 10, 2014.

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

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
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-353

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on an emergency basis, due to congressional review, the Recreation Act of 1994 to clarify that the Department of Parks and Recreation's implementation of its nutritional requirements is not contingent upon promulgation of unrelated regulations concerning field and facility permitting.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Parks and Recreation Fee-based Use Permit Authority Clarification Congressional Review Emergency Amendment Act of 2014".

Sec. 2. Section 7a(b)(2) of the Recreation Act of 1994, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-307(b)(2)), is amended by striking the phrase "section 3(b-1) and (d), section 3a, and section 3b" and inserting the phrase "section 3(b-1) and (d) and section 3a" in its place.

Sec. 3. Applicability.

This act shall apply as of June 12, 2014.

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

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
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-354

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on a temporary basis, the Vending Regulation Act of 2009 and Chapter 5 of Title 24 of the District of Columbia Municipal Regulations, to re-establish criminal penalty provisions for violations of regulations implementing the Vending Regulation Act of 2009.

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

Sec. 2. Section 9 of the Vending Regulation Act of 2009, effective October 22, 2009 (D.C. Law 18-71; D.C. Official Code § 37-131.08), is amended as follows:

(a) The existing text is designated as subsection (a).

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

"(b) Any person who violates any of the provisions of this act or any regulations issued pursuant to this act shall, upon conviction, be subject to a fine of not more than $300, a term of imprisonment of not more than 90 days, or both, for each violation.".

Sec. 3. Chapter 5 of Title 24 of the District of Columbia Municipal Regulations is amended by adding a new subsection 575.4 to read as follows:

"575.4 A person convicted of violating any provision of this chapter shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment for not more than ninety (90) days, or both, for each such offense.".

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.

(a) 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)(l) of the District of Columbia Home Rule Act, approved

ENROLLED ORIGINAL

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

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-355

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 17, 2014

To amend, on a temporary 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 Temporary 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.

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

ENROLLED ORIGINAL

"(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 as follows:

(1) Paragraph (14) is amended by striking the word "and" at the end.

(2) Paragraph (15) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (16) is added to read as follows:

"(16) Information exempt from disclosure pursuant to section 7e of the State Education Office Establishment Act of 2000, passed on 2nd reading on June 3, 2014 (Enrolled version of Bill 20-748).".

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.

(a) 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.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
June 17, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-356

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To amend, on a temporary 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 Temporary 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.

"(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).".

ENROLLED ORIGINAL

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.

(a) 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.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
June 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-357

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To require the holder of a permit or license for a special event to provide infrastructure onsite for the separation and recycling of recyclable waste generated at the event if 100 or more attendees are anticipated.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Special Event Waste Diversion Amendment Act of 2014".

Sec. 2. Section 47-2826 of the District of Columbia Official Code is amended by adding a new subsection (d) to read as follows:

"(d)(1) A person or entity granted a license in accordance with this section for an event where 100 or more attendees are anticipated shall provide infrastructure onsite for the separation and recycling of recyclable waste generated at the event.

"(2) A license holder who violates paragraph (1) of this subsection shall be subject to a fine of up to $5,000 per day.

"(3) The Mayor, pursuant to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this subsection, including a fee to offset the cost of implementation.".

Sec. 3. The District of Columbia Municipal Regulations is amended as follows:

(a) Section 1301 of Title 19 (19 DCMR § 1301) is amended by adding a new subsection 1301.9 to read as follows:

"1301.9 A person or entity granted a permit in accordance with this section for an event where 100 or more attendees are anticipated shall provide infrastructure onsite for the separation and recycling of recyclable waste generated at the event. A permit holder who violates this subsection shall be subject to a fine of up to $5,000 per day.".

(b) Section 700 of Title 24 (24 DCMR § 700) is amended by adding a new subsection 700.3 to read as follows:

"700.3 A person or entity granted a permit in accordance with this chapter for an event where 100 or more attendees are anticipated shall provide infrastructure onsite for the separation and recycling of recyclable waste generated at the event. A permit holder who violates this subsection shall be subject to a fine of up to $5,000 per day.".

ENROLLED ORIGINAL

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 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
June 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-358

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To approve, on an emergency basis, Option Period Four of Task Order No. DCTO-2010-T-0100 with Sprint Communications Company, L.P., to continue to supply the District with wireless telecommunications products and services and other products and support services related to enterprise communications and information technology, and to authorize payment for the services received and to be received under the Task Order.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Option Period Four of Task Order No. DCTO-2010-T-0100 with Sprint Communications Company, L.P., 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 approves the exercise of Option Period Four of Task Order No. DCTO-2010-T-0100 with Sprint Communications Company, L.P., to continue to supply the District with wireless telecommunications products and services and other products and support services related to enterprise communications and information technology, and authorizes payment in an amount not to exceed $2,024,410.83 for services received and to be received under the Task Order.

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
June 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-359

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To approve, on an emergency basis, Change Orders Nos. 001 and 002 to Contract No. DCAM-12-M-1031H-FM with MCN Build, LLC, for design-build services for Powell Elementary School, and to authorize payment to MCN Build, LLC, in the aggregate amount of $20,446,980.57 for the goods and services received and to be received under these change orders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Change Orders Nos. 001 and 002 to Contract No. DCAM-12-M-1031H-FM 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 approves Change Orders Nos. 001 and 002 to Contract No. DCAM-12-M-1031H-FM with MCN Build, LLC, for design-build services for Powell Elementary School, in the aggregate amount of $20,446,980.57, and authorizes payment for the goods and services received and to be received under these change orders.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal 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
June 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-360

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To approve, on an emergency basis, Modification Nos. 10 and 10A to Contract No. DCKA-2011-C-0026 to Parkmobile USA, Inc. for providing services that allow residents and tourists to participate in the District's Cellular Phone Payment Method for Digital Parking Meters using credit and debit cards and smart phone apps and to authorize payment for services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,That this act may be cited as the "Modification Nos.10 and 10A to Contract No. DCKA-2011-C-0026 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 10 and 10A to Contract No. DCKA-2011-C-0026 to Parkmobile USA, Inc for providing services that allow residents and tourists to participate in the District's Cellular Phone Payment Method for Digital Parking Meters using credit and debit cards and smart phone apps, and authorizes payment in the amount of $4,363,360 for the services received and to be received under the modifications.

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
June 18, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-361

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUNE 18, 2014

To approve, on an emergency basis, Modification Nos. 12 and 13 to Contract No. DCKA-2009-C-0123 with C&D Tree Service, Inc. to provide tree removal services for the District's Department of Transportation and to authorize payment for 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. DCKA-2009-C-0123 Modification Nos. 12 and 13 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 12 and 13 to Contract No. DCKA-2009-C-0123 with C&D Tree Service, Inc. to provide tree removal services to the District's Department of Transportation, and authorizes payment in the amount of $1,051,200 for services received and to be received under this 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
June 18, 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

B20-832 Douglas Knoll, Golden Rule, 1728 W Street, and Wagner Gainesville Real Property Tax Exemption Act of 2014

Intro. 06-13-14 by Councilmember Evans and referred to the Committee on Finance and Revenue

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B20-837 Rent Control Improvement and Protection Amendment Act of 2014

Intro. 06-17-14 by Councilmember Graham and referred to the Committee on Business, Consumer, and Regulatory Affairs

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B20-838 Home Care Agency Living Wage Exemption Regulation Amendment Act of 2014

Intro. 06-18-14 by Councilmember Alexander and referred to the Committee on Health

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PROPOSED RESOLUTIONS

PR20-855 Sense of the Council of the District of Columbia in Support of Renaming a Portion of International Place N.W. for Dr. Liu Xiaobo Resolution of 2014

Intro. 06-17-14 by Chairman Mendelson at the request of the Mayor and retained by the Council

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PROPOSED RESOLUTIONS CON'T

PR20-856 Chief Tenant Advocate of the Office of the Tenant Advocate Johanna Shreve Confirmation Resolution of 2014

Intro. 06-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-858 5201 Hayes Street, N.E., Surplus Declaration and Approval Resolution of 2014

Intro. 06-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-859 5201 Hayes Street, N.E., Disposition Approval Resolution of 2014

Intro. 06-13-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Economic Development

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PR20-865 District of Columbia Commission on Human Rights Michael Ward Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-866 District of Columbia Commission on Human Rights Earline Budd Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-867 District of Columbia Commission on Human Rights Matthew McCollough Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-868 Board of Occupational Therapy Roxanne Arneaud Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-869 Board of Occupational Therapy Charles Bond Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PROPOSED RESOLUTIONS CON'T

PR20-870 Board of Occupational Therapy Tracey Ellis Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-871 Board of Pharmacy Alan Friedman Confirmation Resolution of 2014

Intro. 06-16-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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Council of the District of Columbia
Committee on Human Services
NOTICE OF PUBLIC OVERSIGHT HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004 **REVISED/ABBREVIATED**

THE COMMITTEE ON HUMAN SERVICES
JIM GRAHAM, CHAIRMAN

ANNOUNCES A PUBLIC OVERSIGHT HEARING ON

"THE CREATION OF THE HOMELESS PREVENTION PROGRAM"

AND

B20-0767, THE "DIGNITY FOR HOMELESS FAMILIES AMENDMENT ACT OF 2014"

AND

BILL 20-795, THE "DC GENERAL SHORT-TERM PLAYGROUND AMENDMENT ACT OF 2014"

WEDNESDAY, JULY 2, 2014 AT 11:00 A.M.

ROOM 123
THE JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

Councilmember Jim Graham, Chairperson of the Committee on Human Services, announces a public oversight hearing on "The Creation of the Homeless Prevention Program", Bill 20-767, the "Dignity for Homeless Families Amendment Act of 2014", and Bill 20-795, the "DC General Short-Term Playground Amendment Act of 2014. The hearing will be held on Wednesday, July 2, 2014 at 11:00 a.m., in Room 123 of the John A. Wilson Building. **This revised notice reflects a rescheduled hearing date from June 30, 2014 to July 2, 2014, a change in the room from 500 to 123, and the addition of a topic of oversight. This hearing notice is also abbreviated to provide timely notice to the public.**

The purpose of this hearing is to allow for public comment on the creation of a program within the Department of Human Services to assist families who are at-risk of becoming homeless and consider how this program will relate to the existing TANF Employment Program. Bill 20-767 would also amend the Homeless Services Reform Act of 2005 to establish a definition for the term "private room" and to clarify homeless families' rights to access shelter services. Bill 20-795 would amend the Homeless Services Reform Act of 2005 to require the identification of a public space suitable for a playground for children at DC General Family Shelter.

Those who wish to testify should contact Mr. Malcolm Cameron of the Committee on Human Services by e-mail at mcameron@dccouncil.us or by telephone at (202) 724-8191 by May 6, 2014. E-mail contacts to Mr. Cameron should include the residential ward, full name, title, and affiliation -- if applicable -- of the person(s) testifying. Witnesses should bring 15 copies of their written testimony to the hearing. Witnesses representing an organization should limit their testimony to five minutes; individual witnesses will have three minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Human Services, 1350 Pennsylvania Avenue, N.W., Room 116, Washington, D.C. 20004, no later than 5:30 p.m., July 14, 2014.

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

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

on

the Status of Rates for Home Health Agencies in the District of Columbia

Wednesday, July 9, 2014
12:00 p.m., Room 123, 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 oversight roundtable regarding the status of rates for home health agencies in the District of Columbia. The roundtable will be held at 12:00 p.m. on Wednesday, July 9, 2014 in Room 123 of the John A. Wilson Building.

The purpose of this public oversight roundtable is to provide the public with an opportunity to comment on the financial status of home health agencies in the District of Columbia regarding the rate reimbursements they receive.

Those who wish to testify should contact Ronald King, Senior Policy Advisor, at (202) 741-0909 or via e-mail at rking@dccouncil.us and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, July 7, 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, July 7, 2014, the testimony will be distributed to Councilmembers before the roundtable. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted either to Ms. Rayna Smith at rsmith@dccouncil.us, or to Ms. Nyasha Smith, Secretary to the Council, Room 5 of the Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004. The record will close at 5:00 p.m. on July 23, 2014.

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

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

PR20-0790 "District of Columbia Board of Library Trustees Vincent S. Morris Confirmation Resolution of 2014", PR20-781 "District of Columbia Board of Library Trustees Karma A. Cottman Confirmation Resolution of 2014", and PR20-0709 "Public Charter School Board Enrique Cruz Confirmation Resolution of 2014"

on

Tuesday, July 1, 2014, at 10:00 am
Room 123, John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington, DC 20004

David Catania, Chair of the Committee on Education, announces a public roundtable of the Committee on Education. The public roundtable will take place at 10:00 am on Tuesday, July 1, 2014 in Room 123 of the John A. Wilson Building.

The purpose of this roundtable is to discuss the nomination of Vincent S. Morris and Karma A. Cottman for the District of Columbia Board of Library Trustees. Additionally, the Committee would like to hear from the public regarding the nomination of Enrique "Rick" Cruz to the District of Columbia Public Charter School Board.

Those who wish to testify are asked to telephone the Committee on Education at 202-724-8061, or e-mail Jamaal Jordan, at jjordan@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by the close of business on Friday, June 27, 2014. Persons wishing to testify are encouraged, but not required, to submit 5 copies of written testimony. Panels will have five minutes collectively to present their testimony. Individuals will have three minutes to present their testimony.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee on Education, Council of the District of Columbia, 1350 Pennsylvania Avenue, N.W., Suite 119, Washington, DC 20004. The record will close at 5:00 p.m. on Monday, July 7, 2014.

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 20-842, the 1300 H Street, N.E., Surplus Declaration and Approval Resolution of 2014,

Proposed Resolution 20-843, the 1300 H Street, N.E., Disposition Approval Resolution of 2014

AND

Proposed Resolution 20-858, the 5201 Hayes Street, N.E., Surplus Declaration and Approval Resolution of 2014,

Proposed Resolution 20-859, the 5201 Hayes Street, N.E., Disposition Approval Resolution of 2014

JULY 3, 2014
10:00 A.M.
ROOM 500
JOHN A. WILSON BUILDING
1350 PENNSYLVANIA AVENUE, N.W.

On Thursday, July 3, 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 20-842, the 1300 H Street, N.E., Surplus Declaration and Approval Resolution of 2014; Proposed Resolution 20-843, the 1300 H Street, N.E., Disposition Approval Resolution of 2014; Proposed Resolution 20-858, the 5201 Hayes Street, N.E.,

Surplus Declaration Resolution of 2014; and Proposed Resolution 20-859, the 5201 Hayes Street, N.E., Disposition Approval Resolution of 2014.

Proposed Resolutions 20-842 and 20-843 will, respectively, declare District owned property at 1300 H Street, N.E., as surplus, and authorize the Office of the Deputy Mayor for Planning and Economic Development to sell the property to Rise Development/H Street CDC. The proposed redevelopment project of the former R. L. Christian Community Library would result in 8,000 square feet of retail, 30-45 residential units with a minimum of six affordable units, and approximately 8 parking spaces. The chosen development team will also name the redevelopment after Mr. R. L. Christian, a community activist and teacher for the District of Columbia Schools, and include a plaque memorializing his lifetime accomplishments in the ground floor market.

Proposed Resolutions 20-858 and 20-859 will, respectively, declare District owned property at 5201 Hayes Street, N.E., as surplus, and authorize the Office of the Deputy Mayor for Planning and Economic Development to dispose of the land by transferring it to a Development team. This team, comprised of the Warrenton Group, LLC, and Pennrose Properties, LLC, proposes to build approximately 150 affordable residential units. 50 of these units will be replacement affordable units associated with the New Communities Initiative for households earning at or below 30% of the Area Median Income. The remaining 100 units will be affordable units for households earning at or below 60% of Area Median Income.

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 July 2, 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.

B20-843, "Small and Certified Business Enterprise Development and Assistance Waiver Certification Temporary Amendment Act of 2014", **B20-846**, "Nationwide Mortgage Licensing System Conformity Temporary Act of 2014", and **B20-848**, "Small and Certified Business Enterprise Development and Assistance Clarification Temporary Amendment Act of 2014" were adopted on first reading on June 24, 2014. These temporary measures were considered in accordance with Council Rule 413. A final reading on these measures will occur July 14, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 17, 2014, PR 20-863 the “Reprogramming No. 20-196 Disapproval Resolution of 2014" to disapprove Reprogramming 20-196. The request to reprogram $2,500,000 of Fiscal Year 2014 Local funds budget authority from Non-Public Tuition (NPT) to the Office of the State Superintendent of Education (OSSE) and the Department of Employment Services (DOES) was filed in the Office of the Secretary on June 3, 2014. This reprogramming is needed for the early childhood education subsidy and to DOES for the Summer Youth Employment Program stipends and transportation.

The Council review period for Reprogramming 20-196 has been extended to 30 days, ending on Thursday, July 3, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Friday, July 4, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-873 the “Reprogramming No. 20-198 Disapproval Resolution of 2014" to disapprove Reprogramming 20-198. The request to reprogram $1,108,688 of Fiscal Year 2014 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) was filed in the Office of the Secretary on June 18, 2014. This reprogramming will allow the agency to support the rehabilitation of K Street Over Center Leg Freeway to include modifications to its electrical and mechanical systems.

The Council review period for Reprogramming 20-198 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-874 the “Reprogramming No. 20-199 Disapproval Resolution of 2014" to disapprove Reprogramming 20-199. The request to reprogram $611,130 of Fiscal Year 2014 Local funds budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on June 18, 2014. This reprogramming is needed to replenish the healthcare budget authority that was diverted from the general inmate population to the Central Cell Block (CCB) unit and to procure food for CCB detainees.

The Council review period for Reprogramming 20-199 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-875 the “Reprogramming No. 20-201 Disapproval Resolution of 2014" to disapprove Reprogramming 20-201. The request to reprogram $634,850 of Fiscal Year 2014 Local funds budget authority within the Department of Health (DOH) was filed in the Office of the Secretary on June 18, 2014. This reprogramming is needed to fund the procurement of the Birth and Electronic Death System, temporary contracts with Midtown and Motir Services, and the procurement of information technology contracts and hardware.

The Council review period for Reprogramming 20-201 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-876 the "Reprogramming No. 20-202 Disapproval Resolution of 2014" to disapprove Reprogramming 20-202. The request to reprogram $3,400,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the Department of General Services (DGS) to the operating funds budget of the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on June 18, 2014. This reprogramming supports the costs of completing the African American Civil War Memorial, to be located in the former Grimke School, located at 1925 Vermont Avenue, NW.

The Council review period for Reprogramming 20-202 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-877 the “Reprogramming No. 20-203 Disapproval Resolution of 2014" to disapprove Reprogramming 20-203. The request to reprogram $1,276,373 of Fiscal Year 2014 Local funds within the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on June 18, 2014. This reprogramming ensures that operating expenditures are properly recorded within personal and nonpersonal services categories.

The Council review period for Reprogramming 20-203 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

Notice of Reprogramming Disapproval

Chairman Mendelson filed on June 19, 2014, PR 20-878 the “Reprogramming No. 20-204 Disapproval Resolution of 2014" to disapprove Reprogramming 20-204. The request to reprogram $1,274,976 of Fiscal Year 2014 funds, within the Department of Youth Rehabilitation Services (DYRS) was filed in the Office of the Secretary on June 18, 2014. This reprogramming ensures that DYRS will be able to support security services at the Youth Services Center and the New Beginnings Youth Development Center.

The Council review period for Reprogramming 20-204 has been extended to 30 days, ending on Friday, September 19, 2014. If the Council does not adopt a resolution of approval or disapproval during this period, the reprogramming will be deemed approved on Saturday, September 20, 2014.

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. 20-198: Request to reprogram $1,108,688 of Fiscal Year 2014 Special Purpose Revenue funds budget authority from the District Department of Transportation (DDOT) was filed in the Office of the Secretary on June 18, 2014. This reprogramming will allow the agency to support the rehabilitation of K Street Over Center Leg Freeway to include modifications to its electrical and mechanical systems.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-199: Request to reprogram $611,130 of Fiscal Year 2014 Local funds budget authority within the Department of Corrections (DOC) was filed in the Office of the Secretary on June 18, 2014. This reprogramming is needed to replenish the healthcare budget authority that was diverted from the general inmate population to the Central Cell Block (CCB) unit and to procure food for CCB detainees.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-200: Request to reprogram $300,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment to the Operating funds budget of the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on June 18, 2014. This reprogramming will ensure that the budget is disbursed from the appropriate fund.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-201: Request to reprogram $634,850 of Fiscal Year 2014 Local funds budget authority within the Department of Health (DOH) was filed in the Office of the Secretary on June 18, 2014. This reprogramming is needed to fund the procurement of the Birth and Electronic Death System, temporary contracts with Midtown and Motir Services, and the procurement of information technology contracts and hardware.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-202: Request to reprogram $3,400,000 of Pay-As-You-Go (Paygo) Capital funds budget authority and allotment from the Department of General Services (DGS) to the operating funds budget of the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary on June 18, 2014. This reprogramming supports the costs of completing the African American Civil War Memorial, to be located in the former Grimke School, located at 1925 Vermont Avenue, NW.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-203: Request to reprogram $1,276,373 of Fiscal Year 2014 Local funds within the Department of Parks and Recreation (DPR) was filed in the Office of the Secretary on June 18, 2014. This reprogramming ensures that operating expenditures are properly recorded within personal and nonpersonal services categories.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-204: Request to reprogram $1,274,976 of Fiscal Year 2014 funds, within the Department of Youth Rehabilitation Services (DYRS) was filed in the Office of the Secretary on June 18, 2014. This reprogramming ensures that DYRS will be able to support security services at the Youth Services Center and the New Beginnings Youth Development Center.

RECEIVED: 14 day review begins June 19, 2014

Reprog. 20-205: Request to reprogram $567,626 of Fiscal Year 2014 Local funds budget authority within the Office of Attorney General was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to facilitate the procurement of essential furniture and equipment to support the conversion of the agency's law library into a moot court training facility for its attorneys.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-206: Request to reprogram $569,173 of Capital Funds Budget Authority and Allotment within the District Department of Transportation was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to properly align the Master Project, Operations, Safety and System Efficiency (OSS00A) budgets with the Federal Highway Administration's (FHA) obligation for the current fiscal year and future spending.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-207: Request to reprogram $225,852 of Capital Funds Budget Authority and Allotment within the District Department of Transportation was filed in the Office of the Secretary on June 20, 2014.This reprogramming is needed to properly align the Master Project Operations, Safety and System Efficiency (OSS00A) budgets with the Federal Highway Administration's (FHA) obligations for current fiscal year and future spending.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-208: Request to reprogram $590,000 of Local Funds Budget Authority within the Department of Employment Services was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that DOES will be able to procure Information Technology services to build a construction industry portal that will enable the agency to track compliance of District hiring requirements of residents for construction jobs.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-209: Request to reprogram $1,458,334 of Local Funds Budget Authority within the Office of Unified Communications (OUC) was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that the OUC will be able to support upgrades to enhance 911 and 311 service delivery.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-210: Request to reprogram $754,188 of Special Purpose Revenue Funds Budget Authority within the District Department of the Environment was filed in the Office of Secretary on June 20, 2014. This reprogramming is needed to make unspent FY 2014 Evaluation, Measurement and Verification (EM and V0 funds available to the District of Columbia Sustainable Energy Utility for contract performance, including developing and implementing energy efficiency and renewable energy programs and services.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-211: Request to reprogram $1,000,000 of Local Funds Budget Authority within the Office of the State Superintendent of Education was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that OSSE will be able to fund Special Education Data Systems that support compliance with the Individuals with Disabilities Education Act (IDEA) and the Blackman Jones consent decree.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-212: Request to reprogram for $1,938,609 of Local Funds Budget Authority within the Department of Health Care Finance (DHCF) was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that DHCF is able to properly realign its personal services budget, provide adequate funding for contracts, and mitigate Medicaid Personal Care Assistance (PCA) fraud.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-213: Request to reprogram $25,061 of Capital Funds Budget Authority and Allotment from the District of Columbia Public Schools to the Department of General Services was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to support the costs of developing the Property Use and Tracking System (PUTS) at DGS.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-214: Request to reprogram $3,500,000 of Local Funds Budget Authority from the Child and Family Services Agency to the Children and Youth Investment Collaborative was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that the Children and Youth Investment Collaborative (CYIC) will be able to support events and activities as part of the District's 2014 One City Summer initiative.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-215: Request to reprogram $20,223,866 of Local Funds Budget Authority within the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that DCPS' budget is properly aligned to support the Partnership for Assessment of Readiness for College and Careers (PARCC), DCPS' family engagement partnerships, substitute teachers, the Washington Teachers Union (WTU) contract, security, and other required school-based services.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-216: Request to reprogram $600,000 of Local Funds from the Department of Behavioral Health to the Children and Youth Investment Collaborative (CYIC) was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that CYIC will be able to support the Mayor's Mental Health Action Plan for the District's youth and young adults.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-217: Request to reprogram $1,200,000 of Local Funds Budget Authority within the Department of Behavioral Health was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to provide funding for the purchase of drugs to treat patients at St. Elizabeth's Hospital with Hepatitis C and to update equipment for the agency's new records management system.

RECEIVED: 14 day review begins June 23, 2014

Reprog. 20-218: Request to reprogram $990,000 of Local Funds Budget Authority within the Office of the Chief Technology Officer (OCTO) was filed in the Office of the Secretary on June 20, 2014. This reprogramming is needed to ensure that OCTO is able to meet its obligation under the Cooperative Agreement WSCA-AR-233 to procure software and hardware maintenance.

RECEIVED: 14 day review begins June 23, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Re-advertisement

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Hearing Date:	August 25, 2014
Protest Hearing Date:	October 15, 2014

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

WARD 2 ANC 2C SMD 2C01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the petition date. The Protest Hearing Date is scheduled for October 15, 2014 at 1:30 pm.

NATURE OF OPERATION

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

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES

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

ALCOHOLIC BEVERAGE REGULATION ADMINSITRATION

NOTICE OF PUBLIC HEARING

Correction

Posting Date:	June 13, 2014
Petition Date:	July 28, 2014
Hearing Date:	August 11, 2014
License No.	ABRA-077730
Licensee:	Caribbean Vibes, Inc.
Trade Name:	Club Timehri
License Class:	Retailer's Class "C" Tavern
Address	2439 18th Street, NW

WARD: 1 ANC: 1C SMD: 1C07

The Alcoholic Beverage Regulation Administration (ABRA) provides notice that the licensee has filed a petition to amend or terminate the settlement agreement or settlement agreements attached to its license.

The current parties to the agreement(s) are: ANC 1C, The Kalorama Citizens Association*, and Club Timehri, Inc.

The petition may be obtained by contacting ABRA's Public Information Office at 202-442-4423.

Any objectors are entitled to be heard before the granting of such a request on the Hearing Date at 1:30 pm, 2000 14th Street, N.W., 400 South, Washington, D.C., 2000. Petitions or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Roll Call Hearing Date:	August 25, 2014
Protest Hearing Date:	October 15, 2014
License No.:	ABRA-95570
Licensee:	Custom 1635 CT, LLC
Trade Name:	Custom Fuel Pizza and Salads
License Class:	Retailer's Class "C" Restaurant
Address:	1635 Connecticut Ave., NW
Contact:	Paul Strauss: 202-220-3100

WARD 2 ANC 2B SMD 2B03

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 October 15, 2014 at 4:30 pm.

NATURE OF OPERATION

Restaurant featuring rapidly prepared Custom Pizzas, Fresh Salad's and Snacks. No live entertainment. Seats 96, Occupancy Load 96

HOURS OF OPERATION

Sunday through Saturday: 11am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Hearing Date:	August 25, 2014
Protest Hearing Date:	October 15, 2014

License No.:	ABRA-095249
Licensee:	El Pulgarcito Restaurant, LLC
Trade Name:	El Pulgarcito
License Class:	Retailer's Class "C" Tavern
Address:	5313 Georgia Avenue NW
Contact:	Jeff Jackson 202-251-1566

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 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 October 15, 2014 at 1:30 pm.

NATURE OF OPERATION
There will be a full menu serving Salvadorian food at all times. The entertainment will be dancing and a DJ. The number of seats is 95. The total occupancy load is 95.

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

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday 10 am- 2 am Monday through Thursday 9 am – 2 am Friday and Saturday 9 am – 3 am

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday 6 pm – 2 am Friday and Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Roll Call Hearing Date:	August 25, 2014
License No.:	ABRA-072358
Licensee:	J. Paul's DC, LLC
Trade Name:	J. Paul's
License Class:	Retailer's Class "C" RESTAURANT
Address:	3218 M ST., NW
Contact:	Andrew Kline: 202-686-7600

WARD 2 ANC 2E SMD 2E05

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

NATURE OF SUBSTANTIAL CHANGE
Request to add Entertainment Endorsement to license

APPROVED HOURS OF OPERATION
Sunday through Thursday: 10:00am-2:00am, Friday and Saturday: 10:00am-3:00am

APPROVED HOURS OF ALCOHOLIC BEVERAGE SALES AND CONSUMPTION
Sunday through Thursday: 11:30am-1:30am, Friday & Saturday: 11:30am-2:00am

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday: 6pm-2am, Friday & Saturday: 6pm-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Hearing Date:	August 25, 2014
Protest Hearing Date:	October 15, 2014

License No.:	ABRA-095398
Licensee:	Crave, LLC
Trade Name:	Mess Hall
License Class:	Retailer's Class "C" Tavern
Address:	703 Edgewood Street, NE
Contact:	Alan Goldberg 202-550-8780

WARD 5 ANC 5E SMD 5E03

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 October 15, 2014 at 1:30 pm.

NATURE OF OPERATION
Cooking classes, demonstrations and food related events will be provided. The menus may include sandwiches and light fare. The number of seats is 50. The total occupancy load is 199.

HOURS OF OPERATION
Sunday through Saturday 24 Hours

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: June 27, 2014
Petition Date: August 11, 2014
Hearing Date: August 25, 2014

License No.: ABRA-024470
Licensee: Magic Meals Inc
Trade Name: Nooshi
License Class: Retailer's Class "C" Restaurant
Address: 1120 19th Street, N.W.
Phone: Chrissie Chang, 703-992-3994

WARD 2 ANC 2B SMD 2B06

Notice is hereby given that this licensee who has applied for a substantial change to his license under the D.C. Alcoholic Beverage Control Act and that objectors are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, NW, Washington, DC, 20009. A petition or request to appear before the Board must be filed on or before the petition date.

NATURE OF SUBSTANTIAL CHANGE
Request to change the hours of operation and alcohol sale and consumption for the inside premises and sidewalk cafe

CURRENT HOURS OF OPERATION AND ALCOHOLIC SALES/SERVICES/CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Saturday 11:30am-11pm

REQUESTED HOURS OF OPERATION AND ALCOHOLIC SALES/SERVICES/CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFÉ
Sunday through Saturday 11:30am-2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Re-Advertisement

Posting Date: June 27, 2014
Petition Date: August 11, 2014
Hearing Date: August 25, 2014

License No.: ABRA-079370
Licensee: MDM, LLC
Trade Name: Takoma Station Tavern
License Class: Retailer's Class "C" Tavern
Address: 6914 4th Street NW
Contact: David Boyd, 202-587-2773

WARD 4 ANC 4B SMD 4B02

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

NATURE OF SUBSTANTIAL CHANGES
Request to add a rooftop summer garden with seating for 25 patrons with Total Load of 75.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION
Sunday through Thursday 10am-2am, Friday & Saturday 10am-3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR THE SUMMER GARDEN
Sunday through Thursday 10am-2am and Friday & Saturday 10am-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Rescind

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

License No.: ABRA-001782
Licensee: Alamac, Inc.
Trade Name: The River Inn/Dish
License Class: Retailer's Class "C" Hotel
Address: 924 25th Street, NW

Contact: Michael Fonseca (202) 625-7700

WARD 2 ANC 2A SMD 2A03

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

NATURE OF SUBSTANTIAL CHANGE
Request is to have a Sidewalk Cafe. The Sidewalk Cafe capacity is 44.

PROPOSED HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION/ SUMMER GARDEN
Sunday through Saturday 11:00am- 11:00pm

PROPOSED HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION/ SIDEWALK CAFE
Sunday through Saturday 11:00am- 11:00pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	June 27, 2014
Petition Date:	August 11, 2014
Roll Call Hearing Date:	August 25, 2014
Protest Hearing Date:	October 15, 2014
License No.:	ABRA-095631
Licensee:	Davali LLC
Trade Name:	Westchester Dining Room
License Class:	Retailer's Class "C" Restaurant
Address:	4000 Cathedral Avenue NW
Contact:	Stephen O'Brien, Esq., 202-625-7700

WARD 3 ANC 3B SMD 3B04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Roll Call Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for October 15, 2014 at 1:30pm.

NATURE OF OPERATION

New restaurant specializing in Italian cuisine. The restaurant will be located within the Westchester apartment building complex. There will be no direct street access. Background music will be provided. No dancing. Total occupancy load 142.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION

Sunday through Saturday 9am-11pm

DISTRICT DEPARTMENT OF THE ENVIRONMENT

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

Proposal to Submit the Rulemaking to Revise the Sulfur Content of Fuel Oil to EPA as a SIP Revision

Notice is hereby given that a public hearing will be held on July 28, 2014, at 5:00 p.m. in Room 555 at 1200 First Street, N.E., 5th Floor, in Washington, D.C. The regulation was proposed in the *D.C. Register* on June 20, 2014 (61 DCR 006214; Notice ID 4959336). According to the proposed rulemaking, stakeholders have 30 days from posting in the *D.C. Register* to comment on the proposed rulemaking. The District Department of the Environment (DDOE) will accept comments on the proposed rulemaking until the public hearing date on July 28, 2014. This hearing provides interested parties an opportunity to comment on the District's proposed rulemaking and proposed submittal of the rulemaking to the U.S. Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) revision. Once finalized, the regulation will be submitted to the EPA as a SIP Revision in accordance with 40 C.F.R. Part 51.

As mentioned in the proposed rulemaking on June 20, 2014, Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), Chapter 8, is being revised to phase in new sulfur content limits by 2016 and 2018 and to add new recordkeeping and reporting requirements. Chapter 5 is being revised to adopt new sampling, testing, and measurement requirements for fuel oil. The rulemaking also proposes to ban the use of number five (No. 5) and heavier fuel oils for use in the District. The District agreed to pursue many of these requirements to make reasonable further progress toward reducing regional haze under the federal Regional Haze Rule. Reductions will also reduce emissions of particulate matter.

The proposed regulation is available for public review during normal business hours at the offices of the District Department of the Environment (DDOE), 1200 First Street, NE, Washington, D.C. 20002, and on-line at http://ddoe.dc.gov/ddoe. Interested parties wishing to testify at this hearing must submit in writing their names, addresses, telephone numbers, and affiliation, if any, to Mr. William Bolden at DDOE by 4:00 p.m. on July 28, 2014. Interested parties may also submit written comments to Ms. Jessica Daniels, DDOE Air Quality Division, at 1200 First Street, NE, 5th Floor, Washington, DC 20002, or by email at jessica.daniels@dc.gov. No written or email comments will be accepted after July 28, 2014. For more information or to find out if the public hearing has been canceled, contact Ms. Jessica Daniels at 202-741-0862 or by email.

DEPARTMENT OF HEALTH

STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

NOTICE OF INFORMATION HEARING

Pursuant to D.C. Official Code § 44-406(b)(4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on the application by Palisades Healthcare Partners, Inc. for the acquisition of ASAP Services Corporation - Certificate of Need Registration No. 14-2-11. The hearing will be held on Thursday, July 10, 2014, at 10:00 a.m., at 899 North Capitol Street, N.E., 4th Floor, Room 407, Washington, D.C. 20002.

The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to D.C. Official Code § 44-406(b)(1) and an opportunity for affected persons to testify. Persons who wish to testify should contact the SHPDA on (202) 442-5875 before 4:45 p.m., by Wednesday, July 9, 2014. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Second Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Thursday, July 17, 2014. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

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

NOTICE OF PUBLIC HEARING

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

Hearing Date:	**Monday, August 4, 2014 at 1:30 p.m.**
Case Number:	H.P.A. 14-257
Address:	1901-1903 Martin Luther King Jr. Avenue SE
Square/Lot:	Square 5770, Lot 911
Applicant:	Anacostia Economic Development Corporation
Type of Work:	Raze

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

The Applicant's claim is that the issue of a permit to raze is necessary in the public interest for the construction of a project of special merit and that the raze is consistent with the purposes of the preservation law.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF RESCHEDULED[1] PUBLIC HEARING

TIME AND PLACE: **Thursday, October 2, 2014, 6:30 P.M.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 10-26B (3321 Georgia, LLC -- PUD Modification @ Square 3040)

THIS CASE IS OF INTEREST TO ANC 1A

On January 15, 2014, the Office of Zoning received an application from 3321 Georgia LLC (the "Applicant"). The Office of Zoning received revised application materials on March 27, 2014, that replaced the materials filed on January 15, 2014. The Applicant is requesting a modification to an approved planned unit development ("PUD") for property located at 3321 Georgia Avenue, N.W. (Square 3040, Lot 130) (the "Subject Property"). The Zoning Commission originally approved a PUD and related map amendment (from the GA/C-2-A Zone District to the GA/C-2-B Zone District) for the Subject Property pursuant to Z.C. Order No. 10-26, the validity of which was extended pursuant to Z.C. Order No. 10-26A.

The Office of Planning provided its report on April 17, 2014. At its public meeting on April 28, 2014, the Zoning Commission voted to set the application down for a public hearing. The Applicant provided its prehearing statement on May 1, 2014.

The Subject Property consists of approximately 22,002 square feet of land area and is located at the southeast corner of Georgia Avenue, N.W. and Morton Street, N.W. Square 3040 is located in the northwest quadrant of the City and is bounded by Morton Street to the north, Square 3043 and Warder Avenue to the east, Lamont Street to the south, and Georgia Avenue to the west. The Subject Property is located in Ward 1 and within the boundaries of Advisory Neighborhood Commission ("ANC") 1A.

The Applicant proposes to construct a residential building with ground floor retail uses on the Subject Property. The project, as modified, will contain approximately 125,446 square feet of gross floor area, with an overall density of 5.70 FAR and a maximum building height of 89 feet, eight inches. The project also includes 22 off-street parking spaces located in a below-grade garage.

The C-2-B Zone District permits mixed residential and commercial development as a matter-of-right, to a maximum lot occupancy of 80 percent for residential use, a maximum density of 3.5 FAR, of which no more than 1.5 FAR may be devoted to other than residential uses, and a maximum height of 65 feet. Under Chapter 24, the guideline for height in a PUD is 90 feet and

[1] This case was previously scheduled for hearing on July 10th.

the guideline for density in a PUD is 6.0 FAR, of which no more than 2.0 FAR may be commercial.

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

How to participate as a witness.

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

How to participate as a party.

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

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

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

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

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by

mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

Time limits.

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

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

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

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 200-S, 441 4th Street, N.W., Washington, D.C. 20001.

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

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

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF FINAL RULEMAKING

The Acting Commissioner of the Department of Insurance, Securities and Banking ("Department"), pursuant to the authority set forth in Section 539b of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; D.C. Official Code § 42-815.02(j) (2012 Repl.)), and Mayor's Order 2011-51, dated March 2, 2011, hereby amends Chapter 27 (Foreclosure Mediation), Subtitle C (Banking and Financial Institutions) of Title 26 (Insurance, Securities and Banking) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking is necessary to implement the amendments to Section 539b of the Act made by the Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013, effective November 5, 2013 (D.C. Law 20-40; D.C. Official Code § 42-815.02) (the "2013 Law"). The rules clarify the operation of the foreclosure mediation program ("Program") in the Department. The Program assists homeowners and provides, where appropriate, an alternative to foreclosure. A copy of the 2013 Law can be obtained on the Council of the District of Columbia's website, http://www.dccouncil.washington.dc.us.

These rules were originally published on March 14, 2014 in the *D.C. Register* as a Notice of Emergency and Proposed Rulemaking, at 61 DCR 2286. The comment period ended on April 14, 2014. A number of public comments were received and due consideration was given to the public comments that were received. No changes, however, were made and this final rulemaking is identical to the Emergency and Proposed Rulemaking. This rule was adopted as final on June 27, 2014 and will take effect immediately upon publication of this notice in the *D.C. Register*.

Chapter 27 (Foreclosure Mediation), Subtitle C (Banking and Financial Institutions) of Title 26 (Insurance, Securities and Banking) of the District of Columbia Municipal Regulations, is amended as follows:

Section 2700 is amended as follows:

Subsection 2700.1 is amended to read as follows:

2700.1 Unless specified otherwise, these regulations shall apply to the foreclosure mediation rights and procedures established for the exercise of power of sale of a residential mortgage as authorized in Section 539b of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (referred to in this chapter as the "Act") (31 Stat. 1189; D.C. Official Code § 42-815.02)

Subsection 2700.3 is amended to read as follows:

2700.3 These regulations also set forth the procedures for filing an Affidavit of Non-Residential Mortgage Foreclosure in order to issue and record a Notice of Foreclosure for a non-residential mortgage, which does not require the recordation of a Final Mediation Certificate.

Section 2701 is amended as follows:

Subsection 2701.3 is amended to read as follows:

2701.3 A Notice of Intention to Foreclose a Residential Mortgage shall be null and void with respect to a foreclosure of a residential mortgage unless a Notice of Default on Residential Mortgage is mailed to each borrower, as Section 539(c) of the Act (D.C. Official Code § 42-815(c)) and this chapter require, and the lender receives a Final Mediation Certificate provided pursuant to Section 539b of the Act (D.C. Official Code § 45-815.02) and this chapter, and records the Final Mediation Certificate at the District of Columbia Office of the Recorder of Deeds, prior to or contemporaneously with recording the Notice of Intention to Foreclose a Residential Mortgage.

Subsection 2701.4 is amended to read as follows:

2701.4 The following documents shall be recorded with the District of Columbia Office of the Recorder of Deeds within ten (10) business days of the date of mailing of the Notice of Default on Residential Mortgage, unless the Mediation Administrator concludes that there was good cause for failing to record these documents within the required time period:

(a) The Notice of Default on Residential Mortgage, and any supplement to the Notice of Default on Residential Mortgage; and

(b) The Mediation Election Form (Form FM-2).

Section 2703 is amended as follows:

Paragraph 2703.3(d) is amended to read as follows:

2703.3(d) A complete Loss Mitigation Application;

Paragraph 2703.3(e) is amended to read as follows:

2703.3(e) Instructions for completing and mailing the Loss Mitigation Application;

Paragraph 2703.3(g) is amended to read as follows:

2703.3(g) An envelope for the borrower to return to the lender a copy of the Mediation Election Form (Form FM-2) and the Loss Mitigation Application. The envelope shall be preaddressed to the lender's office that will review the Loss Mitigation Application and prepare the loss mitigation analysis required by Subsection 2713.2; and,

Paragraph 2703.3(h) is amended to read as follows:

2703.3(h) An envelope for the borrower to return the Mediation Election Form (Form FM-2) and a copy of the Loss Mitigation Application to the Mediation Administrator. The envelope shall be preaddressed as follows:

Mediation Administrator
Department of Insurance, Securities and Banking
810 First Street, NE
Suite 701
Washington, DC 20002

Subsection 2703.4 is amended to read as follows:

2703.4 Within two (2) business days of the mailing date of the Notice of Default on Residential Mortgage, the lender shall send to the Mediation Administrator by electronic mail to DISB.mediation@dc.gov a copy of the Notice of Default on Residential Mortgage that was sent to the borrower(s) pursuant to Subsection 2703.1, including all attachments required by Subsection 2703.3.

Subsection 2703.5 is amended to read as follows:

2703.5 The lender shall send to the Mediation Administrator by regular first class mail a copy of the Notice of Default on Residential Mortgage that has been submitted to the Mediation Administrator pursuant to Subsection 2703.4, accompanied by a six-hundred dollars ($600) money order, check or cashier's check payable to the "District of Columbia Treasurer." No other form of payment will be accepted.

Subsection 2703.10 is amended to read as follows:

2703.10 The following shall accompany the Notice of Default on Residential Mortgage that is submitted to the Mediation Administrator and shall be available to the borrower(s) upon request:

Paragraph 2703.10(f) is amended to read as follows:

2703.10(f) A true copy of all pooling and servicing or other similar agreements affecting the residential mortgage that pertain to the loss mitigation programs offered and loss mitigation analysis.

Subsection 2703.13 is amended to read as follows:

2703.13 The Affidavit of Mailing of Notice of Default, which is included with the Notice of Default on Residential Mortgage, shall have the same mailing date as the

Notice of Default on Residential Mortgage unless the Mediation Administrator determines that good cause is shown for the different mailing dates.

Section 2707 is amended as follows:

Subsection 2707.1 is amended to read as follows:

2707.1 Each Loss Mitigation Application that is mailed to a borrower(s) shall include all information required in the Loss Mitigation Application.

Subsection 2707.2 is repealed.

Section 2708 is amended as follows:

Paragraph 2708.2(a)(1) is amended to read as follows:

2708.2(a)(1) The Loss Mitigation Application included with the Notice of Default on Residential Mortgage received from the lender; and

Paragraph 2708.2(b)(2) is amended to read as follows:

2708.2(b)(2) A copy of the Loss Mitigation Application submitted to the lender pursuant to paragraph (a) of this subsection; and

Section 2709 is amended as follows:

Subsection 2709.1 is repealed.

Subsection 2709.2 is repealed.

Subsection 2709.4 is amended to read as follows:

2709.4 The Mediation Administrator may send to the lender's office that will review the Loss Mitigation Application and prepare the loss mitigation analysis, a copy of the Mediation Election Form (Form FM-2) and Loss Mitigation Application that were received from a borrower pursuant to Subsection 2708.2(b). The Mediation Administrator may send the information required by this subsection by electronic mail to the address listed on Lender Foreclosure Mediation Agent Contact Form (Form FM-1AC) filed pursuant to Subsection 2703.8.

Section 2710 is amended as follows:

Subsections 2710.1 through 2710.3 are amended to read as follows:

2710.1 Upon the timely delivery of the Mediation Election Form (Form FM-2) by the borrower(s), the Mediation Administrator shall schedule mediation between the borrower(s) and the lender to commence no later than ninety (90) days after the date of mailing of the Notice of Default on Residential Mortgage.

2710.2 Mediation shall be completed within one hundred eighty (180) days of the date of mailing of the Notice of Default on Residential Mortgage unless extended pursuant to Subsection 2710.15.

2710.3 The Mediation Administrator, or the Mediator with the consent of the Mediation Administrator, may reschedule a scheduled mediation upon no less than two (2) business days' notice to each mediation party if the Mediation Administrator or Mediator determines that it is in the public's interest to reschedule the mediation. The Mediation Administrator or Mediator shall consult with the mediation parties with respect to the new time for the rescheduled mediation.

Subsection 2710.8 is amended to read as follows:

2710.8 A lender who fails to mediate in good faith with respect to mediation as provided in Section 2713 shall be subject to a penalty as provided in D.C. Official Code § 42-815.02 (e)(2).

Subsection 2710.9 is amended to read as follows:

2710.9 The Mediation Administrator may terminate the mediation if the Mediation Administrator determines that the lender has failed to participate in the mediation in good faith for more than thirty (30) consecutive days.

Subsection 2710.10 is repealed.

Subsection 2710.15 is amended to read as follows:

2710.15 The mediation parties may agree to extend mediation for an additional thirty (30) days beyond the one hundred eighty (180) day period provided by D.C. Official Code § 42-815.02(e)(5) by mutual consent by executing a Mediation Extension Form (Form FM-3EX), as prescribed by the Commissioner and available on the Commissioner's website at http://disb.dc.gov, and shall include all information specified in Form FM-3EX.

Subsection 2710.16 is amended to read as follows:

2710.16 A borrower who fails to bring all applicable documentation and information to mediation pursuant to Subsection 2710.12 shall not be entitled to continue to participate in the mediation unless the Mediation Administrator determines that good cause has been shown for such failure.

Subsection 2710.21 is amended to read as follows:

2710.21 A mediation shall not exceed two (2) sessions, each lasting a maximum of three (3) hours, which may be scheduled consecutively.

Section 2711 is amended as follows:

Subsection 2711.3 is amended to read as follows:

2711.3 Upon the cancellation of mediation by a borrower who has elected to mediate pursuant to Section 2708, within ten (10) days of receiving the Cancellation of Mediation Form (Form FM-X1) the Mediation Administrator shall cancel the mediation and issue to the lender a Final Mediation Certificate.

Section 2712 is amended as follows:

Subsection 2712.8 is amended to read as follows:

2712.8 At any time during the mediation process, the Mediator may refer a borrower to a housing counseling agency or legal service provider for mortgage assistance, provided that the mediation shall resume not later than fifteen (15) days after the referral.

Section 2713 is amended as follows:

Subsection 2713.2 is amended to read as follows:

2713.2 A good faith effort to mediate requires the lender to conduct the following loss mitigation analysis:

(a) Evaluate the eligibility of the borrower(s) for alternatives to foreclosure including, but not limited to, reinstatement, loan modification, forbearance, short sale, and a deed in lieu of foreclosure;

(b) In considering a loan modification, evaluate the eligibility of the borrower(s) for each loan modification program applicable to the

residential mortgage in default and include an analysis pursuant to the Home Affordable Modification Program and the Federal Deposit Insurance Corporation's Loan Modification Program;

i. If the lender is a Community Bank, it must evaluate all eligible loan modification programs and include an analysis pursuant to the Home Affordable Modification Program, the Federal Deposit Insurance Corporation's Loan Modification Program, or any loan modification program that is based on accepted principles and the safety and soundness of the institution and approved by the Commissioner.

ii. If the lender is a Credit Union, it must evaluate all eligible loan modification programs and include an analysis pursuant to the Home Affordable Modification Program, the Federal Deposit Insurance Corporation's Loan Modification Program, or any modification program that is based on accepted principles and the safety and soundness of the institution and is recognized by the National Credit Union Administration;

(c) Offer the borrower(s) a loan modification at the best terms available for a loan modification if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on a calculation using the Federal Home Affordable Modification Base Net Present Value Model or the Federal Deposit Insurance Corporation's Loan Modification Program;

i. If the lender is a Community Bank, offer the borrower(s) a loan modification at the best terms available if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on any net present value model that a Community Bank uses that is based on accepted principles and the safety and soundness of the institution and approved by the Commissioner;

ii. If the lender is a Credit Union, offer the borrower(s) a loan modification at the best terms available if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on any net present value model that a Credit Union uses that is based on accepted principles and the safety and soundness of the institution and is recognized by the National Credit Union Administration.

(d) If the loan has been sold to a third party investor and the loan servicing agreement permits, offer the borrower(s) a loan modification at the best

terms available for a loan modification if the net present value of receiving payments pursuant to a modified mortgage loan is greater than the anticipated net recovery following foreclosure based on a calculation using the Federal Home Affordable Modification Base Net Present Value Model or the Federal Deposit Insurance Corporation's Loan Modification Program.

Subsection 2713.3 is amended to read as follows:

2713.3 In the event a lender rejects a settlement involving an alternative to foreclosure that has a lower cost than foreclosure, the lender shall provide a written explanation for rejecting the settlement. The explanation shall include an analysis and supporting documentation and, where applicable, the inputs and outputs of the approved net present value model identified pursuant to Subsection 2713.2(c).

Subsection 2713.5 is amended to read as follows:

2713.5 A preliminary determination that a mediation party has failed to mediate in good faith shall be made by the Mediation Administrator in accordance with this chapter.

Section 2714 is amended as follows:

Subsection 2714.1 is amended to read as follows:

2714.1 The lender shall, at least five (5) business days prior to the first mediation session scheduled by the Mediation Administrator or Mediator, provide an electronic copy at DISB.mediation@dc.gov to the Mediation Administrator, and to each borrower the following, if applicable to the residential mortgage and mediation:

(a) An itemization of the amounts needed to cure and payoff the mortgage;

(b) Payment history records with respect to the mortgage, including all fees and costs;

(c) The result of the lender's loss mitigation analysis;

(d) A copy of the documentation and consideration of the options available in Subsection 2713.2, including the data used in and the outcome of any calculation required; and

Subsection 2714.3 is amended to read as follows:

2714.3 Prior to mediation a borrower shall submit with and attach to the Loss Mitigation Application documents that demonstrate the residential mortgage borrower's

household income, including, when applicable, the residential mortgage borrower's most recent tax return, W-2, last two (2) pay stubs, benefit statements, bank statements, and alimony or child support documents. If the requested document(s) is not applicable to the borrower, the borrower must provide a letter explaining why the document is inapplicable.

Subsection 2714.4 is amended to read as follows:

2714.4 The borrower(s) shall bring to the scheduled mediation the hard copies of all applicable documents required in Subsection 2714.3 and any other information that the Mediation Administrator or Mediator requests.

Subsection 2714.6 is amended to read as follows:

2714.6 In the event a party to the mediation does not cooperate with the Mediator as required by this section, the Mediation Administrator:

(a) May determine that the party is not participating in mediation in good faith and issue a Preliminary Determination of Bad Faith;

(b) Reschedule the mediation to enable the party to obtain information required by this section; or

(c) Issue a Preliminary Mediation Certificate.

Section 2716 is amended as follows:

Subsection 2716.2 is amended to read as follows:

2716.2 Any settlement agreement reached as a result of mediation shall be reduced to writing and executed by the mediation parties within ten (10) business days of the date of the mediation parties' agreement.

Section 2717 is amended as follows:

Subsection 2717.1 is amended to read as follows:

2717.1 Within ten (10) days after the completion of mediation, the Mediator shall file a Mediation Report with the Mediation Administrator and deliver a copy to the mediation parties.

Subsection 2717.3 is amended to read as follows:

2717.3 Unless a settlement agreement is executed between the mediation parties, within ten (10) business days after receiving the Mediation Report and after reviewing and considering a Mediation Report the Mediation Administrator shall:

(a) Schedule the matter with another Mediator for one (1) additional mediation session if there is a reasonable likelihood the mediation parties will be able to reach a settlement agreement, or issue a Preliminary Mediation Certificate if the lender participated in the mediation in good faith;

(b) Assess any applicable penalty against the lender pursuant to the Act or this chapter, and issue a Preliminary Determination of Bad Faith if the lender did not participate in the mediation in good faith; or

(c) Cancel the mediation and issue a Preliminary Mediation Certificate if the borrower(s) did not participate in the mediation in good faith.

Section 2718 is amended to read as follows:

2718 PRELIMINARY MEDIATION CERTIFICATE

2718.1 Once the mediation has concluded, upon determining that the lender acted in good faith the Mediation Administrator shall issue and send to all parties a Preliminary Mediation Certificate.

2718.2 The borrower(s) may appeal a Preliminary Mediation Certificate in the District of Columbia Superior Court in accordance with the appeal process.

2718.3 If the borrower(s) does not appeal within thirty (30) days and the lender documents this fact, the lender may request a Final Mediation Certificate.

Section 2719 is amended to read as follows:

2719 FINAL MEDIATION CERTIFICATE

2719.1 The lender may request on Form FM-R1 a Final Mediation Certificate and must affirm that the borrower(s) has not filed a timely appeal.

2719.2 The lender may not request a Final Mediation Certificate until thirty (30) days after the Mediation Administrator issues the Preliminary Mediation Certificate.

2719.3 A Final Mediation Certificate issued pursuant to Section 539b of the Act (D.C. Official Code § 45-815.02) shall expire one (1) year from the date of issuance unless extended for an additional year pursuant to Subsection 2719.8.

2719.4 A foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a Notice of Intention to Foreclosure on a Residential Mortgage without a recorded Final Mediation Certificate.

2719.5 A borrower shall have the same rights to assert claims for defects in the documents recorded pursuant to Subsection 2701.4 as the law provides for a defective Notice of Foreclosure Sale of Real Property or Condominium Unit (Form ROD-14) and Notice of Intention to Foreclose on a Residential Mortgage.

2719.6 Except as provided in Subsections 2719.4 and 2719.5, a recorded Final Mediation Certificate shall serve as conclusive evidence that all other provisions provided by the Act and this chapter have been complied with, and the same can be relied upon by any *bona fide* purchaser or *bona fide* purchaser's lender, including its successors or assigns.

2719.7 A borrower shall not be barred from asserting a claim for fraud or monetary damages against the borrower's lender.

2719.8 A lender may request an extension of a Final Mediation Certificate that has not expired by filing with the Mediation Administrator a request for an extension of a Final Mediation Certificate, and sending the borrower(s) a copy of the request for an extension of a Final Mediation Certificate.

2719.9 A request for an extension of a Final Mediation Certificate filed pursuant to Subsection 2719.8 shall set forth each basis for which the lender seeks an extension and include all relevant facts and documentation, if applicable.

2719.10 The Mediation Administrator may contact the lender or borrower(s) for information regarding a request for an extension of a Final Mediation Certificate filed pursuant to this section.

Section 2720 is amended to read as follows:

2720 APPEAL PROCESS; JUDICIAL REVIEW

2720.1 Within thirty (30) days of issuance of the Preliminary Mediation Certificate a borrower may file in the District of Columbia Superior Court an appeal of the Preliminary Mediation Certificate as provided for in D.C. Official Code § 42-815.02(e)(3)(B).

2720.2 Within thirty (30) days of issuance of the Preliminary Determination of Bad Faith a lender may file in the District of Columbia Superior Court an appeal of the Mediation Administrator's Preliminary Determination of Bad Faith as provided for in D.C. Official Code § 42-815.02(e)(3)(C).

2720.3 A copy of the filing of the appeal must be sent to the Mediation Administrator no later than thirty (30) days after issuance of the Preliminary Mediation Certificate or the Preliminary Determination of Bad Faith.

Section 2721 is amended to read as follows:

2721 APPLICATION FOR ORDER TO PERFORM DUE TO BREACH

2721.1 A borrower that alleges that a lender has breached a settlement agreement entered into pursuant to this chapter may request that the Mediation Administrator issue an Order to Perform by filing an Application for Order to Perform Due to Breach (Form FM-10B) prescribed by the Commissioner and available on the Commissioner's website at http://disb.dc.gov.

2721.2 An Application for Order to Perform Due to Breach (Form FM-10B) shall be filed with the Mediation Administrator.

2721.3 The borrower shall mail to the lender an Application for Order to Perform Due to Breach (Form FM-10B).

2721.4 A lender who receives an Application for Order to Perform Due to Breach (Form FM-10B) alleging that the lender is in breach of a settlement agreement may challenge the allegation of the borrower that the lender breached the settlement agreement by filing an objection to the Application for Order to Perform Due to Breach (Form FM-10B) with the Mediation Administrator within ten (10) days of the date of mailing of the Application for Order to Perform Due to Breach (Form-10B) pursuant to this section.

2721.5 An objection filed pursuant to Subsection 2721.4 shall set forth each basis for which the lender disputes the allegations that it has breached the settlement agreement, including all relevant facts.

2721.6 The Mediation Administrator may contact the lender or borrower(s) for information regarding an Application for Order to Perform Due to Breach (Form FM-10B) filed pursuant to this section.

Section 2722 is amended to read as follows:

2722 APPLICATION FOR FINAL MEDIATION CERTIFICATE DUE TO BREACH

2722.1 A lender that alleges that the borrower(s) has breached a settlement agreement executed between the lender and the borrower(s) may apply for a Final Mediation

Certificate by filing an Application for Final Mediation Certificate Due to Breach (Form FM-10L) prescribed by the Commissioner and available on the Commissioner's website at http://disb.dc.gov.

2722.2 An Application for Final Mediation Certificate Due to Breach (Form FM-10L) shall be filed with the Mediation Administrator.

2722.3 The lender shall mail to the borrower(s) an Application for Final Mediation Certificate Due to Breach (Form FM-10L).

2722.4 A borrower who receives an Application for Final Mediation Certificate Due to Breach (Form FM-10L) alleging that the borrower(s) breached the settlement agreement may challenge the lender's allegation that the borrower(s) breached the settlement agreement by filing with the Mediation Administrator an objection to the Application for Final Mediation Certificate Due to Breach (Form FM-10L) within ten (10) days of the date of mailing of the Application for Final Mediation Certificate Due to Breach (Form FM-10L) pursuant to this section.

2722.5 An objection filed pursuant to Subsection 2722.4 shall set forth each basis for which the borrower(s) disputes the allegations that it has breached the settlement agreement, including all relevant facts.

2722.6 The Mediation Administrator may contact the borrower(s) or lender for information regarding an Application for Final Mediation Certificate Due to Breach (Form FM-10L) filed pursuant to this section.

Section 2723 is amended to read as follows:

2723 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE FORM

2723.1 The authorized Notice of Intention to Foreclose a Residential Mortgage shall be used to comply with the requirements in Section 539(c) of the Act for a foreclosure sale pursuant to a residential mortgage. Issuance of the Notice of Intention to Foreclose a Residential Mortgage shall comply with Section 2728.

Section 2724 is amended to read as follows:

2724 MEDIATION ADMINISTRATOR

2724.1 The Commissioner shall designate an individual to serve as the Mediation Administrator.

2724.2 The Mediation Administrator may extend deadlines upon determining that there is good cause to do so.

Section 2725 is amended to read as follows:

2725 QUALIFICATION, APPOINTMENT, TRAINING, AND COMPENSATION OF MEDIATORS/ MEDIATION SERVICES

2725.1 The following persons shall be qualified to act as a Mediator under this chapter:

(a) An Administrative Law Judge or attorney employed by the Office of Administrative Hearings, authorized by the Commissioner to provide mediation services under the Act and this chapter, and who has completed a foreclosure mediation training program approved by the Commissioner; or

(b) An individual who is licensed to practice law in the District of Columbia, who is employed or contracted by a firm authorized by the Commissioner, and who has completed a foreclosure mediation training program approved by the Commissioner.

2725.2 The Commissioner may appoint an individual qualified under Subsection 2725.1(a) pursuant to an executed Memorandum of Understanding between the Department and the Office of Administrative Hearings.

2725.3 The Commissioner may appoint an individual qualified under Subsection 2725.1(b) pursuant to a valid contract between the Department and the Mediator or the Mediator's employer.

2725.4 The Commissioner shall designate approved foreclosure mediation training programs required pursuant to Subsection 2725.1 and shall provide a description of the program, including the requirements for the program and the requirements for obtaining a certification under the program.

Section 2726 is amended to read as follows:

2726 VIOLATIONS

2726.1 A lender that initiates a foreclosure through the power of sale provision of a residential mortgage in violation of the Act or this chapter shall be deemed to have failed to participate in the mediation in good faith.

2726.2 Any cost incurred by a lender in a foreclosure through the power of sale provision of a residential mortgage in violation of the Act or this chapter shall not be assessed to the borrower(s).

2726.3 A lender that fails to attend mediation shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars ($500) for each mediation session that the lender fails to attend.

2726.4 A lender that fails to send, at least five (5) business days prior to the first mediation session, an electronic version of the documents required in Subsection 2714.1, and bring to a mediation any document that the Act, this chapter, the Mediation Administrator, or Mediator requires, shall be subject to a penalty assessed by the Commissioner in the amount of five hundred dollars ($500) unless the Mediation Administrator determines that good cause is shown.

2726.5 A lender that fails to mediate in good faith shall be subject to a penalty in the amount of five hundred dollars ($500) assessed by the Commissioner.

2726.6 A lender that breaches a settlement agreement pursuant to Section 539b (e)(4)(a)(i) of the Act shall be subject to a penalty assessed by the Commissioner in the amount of one thousand dollars ($1,000), and shall be required to perform the terms of the settlement agreement.

Section 2727 is amended to read as follows:

2727 FORECLOSURE OF A SECURITY INTEREST OTHER THAN A RESIDENTIAL MORTGAGE

2727.1 A lender or trustee that initiates a foreclosure pursuant to a security interest other than a residential mortgage shall file and record with the District of Columbia Office of the Recorder of Deeds an Affidavit of Non-Residential Mortgage Foreclosure (Form FM-6) prior to, or contemporaneously with, a Notice of Foreclosure pursuant to Section 539 of the Act (D.C. Official Code § 42-815).

2727.2 The Affidavit of Non-Residential Mortgage Foreclosure (Form FM-6) shall be in the form prescribed by the Commissioner and available on the Commissioner's website at http://disb.dc.gov, and shall include all information required in Form FM-6.

Section 2728 is amended to read as follows:

2728 NOTICE OF INTENTION TO FORECLOSE A RESIDENTIAL MORTGAGE

2728.1 The holder of a note secured by a deed of trust, mortgage, or security instrument (hereinafter "holder"), or the agent of any such holder, shall at least thirty (30) days in advance of any sale of the real property encumbered by the deed of trust, mortgage, or security instrument under a power of sale provision contained therein, send to the borrower(s) of the real property encumbered by the deed of trust, mortgage, or security instrument, by first-class certified mail, postage prepaid, return receipt requested, and by first-class mail, a Notice of Intention to Foreclose a Residential Mortgage to his or her last known address.

2728.2 The lender shall provide the following information concerning the sale on the Notice of Intention to Foreclose a Residential Mortgage:

(a) The name and address of the borrower(s) of the property, and his or her telephone number, if known;

(b) The identification of the property by address;

(c) The lot and square number or the parcel number of the property;

(d) The date on which the security instrument was recorded in the District of Columbia Recorder of Deeds, and the security instrument number;

(e) The name, address, and telephone number of the maker of the note secured by the security instrument;

(f) A description of the property;

(g) The name, address, and telephone number of the holder of the note;

(h) The name, address, and telephone number of the person to call if the borrower(s) wishes to stop foreclosure;

(i) The current balance owed on the note, the minimum amount required to cure the default obligation, and the total amount of fees and costs required to cure the default obligation as of the date of the Notice of Intention to Foreclose on a Residential Mortgage, and an estimate of other fees or costs reasonably expected to be incurred through the fifth (5^{th}) business day prior to the date of sale to be paid in order to cure the default;

(j) The time, date and location of the sale of the real property; and

(k) Provision for a notarized certification by the note holder, his or her agent, or the preparer that the original Notice of Intention to Foreclose a Residential Mortgage has been sent to the borrower(s) by first-class certified mail, return receipt requested, and by first-class mail, and that the note holder understands that no foreclosure sale may take place until at

least thirty (30) days after a copy of the notice has been recorded in the District of Columbia Recorder of Deeds.

2728.3 Any Notice of Intention to Foreclose a Residential Mortgage filed pursuant to the Act or this chapter shall be subject to the provisions set forth in 9 DCMR §§ 3100.3 – 3100.10 for a Notice of Foreclosure Sale of Real Property or Condominium Unit.

2728.4 A Final Mediation Certificate shall be recorded in the District of Columbia Recorder of Deeds prior to or contemporaneously with recording the Notice of Intention to Foreclose a Residential Mortgage.

Section 2729 is amended to read as follows:

2729 TRUSTEE LIABILITY

2729.1 The liability under the Act for a trustee who is defined as a lender shall be limited to Section 539b of the Act (D.C. Official Code § 42-815.02(e)(2)(A)(iii)) for the trustee's exercise of a power of sale or the issuance of a Notice of Intention to Foreclose a Residential Mortgage or Notice of Foreclosure Sale of Real Property or Condominium Unit in violation of the Act or this chapter.

Section 2799 is amended as follows:

Subsection 2799.1 is amended by adding the following definitions:

Community Bank – A depository institution with aggregate assets of less than one billion dollars.

Loss Mitigation Application – Form FM-1LM, which is available on the Commissioner's website at http://disb.dc.gov, or a functionally equivalent loss mitigation application form that has been approved by the Commissioner.

Notice of Default on Residential Mortgage – Form FM-1, which is available on the Commissioner's website at http://disb.dc.gov.

Notice of Intention to Foreclose a Residential Mortgage – Form FM-5, which is available on the Commissioner's website at http://disb.dc.gov.

Subsection 2799.1 is amended by amending the following definitions:

Mediation services – Include, but are not limited to, the selection and employment of a mediator, foreclosure mediation training, supplies and material relating to the foreclosure mediation program.

Residential mortgage – A loan secured by a deed of trust or mortgage used to acquire or refinance real property which is improved by four (4) or fewer units, including condominium or cooperative units but shall not include debts incurred and currently obligating a business entity exclusively, as defined by D.C. Official Code § 29-101.02(7). This term includes a security interest established in connection with the financing of a housing cooperative unit.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission ("Commission"), pursuant to the authority set forth in Sections 8(c)(7) (14), (15), (16), (17), (18), (19) and 20m 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)(7) (14), (15), (16), (17), (18), (19) (2012 Repl. & 2013 Supp.), 50-329.03 (2012 Repl. & 2013 Supp.), hereby gives notice of its intent to adopt amendments to Chapters 3 (Panel on Adjudication: Rules of Organization and Procedure), 5 (Taxicab Companies, Associations and Fleets), 7 (Complaints Against Taxicab Owners or Operators), 8 (Operation of Taxicabs), 9 (Insurance Requirements), 10 (Public Vehicles for Hire), 13 (Licensing and Operations of Taxi Meter Companies), and 15 (Licensing and Operations of Dome Light Installation Companies) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules clarify jurisdiction, procedures, and penalties to assist the Office of Taxicabs in its enforcement of Title 31, and makes clear that all enforcement actions shall be governed by Chapter 7.

Proposed rules amending Chapters 3, 5, 6, 7, 8, and 10 of DCMR Title 31 were originally approved by the Commission for publication on February 13, 2013, and published in the *D.C. Register* on March 15, 2013, at 60 DCR 3783. The Commission held a public hearing on the proposed rules on April 12, 2013, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the comment period, which expired on April 13, 2013. A Notice of Second Proposed Rulemaking was published in the *D.C. Register* on May 17, 2013 at 60 DCR 7048. Comments received during the comment period, which ended on June 15, 2013, were carefully considered and necessitated a third publication. A Notice of Third Proposed Rulemaking was published in the *D.C. Register* on April 18, 2014 at 61 DCR 4006. Comments were received during the comment period, which ended on May 18, 2014, and were carefully considered, but it was determined by the Commission that no substantial changes were necessary. Minor changes have been made to correct grammar and typographical errors, and to provide clarity; no substantive change is intended.

This final rulemaking was adopted by the Commission on June 11, 2014, and will take effect upon publication in the *D.C. Register*.

Chapter 7, COMPLAINTS AGAINST TAXICAB OWNERS OR OPERATORS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is deleted.

A new Chapter 7, ENFORCEMENT, is added as follows.

CHAPTER 7 ENFORCEMENT

700 APPLICATION AND SCOPE

700.1 This chapter is intended by the Commission to establish fair and consistent procedural rules for enforcement of and compliance with this title.

700.2 This chapter applies to all persons regulated by this title.

700.3 The provisions of this chapter shall be interpreted to comply with the language and intent of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-301 *et seq.*) ("Establishment Act"), and the District of Columbia Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992, effective March 16, 1993 (D.C. Law 9-199; D.C. Official Code §§ 50-331 *et seq.*) ("Impoundment Act").

700.4 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, including a penalty provision, the provision of this chapter shall control.

700.5 The provisions of this chapter shall apply to all matters and contested cases pending on the date of final publication, to the extent allowed by the District of Columbia Administrative Procedure Act ("DCAPA") effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code §§ 2-501 *et seq.*) and other applicable law.

701 ADMINISTRATIVE ISSUANCES, INSTRUCTIONS, AND GUIDANCE

701.1 The Office of Taxicabs ("Office") may promulgate an issuance, instruction, or guidance as it deems necessary and appropriate to aid in administration, enforcement, or compliance with any provision of this title. An issuance, instruction, or guidance may be modified or rescinded at any time with reasonable notice.

701.2 Each issuance, instruction, and guidance shall be in writing, and shall:

(a) Interpret or explain a provision of this title or other applicable law; or

(b) Provide administrative guidance for compliance with a provision of this title or other applicable law, such as establishing forms required applying for licenses, documentation requirements, and setting deadlines for providing to the Office information required by a provision of this title.

701.3 Each issuance, instruction, and guidance shall be posted on the Commission's website and shall become effective twenty-four (24) hours after it is posted or at such later time as stated in the issuance, instruction, or guidance provided, however, that an issuance, instruction, or guidance shall become effective upon posting if it states that it is effective upon posting based on a determination that such action is required to protect passenger, operator, or public safety; for consumer protection; or, where otherwise permitted by law.

701.4 Failure to comply with an issuance, instruction, or guidance may:

(a) Result in the denial of a license; or

(b) Be offered as evidence in an enforcement action under § 703 for violation of any applicable provision of this title or other applicable law to which the issuance, instruction, or guidance applies.

701.5 This section shall not apply to an issuance, instruction, guidance or other document concerning the internal operations of the Office, such as a document instructing employees on how to carry out their duties.

702 COMPLIANCE ORDERS

702.1 The Office or a District enforcement official (including a public vehicle inspection officer) may issue a written or oral compliance order to any person regulated by this title or other applicable law.

702.2 A compliance order may require the respondent to take any lawful action related to compliance or verification of compliance with a provision of this title or other applicable law, including, without limitation, an order to:

(a) Appear at the Office for a meeting or other purpose provided that the order clearly states that the appearance is mandatory;

(b) Make a payment to the District for an amount such person owes under a provision of this title or other applicable law;

(c) Allow an administrative inspection of a place of business or business records;

(d) Surrender, or produce for inspection and copying, a document or item related to compliance with a provision of this title or other applicable law, such as a licensing document;

(e) Submit a vehicle for testing or inspection; or

(f) Take an action to assist with the enforcement of a provision of this title or other applicable law.

702.3 Each compliance order shall include the following information:

(a) The action the respondent must take to comply;

(b) The deadline for compliance, except where it is apparent from the context, such as an order to move a vehicle from the roadway; and

(c) If the compliance order is in writing:

(1) A statement of the circumstances giving rise to the order

(2) A citation to the relevant provision of this title or other applicable law; and

(3) If the order requires an action to assist the Office in enforcing a provision of this title or other applicable law against a person with whom the respondent is currently associated, the name of and contact information for such person.

702.4 A written compliance order shall be served in the manner prescribed by § 712.

702.5 The civil penalties for failure to comply with a compliance order are established as follows:

(a) Individuals:

(1) Each individual who fails to timely and fully comply with a compliance order shall be subject to a civil of five hundred dollars ($500) for the first violation, one thousand dollars ($1,000) for the second violation, and one thousand five hundred dollars ($1,500) for the third and subsequent violations.

(2) If an individual's failure to comply with a compliance order causes the Office to lose jurisdiction over an enforcement action against any person, then, in addition to a civil fine that may be imposed under subparagraph (a) (1), such individual shall pay a civil fine of one thousand dollars ($1,000) for the first violation, two thousand dollars ($2,000) for the second violation, and three thousand dollars ($3,000) for the third and subsequent violations.

(b) Entities:

(1) Each entity that fails to timely and fully comply with a compliance order shall be subject to a civil fine of one thousand dollars ($1,000) for the first violation, two thousand dollars ($2,000) for the second violation, and three thousand dollars ($3,000) for the third and subsequent violations.

(2) If an entity's failure to comply with a compliance order causes the Office to lose jurisdiction over an enforcement action against any

person, then, in addition to a civil fine that may be imposed under subparagraph (b)(1), such entity shall pay a civil fine of two thousand five hundred dollars ($2,500) for the first violation, five thousand dollars ($5,000) for the second violation, and seven thousand five hundred dollars ($7,500) for the third and subsequent violations.

703 ENFORCEMENT ACTIONS

703.1 The Office may take one or more of the following enforcement actions where there are reasonable grounds to believe that a person has violated, or is violating, a provision of this title or other applicable law:

(a) Issue a notice of infraction ("NOI") in accordance with § 704;

(b) Issue an order to cease and desist in accordance with § 705;

(c) Issue an order of immediate suspension of a license in accordance with § 706 or § 707;

(d) Issue a notice of proposed suspension or revocation of a license in accordance with § 708; or

(e) Issue an order of impoundment of a vehicle pursuant to the Impoundment Act.

703.2 In addition to any other penalty or action authorized by a provision of this title, the Office may recommend to another government agency the denial, revocation or suspension of any license that may be issued by the other agency.

703.3 Each respondent shall respond to a notice of an enforcement action within the time stated in the notice or, if no time for a response is stated in the notice, as specified in this chapter. Failure to respond within the time required shall subject the respondent to the civil penalties and fines imposed therein.

703.4 The Office may modify, supplement or withdraw any enforcement action at any time, provided such action is consistent with fundamental fairness and the due process rights of the respondent.

703.5 The enumeration of enforcement actions in this section shall not limit or proscribe any legal remedy available to the Commission or the Office in a court proceeding at law or in equity.

703.6 The Commission or Office may, through the Office of the Attorney General, petition the District of Columbia Superior Court for injunctive relief, or take any

other action authorized by law to enforce compliance with a provision of this title or other applicable law.

703.7 The circumstances giving rise to a respondent's suspension may be considered by the Office in any determination of whether to issue or renew a license to the respondent.

703.8 All impoundments of vehicles shall be conducted in compliance with the Impoundment Act.

704 NOTICES OF INFRACTION

704.1 The Office or a District enforcement official (including a public vehicle inspection officer) may issue an NOI, imposing a fine or other penalty, whenever the Office or the enforcement official has reasonable grounds to believe the respondent is in violation of a provision of this title or other applicable law.

704.2 An NOI shall be in writing in a form prescribed by the Office and shall include:

(a) The name of the respondent;

(b) A citation or reference to the provision of this title or other applicable law which the respondent has violated;

(c) The circumstances giving rise to the infraction, including the time and place of the infraction;

(d) The amount of the civil fine applicable to the infraction;

(e) A statement that:

(1) The fine must be paid within thirty (30) calendar days of the date that the NOI has been served on the respondent;

(2) The respondent has the right to request a hearing before the Office of Administrative Hearings ("OAH"); and

(3) If the respondent fails to pay the fine or request a hearing within thirty (30) calendar days of the date the NOI is served on the respondent, a penalty equal to the amount of the fine may be imposed and the respondent's license may be suspended until the fine has been paid; and

(f) Any other information that the Office may require.

704.3 Each NOI shall be served and filed in the manner prescribed by § 712.

704.4 In response to an NOI, a respondent shall file a written answer with OAH within thirty (30) days of the date the NOI is served on the respondent. The answer shall:

(a) Admit the infraction and pay the fine;

(b) Admit the infraction with an explanation, and providing any supporting documentation; or

(c) Deny the infraction and request a hearing.

704.5 Payment of the fine shall not relieve the respondent of the obligation to abate the infraction cited in the NOI.

704.6 If a respondent admits an infraction in the NOI, the respondent shall include payment of the fine with his or her answer. If respondent pays the stated fine but fails to indicate a specific answer, the respondent shall be deemed to have admitted the infraction.

704.7 If a respondent responds to an NOI, does not pay the stated fine, and fails to state an answer as required by § 704.4, the respondent shall be deemed to have denied the infraction.

704.8 If the respondent admits an infraction with an explanation, the respondent shall state on the NOI whether the respondent requests a hearing on the papers or an in-person hearing. The OAH may hold an in-person hearing in its sole discretion.

704.9 If a respondent denies an infraction, OAH may schedule an in-person hearing in accordance with its rules.

704.10 If a respondent does not answer the NOI within thirty (30) calendar days:

(a) OAH shall issue a default order; and

(b) A civil penalty equal to the amount of the fine imposed by the NOI shall be imposed by OAH in the default order.

704.11 A civil penalty, including a fine, may be downwardly modified by OAH if:

(a) The downward modification is not inconsistent with the provision of this title or other applicable law which is the basis for the penalty;

(b) The Office is provided with an opportunity to present to OAH its opinion on a proposed downward modification or fine reduction; and

(c) The downward modification is based on a consideration of all relevant mitigating and aggravating factors.

705 CEASE AND DESIST ORDERS

705.1 If the Office has reason to believe that a person is violating a provision of this title or other applicable law and the violation has caused or may cause immediate and irreparable harm to the public, the Office may issue a cease and desist order requiring the person to immediately, or within a specified period of time, cease the conduct or activity which is allegedly in violation of a provision of this title or other applicable law.

705.2 A cease and desist order shall be in writing in a form prescribed by the Office and shall include:

(a) The grounds for the order, including a citation to the law or regulation that the respondent is violating;

(b) A statement identifying the conduct which the respondent must cease, or the action the respondent must take, in order to correct the violation;

(c) The deadline by which such conduct must cease or such action must be taken. The date and time may be immediately upon service of the order;

(d) A statement that the respondent has a right to a hearing before OAH if the respondent requests a hearing, in writing, within fifteen (15) calendar days of service of the order or request;

(e) A statement explaining the process by which the respondent may request a hearing; and

(f) A statement that the respondent's request for a hearing shall not stay, suspend, or delay the effectiveness or enforcement of the order.

705.3 Each cease and desist order shall be served and filed in the manner prescribed by § 712.

705.4 Upon receipt of a timely request for a hearing, OAH shall conduct a hearing within fifteen (15) calendar days after the date of receipt of the request and shall issue a decision within thirty (30) calendar days after the close of the record in the OAH proceedings.

705.5 If the respondent does not request a hearing in writing within fifteen (15) calendar days after service of the cease and desist order, OAH shall issue a default order pursuant to its procedures. The default order shall incorporate the requirements, terms, and conditions of the cease and desist order.

705.6 A cease and desist order shall be enforced pending a final decision on the merits.

705.7 If a respondent fails to comply with a cease and desist order, the Commission or Office may, through the Office of the Attorney General, petition the District of Columbia Superior Court for injunctive relief, or take any other action authorized by law to enforce compliance with a provision of this title or other applicable law.

706 IMMEDIATE SUSPENSION OF A VEHICLE OPERATOR'S LICENSE

706.1 The Office may order the immediate suspension of a license allowing an individual to operate a public vehicle-for-hire whenever the Office has reasonable grounds to conclude that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public.

706.2 A determination of imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, under § 706.1, shall be based on evidence that the respondent:

(a) Has committed murder, manslaughter, mayhem, malicious disfiguring of another, arson, abduction, kidnapping, burglary, theft, breaking and entering, robbery, larceny, assault or battery, or any other felony;

(b) Has committed a sexual offense proscribed by D.C. Official Code § 22-1901 (incest), §§ 22-3101 to 22-3103 (sexual performance using minors), § 22-2701 to § 22-2722 (prostitution and pandering), §§ 22-3002 to 22-3020 (sexual abuse), or § 22-1831 *et seq*. (human trafficking);

(c) Has violated the District of Columbia Uniformed Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code §§ 48-901.01 *et seq*.) or the Drug Paraphernalia Act of 1982, effective September 17, 1982 (D.C. Law 4-149; D.C. Official Code §§ 48-1101 *et seq.)*;

(d) Has committed a criminal act outside the District which, if committed in the District, would fall into one of the categories in § 706.2 (a)-(c);

(e) Has committed a criminal offense in connection with the operation of a vehicle which is licensed by the Office as a public vehicle-for-hire;

(f) Has violated a traffic regulation in a manner that reflects recklessness, gross negligence, depravity; or wanton disregard for the safety of other persons or property; or

(g) Has acted or failed to act in any manner which otherwise poses an imminent threat to the health or safety of passengers, operators, or the public, or to consumer protection or passenger privacy.

706.3 A determination of imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, under § 706.1, shall not be based on evidence that the respondent:

(a) Has not been arrested, charged, prosecuted, presented, indicted, or convicted of a crime in connection with the facts giving rise to the determination;

(b) Has not been the subject of a civil or administrative proceeding in connection with the facts giving rise to the determination; or

(c) Has not engaged in prior, similar misconduct.

706.4 In determining whether a respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, the Office may consider any and all relevant evidence, including evidence which may not be admissible in a criminal, civil, or administrative proceeding, including without limitation a statement against interest, an admission, an arrest record, or court order.

706.5 Each order of immediate suspension shall be in writing and shall state:

(a) The grounds for the immediate suspension;

(b) The terms and conditions applicable to the suspension (if any), including any deadlines;

(c) That the matter will be scheduled for a hearing at OAH consistent with its rules and procedures; and

(d) Notice that the respondent's request for a hearing before OAH or referral of the matter to OAH shall not stay, suspend, postpone, or delay the effectiveness of the order of immediate suspension.

706.6 Each order of immediate suspension pursuant to this section shall be served and filed in the manner prescribed by § 712.

706.7 A preliminary hearing on an order of immediate suspension shall be held before OAH within three (3) business days of service of the order on the respondent. At the preliminary hearing, either party may request an evidentiary hearing on the order of immediate suspension. If a party requests an evidentiary hearing, OAH

shall hold the evidentiary hearing within fifteen (15) calendar days of service of the order on the respondent.

706.8 Any review by OAH of an order of immediate suspension, at a preliminary hearing held pursuant to § 706.7, or at any subsequent hearing, shall be limited to a determination of whether the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2. If OAH determines that the Office has sufficient evidence to conclude that reasonable grounds exist to believe that the respondent poses an imminent danger to the health, safety, or welfare of an operator, a passenger, or the public, as provided in § 706.2, the order of immediate suspension shall remain in effect without modification by OAH through the end of the immediate suspension as stated in the order, or until a final ruling on the merits on a concurrent notice of proposed suspension or revocation is issued pursuant to § 708, whichever is later.

706.9 Each order of immediate suspension issued pursuant to this section shall be issued concurrently with a notice of proposed suspension or revocation issued pursuant to § 708.

707 IMMEDIATE SUSPENSION OF A LICENSE OTHER THAN A VEHICLE OPERATOR'S LICENSE

707.1 The Office may order the immediate suspension of a license other than a license allowing an individual to operate a public vehicle-for-hire whenever the Office has reasonable grounds to believe the respondent poses an imminent danger to the public.

707.2 A determination under § 707.1 shall be based on evidence that the respondent:

(a) Has committed a willful or repeated violation of any provision of this title or other applicable law which carries a civil penalty of at least five hundred dollars ($500) for the current or most recent violation or for which license suspension is stated as an available civil penalty;

(b) Has allowed or suborned activity by another person which would provide a ground for such person's suspension or revocation under this chapter; or

(c) Poses an imminent or significant threat to the health or safety of passengers, operators, or the public, consumer protection, or passenger privacy.

707.3 In determining whether a respondent poses an imminent danger to the public, the Office or District enforcement official may consider any and all relevant evidence, including evidence which may not be admissible in a criminal, civil, or

administrative proceeding, including without limitation a statement against interest, an admission, an arrest record, or court order.

707.4 Each order of immediate suspension pursuant to this section shall be served and filed in the manner prescribed by § 712.

707.5 Section 706.3 shall apply to all proceedings under this section. The adjudication of an order of immediate suspension of a license under this section shall be as set out in § 706.7 and § 706.8.

707.6 Each order of immediate suspension issued pursuant to this section shall be issued concurrently with a notice of proposed suspension or proposed revocation issued pursuant to § 708.

708 NOTICE OF PROPOSED SUSPENSION OR REVOCATION OF A LICENSE

708.1 Proposed suspension. The Office may issue a notice of proposed suspension of a license issued under this title based on any of the following grounds:

(a) A material misrepresentation, fraud, or concealment of material information in a communication with the Commission or the Office in a document provided to the Commission or the Office, or in connection with an activity for which the respondent is licensed;

(b) A determination that the respondent no longer meets the requirements for the license it was issued by the Office;

(c) A determination that a basis for suspension exists pursuant to a provision of another chapter of this title;

(d) The existence of one or more grounds for suspension of a license pursuant to § 706.2 or § 707.2, without regard to whether the Office has issued an order of immediate suspension;

(e) A criminal conviction involving fraudulent conduct, or in the case of an entity, a determination that an employee, agent, or independent contractor associated with the entity has been convicted of such conduct in connection with any activity regulated by this title;

(f) The use or subornation of a fraudulent or misleading device, method, or practice relating to any activity regulated by this title;

(g) A willful or repeated failure to obey one or more compliance orders issued by the Office;

(h) A willful or repeated failure to comply with one or more orders issued by OAH;

(i) A willful or repeated failure to pay one or more civil fines imposed by the Office; or

(j) A willful or repeated failure to comply with one or more provisions of this title or applicable law.

708.2 Proposed revocation. The Office may issue a notice of proposed revocation of a license issued under this title based on any of the following grounds:

(a) The respondent's license is currently, or was previously, suspended under § 706, § 707, or § 708.1;

(b) The respondent has committed substantial or repeated acts that constitute grounds for immediate suspension under § 706.2 or § 707.2, without regard to whether the Office has issued an order of immediate suspension;

(c) The respondent has committed substantial or repeated acts that constitute grounds for proposed suspension under § 708.1;

(d) A determination that a basis for revocation exists pursuant to a provision of another chapter of this title; or

(e) The respondent has failed to timely and fully comply with the terms and conditions of an order of suspension, or has committed further violations of this title or other applicable law during the pendency of a suspension.

708.3 A notice of proposed suspension or proposed revocation shall be issued concurrently with each order of immediate suspension, if issued.

708.4 A notice of proposed suspension or proposed revocation of a license shall be in writing and shall state:

(a) The grounds for the proposed suspension or revocation;

(b) The date on which the proposed suspension or revocation will become effective which shall be no sooner than thirty-one (31) calendar days following service of the notice;

(c) If a proposed suspension is for a time certain, the duration of the suspension; or, if the suspension is for an indefinite period of time, the terms upon which the license may be reinstated in full;

(d) A statement:

(1) That the respondent has the right to request a hearing before the OAH within thirty (30) calendar days of service of the notice;

(2) Explaining the process for requesting a hearing; and

(3) That, if the respondent fails to file an appeal within thirty (30) calendar days, the proposed suspension or revocation shall become final.

708.5 No proposed suspension shall extend beyond the current licensing period. The suspension of a license is a factor that shall be considered by the Office at the time of renewal of a license issued under this title.

708.6 Each notice of proposed suspension or proposed revocation shall be served and filed in the manner prescribed by § 712.

709 LICENSING DOCUMENTS

709.1 The terms stated or incorporated by reference in each licensing document shall constitute a compliance order to the licensee.

709.2 If a licensing document states that it is temporary, it shall be valid and effective for all purposes under this title throughout the period stated therein.

709.3 No person, other than a District enforcement official or other person authorized by law, shall duplicate or transfer to another person any licensing document except with written permission from the Office or in compliance with § 814.8 or § 822.2. Such action shall constitute fraud for purposes of this chapter.

710 PUBLIC COMPLAINTS

710.1 The Office shall receive oral and written complaints by members of the public through the following means: by telephone, through the Commission's website, by email, in person, by U.S. Mail, by fax, or by private delivery service.

710.2 An oral complaint shall not be the basis of further action by the Office unless it has been reduced to writing. If the Office receives an oral complaint, it shall either: (1) contact the complainant to request that the complaint be filed in writing; or (2) promptly reduce the complaint to writing.

710.3 The Office shall notify each complainant that his or her complaint has been received within seventy-two (72) hours of receiving a complaint submitted in writing or within seventy-two (72) hours after receiving a written complaint which had been originally submitted orally. The notice shall be provided by U.S.

Mail, email, or telephone call using the contact information provided by the complainant.

710.4 A public complaint shall be pursued by the Office if submitted within thirty (30) days following the event or occurrence giving rise to the complaint, provided however, that a complaint alleging that any individual suffered personal injury or engaged in criminal misconduct in connection with a public vehicle-for-hire service may be pursued by the Office if submitted within twelve (12) months after the event or occurrence giving rise to the complaint.

710.5 Unless the Office determines that a public complaint is not actionable, it shall notify the respondent of the complaint within fourteen (14) calendar days after the public compliant has been submitted to the Office.

710.6 Each respondent who is the subject of a complaint shall be notified in writing that the complaint has been submitted and be given the opportunity for mediation in accordance with § 711.

710.7 The Office shall initiate any enforcement action based on a timely complaint not later than sixty (60) calendar days after the completion of mediation as described in § 711.

711 MEDIATION

711.1 Mediation shall consist of an informal and voluntary meeting between the Office and the respondent, at a time and place designated by the Office, for the purpose of addressing a public complaint it has received, or an enforcement action it has filed or may file.

711.2 The Office shall extend an invitation to mediate when a public complaint is filed or when the Office is considering the issuance of an order of immediate suspension of a license, and may, in its discretion, extend an invitation to mediate any other matter.

711.3 A respondent shall not be required to participate in mediation. An invitation to mediate shall not be considered a compliance order pursuant to § 702.2.

711.4 Mediation shall be scheduled by the Office to occur within a reasonable period, provided, however, that where the Office is considering an immediate suspension, the mediation shall be scheduled for not later than three (3) business days following service of the invitation. Mediation that follows a public complaint shall not be scheduled until the invitation to mediate is accepted by the respondent.

711.5 An invitation to mediate shall be accepted by the respondent not later than the deadline set by the Office, provided, however, that the deadline shall be ten (10)

calendar days following service if the invitation is based on a public complaint, and two (2) business days if the Office is considering the issuance of an order of immediate suspension.

711.6 Each invitation to mediate shall be in writing and:

(a) Shall state the designated time and location for the mediation session in accordance with § 711.4;

(b) Shall state the deadline for acceptance of the invitation, as prescribed by § 711.5;

(c) Shall provide a description of the circumstances giving rise to the invitation;

(d) Shall state that the Office may take an enforcement action in connection with the circumstances giving rise to the invitation, identifying the applicable regulations and potential penalties;

(e) May include a request that the respondent bring with it, or submit in advance, documents or information.

711.7 Each invitation to mediate shall be served in the manner prescribed by § 712.

711.8 If the Office receives a timely acceptance from the respondent and the respondent appears on time for mediation, the Office shall mediate the matter as stated in the invitation. If the Office does not receive a timely acceptance from the respondent or the respondent does not appear on time for mediation, the Office may initiate an enforcement action.

711.9 The Office may reschedule a mediation one time for good cause shown provided the request to reschedule is received by the Office not later than: three (3) business days before the mediation date, the deadline for acceptance of the invitation where the Office is considering the issuance of a notice of immediate suspension, or a shorter period if exigent circumstances (such as hospitalization) exist and are supported by appropriate documentation.

711.10 At mediation, the parties may negotiate and reach agreement on any penalty that would be available if an enforcement action were taken (including a full or partial payment of a civil fine), admission of liability, execution of a compliance agreement or consent decree, suspension or revocation of a license, or any other relief authorized by law.

711.11 No fact related to or concerning mediation shall be admissible in the adjudication of an enforcement action, including without limitation whether a mediation session occurred or did not occur, whether a mediation session was rescheduled or

not, and the substance or fact of a party's offer to compromise, provided, however, that any information or document not created in anticipation of mediation or which rebuts an allegation by the respondent that it was not given notice shall be admissible regardless of whether it was obtained in connection with mediation. An enforcement action shall not be limited to the circumstances, evidence, civil infraction, or potential penalty stated in an invitation to mediate provided any change is based on subsequently-acquired information, further investigation, or additional analysis.

712 SERVICE AND FILING

712.1 Each written compliance order issued pursuant to § 702, each enforcement action authorized by § 703 other than an order of impoundment of a vehicle, and each invitation to mediate issued pursuant to § 711, shall be served by one of the following methods, unless a different method of service is required by law:

(a) By personal service upon the respondent or the respondent's agent, through delivery of the document to the last known home or business address of the respondent, or the respondent's agent, on file with the Office and leaving the document with a person over the age of sixteen (16) years old residing or employed at that address by handing the notice or order to such individual;

(b) By posting the document in a conspicuous place in or about the location of respondent's place of business; or

(c) By depositing the document into first-class U.S. Mail, addressed to the last known home or business address of the respondent, or respondent's agent, on file with the Office.

712.2 Service pursuant to § 712.1(c) is complete at the time the document is deposited into the U.S. Mail, regardless of whether an earlier or later date or time is stamped upon the envelope.

712.3 An individual licensed by the Commission who defaces, alters, or removes a document posted pursuant to § 712.1 (b) without the approval of the Office shall be subject to a civil fine in the amount of one thousand dollars ($1,000).

712.4 An entity licensed by the Commission that allows or induces an individual to deface, alter, or remove a document posted pursuant to § 712.1(b), without the approval of the Office, shall be subject to a civil fine in the amount of two thousand five hundred dollars ($2,500).

712.5 Each document subject to service under § 712.1, other than a compliance order or invitation to mediate, shall be filed promptly with OAH in the manner prescribed by its rules and procedures.

713 REPRESENTATION

713.1 Each person may designate a representative to act or appear on its behalf before the Office or the Commission in connection with any matter arising under this title.

713.2 No person, other than a representative designated pursuant to § 713.1, shall act or appear on behalf of another person before the Office or the Commission.

Subsection 799.1 is amended to read as follows:

799.1 The terms "adjudication," "contested case," "declaratory order", "party," "person", and "license" shall have the meanings ascribed to them in the District of Columbia Administrative Procedure Act, effective October 8, 1975 (D.C. Law 1-19, D.C. Official Code §§ 2-502 *et seq*.).

A new Subsection 799.2 is added to read as follows:

799.2 The following words and phrases shall have the meanings ascribed:

"Complainant" – a member of the public who submits a complaint.

"District enforcement official" – a public vehicle inspection officer (hack inspector) or other authorized official, employee, or general counsel of the Office, or any law enforcement official authorized to enforce a provision of this title or other applicable law.

"Licensing document" – A physical or electronic document issued by the Office as evidence that a person has been granted a license, such as a commercial operator's identification card.

"Office" – the Office of Taxicabs as established by D.C. Official Code § 50-312.

"Public vehicle-for-hire" – (A) a passenger motor vehicle operated in the District by an individual or any entity that is used for the transportation of passengers for hire, including as a taxicab, limousine, or sedan; or (B) another private passenger motor vehicle that is used for the transportation of passengers for hire but is not operated on a schedule or between fixed termini and is operated exclusively in the District, or a vehicle licensed pursuant to D.C. Official Code § 47-2829, including taxicabs, limousines, and sedans.

"Respondent" – a person (individual or entity) that is the subject of a compliance order, public complaint, invitation to mediate, or enforcement action.

"Revocation" – the permanent recall or annulment of the privilege or authority granted by a license without opportunity for reinstatement or renewal of the license which was in effect at the time of the revocation.

"Suspension" – a temporary bar from the privilege or authority conferred by a license for a fixed period, or for an indefinite period pending the satisfaction of a term or condition stated in the notice of suspension.

Chapter 3, PANEL ON ADJUDICATION: RULES OF ORGANIZATION AND PROCEDURE, is repealed and reserved.

Chapter 5, TAXICABS COMPANIES, ASSOCIATIONS, AND FLEETS AND INDEPENDENT TAXICABS, is amended as follows:

A new Section 519 is added to read as follows:

519 ENFORCEMENT OF THIS CHAPTER

519.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Section 510, COMPLIANCE WITH LICENSING REQUIREMENTS; SUSPENSIONS AND REVOCATIONS, is amended as follows:

Subsection 510.3 is repealed.

Section 518, PENALTY, is amended as follows:

Subsections 518.2 and 518.3 are repealed.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

Section 826, FILING OF COMPLAINTS, is amended to read as follows:

826 ENFORCEMENT OF THIS CHAPTER

826.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 9, INSURANCE REQUIREMENTS, is amended as follows:

A new Section 908 is added to read as follows:

908 ENFORCEMENT OF THIS CHAPTER

908.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 10, PUBLIC VEHICLES FOR HIRE, is amended as follows:

Section 1002, APPLICATION FOR A HACKER'S LICENSE; FEES, is amended as follows:

Subsection 1002.10 is amended to read as follows:

1002.10 The denial of a hacker's license for failure to successfully take and pass the written examination is not reviewable on appeal.

Section 1013, COMPLAINTS AGAINST OPERATORS OF PUBLIC VEHICLES FOR HIRE, is amended to read as follows.

1013 ENFORCEMENT OF THIS CHAPTER

1013.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 13, LICENSING AND OPERATIONS OF TAXI METER COMPANIES, is amended as follows:

A new Section 1332 is added to read as follows:

1332 ENFORCEMENT OF THIS CHAPTER

1332.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

Chapter 15, LICENSING AND OPERATIONS OF DOME LIGHT INSTALLATION COMPANIES, is amended as follows:

Section 1531, DOME LIGHT INSTALLATION BUSINESS - PENALTIES FOR VIOLATIONS, is amended as follows:

Subsections 1531.3, 1531.4, and 1531.5 are repealed.

1532 ENFORCEMENT OF THIS CHAPTER

1532.1 The enforcement of this chapter shall be governed by the procedures set forth in Chapter 7 of this title.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(3), (7), 14, 20, and 20g of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (7), 50-313, 50-319, 50-329, (2012 Repl. & 2013 Supp.)), hereby announces its adoption of final rules amending Chapter 4 (Taxicab Payment Services) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These rules address various compliance standards for Payment Service Providers (PSPs), including: (1) fees for untimely renewal applications, (2) suspensions and revocations of approvals to operate as a PSP in the District, (3) cooperation with the Office of Taxicabs ("Office"), (4) reporting to the Office, and (5) maintenance of separate vehicle and operator inventories. PSP compliance with the requirements of this title, and this chapter, is important to ensure the ongoing modernization of the District's taxicab industry.

A Notice of Proposed Rulemaking was adopted on March 12, 2014 and published in the *D.C. Register* on May 2, 2014 at 61 DCR 4442. No comments were received on the proposed rulemaking. No substantial changes have been made. The Commission voted to adopt these rules as final on June 11, 2014, and they will become effective upon publication in the *D.C. Register*.

Chapter 4, TAXICAB PAYMENT SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 406, RENEWAL APPLICATIONS, is amended as follows:

Subsection 406.1 is amended to read as follows:

406.1 Each approved MTS shall be submitted for renewal of its approval at least sixty (60) days before the expiration of the approval, unless the Office grants a waiver in writing for good cause shown. A renewal application submitted less than sixty (60) days before the expiration of the approval shall be accompanied by a late fee of one thousand dollars ($1,000). The procedures applicable to new applications shall apply to renewal applications, except as otherwise required by this title or other applicable law.

Section 407, SUSPENSION OR REVOCATION OF APPROVAL, is amended to read as follows:

407 SUSPENSION OR REVOCATION OF APPROVAL

407.1 Order of immediate suspension. The Office may immediately suspend an MTS's approval issued under § 405 when:

(a) The Office has reasonable grounds to believe the PSP that operates the MTS has committed or is committing a willful or repeated violation of § 408.9 (failure to cooperate with or report to the Office), § 408.13 (failure to timely pay owners), § 603.9 (failure to provide MTS service and support), or § 408.14 (failure to maintain operator and vehicle inventories);

(b) The Office has reasonable grounds to believe there exists an imminent or significant risk that the MTS may be or has been used by one or more individuals, or by an entity other than the PSP, to violate or enable the violation of one or more provisions of this title or other applicable law;

(c) The Office has reasonable grounds to believe the MTS or the PSP's operations or conduct pose an imminent or significant threat to the safety and welfare of passengers, operators, or the public; or

(d) The Office has reasonable grounds to believe the MTS or the PSP's operations or conduct pose an imminent or significant threat to consumer protection or passenger privacy.

407.2 As provided in § 407.4, a PSP's failure to timely and fully comply with the terms and conditions of an order of immediate suspension, or to further violate this title or other applicable law during the pendency of an order, shall be a sufficient basis for revocation of the PSP's approval.

407.3 Notice of proposed suspension. The Office may issue a notice of proposed suspension of a PSP's approval issued under § 405 when:

(a) The Office has reasonable grounds to believe the PSP has:

(1) Committed fraud, made a fraudulent or material misrepresentation to any person in connection with the conduct of its MTS business, or has concealed material information from the Office, or

(2) Induced any other person to commit an act enumerated in (a)(1).

(b) The Office has reasonable grounds to believe the PSP no longer meets the requirements for approval under this chapter;

(c) An order of immediate suspension has been issued against the PSP;

(d) The Office has reasonable grounds to believe one or more grounds exist for immediate suspension of the PSP under § 407.1;

(e) The PSP or an employee, agent, or independent contractor associated with it has been convicted of a criminal offense involving fraudulent conduct in connection with the conduct of an activity within the jurisdiction of the Commission; or

(f) The Office has reasonable grounds to believe the PSP has failed to comply with any provision of this title or other applicable law.

407.4 Notice of proposed revocation. The Office may issue a notice of proposed revocation of a PSP's approval issued under § 405 when:

(a) The PSP's approval has been previously suspended at any time on any grounds;

(b) The Office has reasonable grounds to believe the PSP has committed substantial or repeated acts which would constitute grounds for an order of immediate or proposed suspension under § 407.1 or § 407.3; or

(c) The Office has reasonable grounds to believe the PSP failed to timely and fully comply with the terms and conditions of an order of suspension, or further violated this title or other applicable law during the pendency of an order of suspension.

407.5 Content of order or notice. Each order of immediate suspension and notice of proposed suspension or revocation shall:

(a) Be in writing;

(b) State the grounds for the order or notice;

(c) State the terms and conditions required for compliance with the order or notice (if any) including any deadlines;

(d) State that the PSP is entitled to a review of the order by OAH:

(1) Within three (3) business days, if it is an order of immediate suspension;

(2) Within thirty (30) calendar days, if it is a notice of proposed suspension or revocation;

(e) Include full contact information for OAH;

(f) Include a reference to OAH regulations, or to Section 10 of the DCAPA (D.C. Official Code § 2-509), that detail the hearing procedures to be used during OAH's review of the Order; and

(g) Include a statement that a party or witness may apply for the appointment of a qualified interpreter if he or she is deaf or cannot readily understand or communicate the spoken English language.

407.6 Method of service and filing. Each order of immediate suspension and notice of immediate suspension or revocation shall:

(a) Be served promptly on the PSP by hand delivery to the address on file with the Office for the PSP or its agent, leaving the document with a person over the age of sixteen (16) residing or employed at that address.

(b) Be filed promptly with OAH, and, if it is an order of immediate suspension, not later than the next business day after service.

407.7 The Office may, but shall not be required to, invite a PSP to participate in mediation in advance of any suspension or revocation action authorized by this section.

Section 408, OPERATING REQUIREMENTS APPLICABLE TO PSPs AND DDSs, is amended as follows:

Subsection 408.9 is amended to read as follows.

408.9 Cooperation and reporting. Each PSP shall:

(a) Timely and fully cooperate with the Office and all District enforcement officials in the enforcement of and compliance with all applicable provisions of this title and other applicable laws;

(b) Timely provide full and complete reports as required by Chapter 6;

(c) Timely provide full and complete trip data as directed by the Office pursuant to § 603; and

(d) Appear at the administrative offices of the Office with any records demanded, when directed to do so by the Office pursuant to this title, except for good cause shown.

Subsection 408.14 is amended to read as follows.

408.14 Inventory requirements.

(a) Each PSP shall maintain with the Office accurate and current inventories of all vehicles and all operators on active status with which it associates for its MTS. Only active vehicles and active operators shall appear on inventories.

(b) Each PSP shall ensure that:

(1) Its vehicle and operator inventories are maintained and updated in the manner and frequency determined by the Office;

(2) When a vehicle or operator is no longer associated with the PSP as a result of a threat to passenger or public safety, the inventories shall be updated promptly; and

(3) Separate inventories are maintained for vehicles and operators.

(c) Each vehicle inventory shall include, as to each vehicle:

(1) The name, address, work telephone number, and cellular telephone number, for the owner(s);

(2) The name, address, telephone number, and cellular telephone number for the taxicab company, association or fleet with which the owner is associated, if any;

(3) The vehicle's PVIN, make, model, and year of manufacture;

(4) A certification that the vehicle is in compliance with the insurance requirements of Chapter 9 of this title; and

(5) A statement of whether the vehicle is wheelchair accessible.

(d) Each operator inventory shall include, as to each operator:

(1) The name, address, work telephone number and cellular telephone number, for the operator; and

(2) The operator’s DCTC commercial operator license number and the name, address, telephone number and cellular telephone number for any taxicab company, association, or with which the operator is associated.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(3) and (7), 14, 20, and 20g of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (c)(7), 50-313, 50-319, 50-329 (2012 Repl. & 2013 Supp.)), hereby gives notice of its adoption of final rules amending Chapters 4 (Taxicab Payment Services) and 5 (Taxicab Companies, Associations and Fleets) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

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

An emergency rulemaking was adopted on December 11, 2013, took effect immediately, and was published in the *D.C. Register* on December 20, 2013 at 60 DCR 17047, to remain in effect for sixty (60) days after the date of adoption. A Notice of Second Emergency and Proposed Rulemaking was adopted by the Commission on March 12, 2014, took effect immediately, and was published in the *D.C. Register* on April 25, 2014, at 61 DCR 4216. The Commission has not received any comments on the rulemaking. The Commission voted to adopt these rules as final on June 11, 2014, and they will become effective upon publication in the *D.C. Register*.

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

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

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

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

(d) A violation of § 408.13 by failing to pay each taxicab company or independent owner with which it is associated the portion of such PSP's revenue to which the taxicab company or independent owner is entitled

within twenty-four (24) hours or one (1) business day of when such revenue is received by the PSP, or

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

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

509 PROMPT PAYMENT TO TAXICAB OPERATORS

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

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

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Section 8(c)(2) and (c)(20) of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2); (20) (2012 Repl. & 2013 Supp.)) hereby gives notice of the adoption of amendments to Chapters 4 (Taxicab Payment Services), 8 (Operation of Taxicabs), and 11 (Public Vehicles for Hire Consumer Service Fund) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The amendments update existing fees authorized by the Commission and clarify the definition of the integration service fee. These rules are necessary to clarify that the integration service fee must be charged consistently with the integration rules in Chapter 4, not merely "whenever" a digital payment is processed, as the rule had originally been written. These rules are also necessary to fund testing and licensing of new operators by the Office, which cannot otherwise be supported.

These rules were originally adopted on September 11, 2013 as a Notice of Emergency and Proposed Rulemaking, became effective on Friday, September 13, 2013, and were published in the *D.C. Register* on September 27, 2013 at 60 DCR 13446. Portions of the original rulemaking were the subject of a separate final rulemaking adopted by the Commission. A Notice of Second Emergency and Proposed Rulemaking was adopted by the Commission on March 12, 2014, became effective on Friday, March 14, 2014, and was published in the *D.C. Register* on April 11, 2014, at 61 DCR 3846. No comments were received on the rulemaking. The Commission voted to adopt these rules as final on June 11, 2014, and they will become effective upon publication in the *D.C. Register*.

Chapter 4, TAXICAB PAYMENT SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 408, OPERATING REQUIREMENTS APPLICABLE TO PSPs AND DDSs, is amended as follows:

Subparagraph 408.16(b)(3)(A) is amended as follows:

408.16(b)(3) (A) Hardware integration requirements. Hardware integration between a PSP and DDS shall provide for and require the following events to occur in the following order:

Subparagraph 408.16(b)(3)(A)(iii)(C) is amended by striking the "and" at the end of the paragraph.

Subparagraph 408.16(b)(3)(A)(iv) is amended by striking the period at the end of the paragraph and inserting the phrase "; and" in its place.

A new Subparagraph (v) is added to § 408.16(b)(3)(A) to read as follows:

(v) The DDS shall pay an integration service fee to the PSP.

Subparagraph 408.16(b)(3)(B)(v) is amended as follows:

(v) The DDS shall pay an integration service fee to the PSP.

Section 499, DEFINITIONS, is amended as follows:

Subsection 499.2 is amended as follows:

The definition of "Integration service fee" is amended to read as follows:

"Integration service fee" - a thirty five cent ($0.35) fee paid by each DDS to a PSP with which it is integrated under this chapter, for the use of the PSP's MTS, each time a digital payment is processed by the DDS, unless the DDS and PSP have integrated in a manner allowed by this chapter that does not require the payment of such fee.

Chapter 8, OPERATION OF TAXICABS, is amended as follows:

Subsection 827.1, Annual Operator ID License, is amended to read:

Hack License/Face Card	$250 for two (2) years
Limo License/Face Card	$300 for two (2) years
Taxi/Limo/Sedan Face Card	$550 for two (2) years

Subsection 827.1, Pre-License Testing, is amended to read:

Pre-License Testing	
First Testing:	$100
Second and additional testing:	$75

Chapter 11, PUBLIC VEHICLES FOR HIRE CONSUMER SERVICE FUND, is amended as follows:

Section 1104, FEES, is amended as follows:

Subsection 1104.1, amended to add the following fees:

Proposed PSP Application Fee (§ 403.3)	$1000
Late Renewal Application Fee – PSP or DDS (§§ 406 or 1604.6)	$1000
Vehicle Age Waiver Fee (§609)	$50
Taximeter Business License Fee (§1305.1)	$2,000; $500 non-refundable
Dome Light Business Application Fee (§1505.1)	$500
Dome Light Business Biennial Renewal Application Fee (§1505.3)	$1500
Pair of taxicab passenger rate stickers	$1.00

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission, pursuant to the authority set forth in Sections 8(c)(3), (5) and (7), 14, 20, and 20g of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (c)(5), (c)(7), 50-313, 50-319, 50-329 (2012 Repl. & 2013 Supp.)), hereby gives notice of its adoption of amendments to Chapters 6 (Taxicab Parts and Equipment) and 8 (Operation of Taxicabs) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules would: (1) require that taximeters be double-sealed to prevent the use of unauthorized meters, (2) correct inconsistent references to the Dome Light status, (3) change the trip data reporting in the service and support requirements of Section 603 to provide that each modern taximeter system report the public vehicle identification number in a non-anonymous format, and (4) provide a one thousand ($1,000) fine for the use of an improperly sealed meter.

A Notice of Proposed Rulemaking was adopted on April 9, 2014 and published in the *D.C. Register* on May 2, 2014 at 61 DCR 4448. No comments were received on the proposed rulemaking and no substantial changes were made to the rulemaking. The Commission voted to adopt these rules as final on June 11, 2014, and they will become effective upon publication in the *D.C. Register*.

Chapter 6, TAXICAB PARTS AND EQUIPMENT, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 602, TAXIMETERS, is amended as follows:

Subsection 602.1(c)(23) and (24) are amended to read as follows:

(23) Be permanently affixed to the vehicle in a location approved by the Commission and double sealed so as to prevent tampering, removal, or opening;

(24) Have a Commission-approved Dome Light that is connected to the engine and controlled by engaging the meter; provided, however, that the Dome Light may contain a driver-activated switch located on the side of the Dome Light that will allow the complete Dome Light to remain dark when the vehicle is being utilized for personal use, in compliance with Subsections 605.5, 605.6, 605.7 and 605.8.

Section 603, MODERN TAXIMETER SYSTEMS, is amended as follows.

Subsection 603.9 (c) is amended to read as follows:

(c) Transmit to the TCIS every twenty-four (24) hours via a single data feed consistent in structure across all PSPs, in a manner as established by the Office, the following data:

(1) The operator's identification (Face Card) number

(2) The operator's PVIN;

(3) The vehicle tag (license plate) number;

(4) The name of the PSP;

(5) The name of the taxicab company, association, or fleet, if applicable;

(6) The PSP-assigned tour of duty identification number;

(7) The date and time when the operator completed the required login process pursuant to Subsection 603.9(a) at the beginning of the tour of duty;

(8) The time (duration) and mileage of each trip;

(9) The date and time of pickup and drop-off of each trip;

(10) The geospatially-recorded place of pickup and drop-off of each trip which may be generalized to census tract level;

(11) The number of passengers;

(12) The unique trip identification number assigned by the PSP;

(13) The taximeter fare and an itemization of the rates and charges pursuant to § 801;

(14) The form of payment (cash payment, cashless payment, voucher, or digital payment), the payment method, and, if a digital payment, the name of the DDS;

(15) The date and time of logoff at the end of the tour of duty;

(16) The date and time that the data transmission to TCIS takes place;

Subsection 603.9 (d) is amended to read as follows.

(d) Provide the Office with all information necessary to ensure that the PSP pays the taxicab passenger surcharge for each taxicab trip and that the District receives required data pursuant to Subsection 603.9, regardless of how the fare is paid, including:

(1) Weekly surcharge reports (due every Monday by the close of business (COB));

(2) Weekly vehicle installation and inventory reports (consistent with the requirements of Subsection 408.14 (due every Friday COB);

(3) Weekly TCIS trip rejected reports;

(4) Weekly non-payment drivers lists;

(5) Weekly detailed trip records, including driver's information upon request of the Office; and

(6) Any other reports as may be required by the Office for purposes consistent with this section.

Section 605, DOME LIGHTS AND TAXI NUMBERING SYSTEM, is amended as follows:

Subsections 605.5, 605.6, and 605.7 are amended to read as follows:

605.5 The LED portion of the Dome Light shall display "Taxi For Hire" at all times when the taxicab is available for hire and the LED portion of the Dome Light shall go "dark" when the taxicab is not available for hire because the taxicab is carrying a passenger. The Dome Light may contain a driver activated switch on the side of the Dome Light that will allow the complete Dome Light to remain dark when the vehicle is being utilized for personal use.

605.6 Whenever a taxicab operator removes his or her vehicle from service and is proceeding to a place of his or her choosing without intending to take on passengers, the LED portion of the Dome Light shall display "Taxi Off Duty".

605.7 Whenever a taxicab is responding to a dispatch call or proceeding to a prior arranged transport, the LED portion of the Dome Light shall display "Taxi On Call".

Chapter 8, OPERATION OF TAXICABS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 825, TABLE OF CIVIL FINES AND PENALTIES, is amended as follows:

Subsection 825.2 is amended by adding to the current rows of infractions, as the last row

under the heading "Taximeter" the following:

Operating with an improperly sealed meter	$1,000; license suspension, revocation, or non-renewal, or any combination of these sanctions

D.C. DEPARTMENT OF FORENSIC SCIENCES

NOTICE OF PROPOSED RULE MAKING

The Director of the Department of Forensic Sciences, pursuant to the authority set forth in Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011 (D.C. Law 19-18; D.C. Official Code § 5-1501.01 *et seq.*), hereby gives notice of the proposed rules to add a new Chapter 37 (District of Columbia Breath Alcohol Testing Program) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

The District of Columbia Breath Alcohol Testing Program regulations will inform the requirements for the certification, calibration and maintenance of the breath alcohol testing equipment, for providing forensic science services and training pertaining to forensic testing of breath for ethanol content.

The Department gives notices of its intent to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Pursuant to D.C. Official Code § 5-1501.15, these proposed rules will also be transmitted to the Council of the District of Columbia, and the final rules may not become effective until the expiration of the forty-five (45) day period of Council review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the forty-five (45) day review period, the proposed rules shall be deemed approved.

Title 28 DCMR (Corrections, Courts, and Criminal Justice) is amended by adding a new Chapter 37 (District of Columbia Breath Alcohol Tasting Program) to read as follows:

3700 BREATH ALCOHOL PROGRAM MANAGER RESPONSIBILITIES

3700.1 The primary function of the Breath Alcohol Program Manager is as follows:

(a) Provide the technical and administrative support for the District's breath alcohol testing program; and

(b) Maintain all records that pertain to the calibration, certification, accuracy, validity, and data generated from evidentiary instruments and licensure of operators and technicians.

3700.2 Supervision of the program shall include:

(a) Maintaining evidentiary instrument(s), and affiliated equipment;

(b) Supervising data collection for initial certification and/or approval of individual evidentiary instruments, including the following:

1. Developing techniques for testing and for certification of evidentiary instruments; and

2. Selecting site location(s) for evidential breath alcohol testing.

(c) Providing testimony as an expert witness, either by affidavit or in person, or in any other manner approved by the court, regarding breath alcohol testing;

(d) Maintaining records of all operators' and technicians' licensure records;

(e) Modifying the Quality Management Manual Breath Alcohol Program and Basic Training Program for Breath Alcohol Operator's Manual (Operator's Manual) when needed; and

(f) Maintaining all versions of the Operator's Manual and the Quality Management Manual Breath Alcohol Program (Quality Manual) to include revision dates.

3700.3 The Breath Alcohol Program Manager shall maintain all records that pertain to the calibration, accuracy, and validity of, and data generated from, evidentiary instruments used by the Breath Alcohol Program, for a minimum of five (5) years.

3700.4 The Breath Alcohol Program Manager shall provide copies of records listed in Subsection 3700.3 for inspection upon request from the following:

(a) The Mayor; or authorized representative;
(b) The Office of the United States Attorney for the District of Columbia;
(c) The Office of the Attorney General for the District of Columbia;
(d) The Metropolitan Police Department (MPD);
(e) The Office of the District of Columbia Auditor;
(f) The Office of the Inspector General; and
(g) Any other law enforcement agency.

3701 APPROVAL OF DEVICES

3701.1 The Breath Alcohol Program Manager shall approve all evidentiary instruments used by licensed operators.

3701.2 Devices are approved and certified in accordance with the admissibility criteria defined in D.C. Official Code § 50-2206.52a.

3701.3 The standard operating procedures in the Quality Manual are the procedures for establishing the accuracy of the District's evidentiary instruments.

3702 OPERATOR LICENSURE

3702.1 The Breath Alcohol Program Manager shall approve and maintain a Basic Training Program in accordance with the Operator's Manual and shall issue operator licenses under the standards in the Operator's Manual.

3702.2 An applicant shall successfully complete a course of instruction which meets the criteria set forth in the Operator's Manual in order to obtain licensure as an operator. That includes:

(a) Basic breath instrument operation;

(b) Basic troubleshooting for the evidential instrument; and

(c) Subject testing procedures.

3702.3 An applicant must also establish successful participation in and completion of a Standardized Field Sobriety Testing course in accordance with the curriculum established by the National Highway Traffic Safety Administration.

3702.4 Prior to initial licensure an applicant must satisfactorily complete examinations, prepared and given by the Breath Alcohol Program Manager in accordance with the Operator's Manual, to include:

(a) A written examination; and

(b) A practical examination.

3702.5 An operator card and associated personal identification number (PIN) will be issued to a successful applicant as proof of licensure by the Breath Alcohol Program Manager.

3702.6 An operator license is valid for two years unless deactivated or suspended by the Breath Alcohol Program Manager.

3703 RENEWAL OF CURRENT OPERATOR LICENSURE

3703.1 Renewal of an operator licensure requires satisfactory completion of a course of instruction approved by the Breath Alcohol Program Manager and as defined in the Operator's Manual, including:

(a) An overview of any changes to the manuals or procedures for testing; and

(b) A practical examination.

3703.2 Upon license renewal a new breath operator card and associated PIN will be issued that is valid for a period of two (2) years unless deactivated or suspended by the Breath Alcohol Program Manager.

3703.3 If an operator fails to renew the license in accordance with the Operator's Manual, the previously issued operator card and associated PIN will be deactivated.

3704 OPERATOR LICENSURE DEACTIVATION AND SUSPENSION

3704.1 Deactivation shall be initiated by the licensed operator in the event of voluntary surrender of licensure in accordance with Operator's Manual.

3704.2 An operator's license shall be deactivated by the Breath Alcohol Program Manager in the following situations:

(a) Failure to renew;

(b) Change in employment under which the licensure was acquired;

(c) Failure to comply with protocols in the Operator's Manual; or

(d) Upon receipt of notification by the Breath Alcohol Program Manager that an operator's arrest powers have been suspended by MPD.

3704.3 The Breath Alcohol Program Manager shall suspend an operator's license if an operator:

(a) Intentionally disregard or violates these regulations;

(b) Falsely or deceitfully obtains licensure;

(c) Engages in malfeasance or noncompliance with any provision of these regulations; or

(d) Performs his duties in an unreliable or incompetent manner.

3704.4 An operator with a suspended or deactivated license will not be permitted to operate an evidentiary breath testing instrument.

3705 REQUIREMENTS TO BE A LICENSED TECHNICIAN

3705.1 The minimum qualifications for certification as a licensed technician are:

(a) A baccalaureate degree from an accredited college or university with a major in chemistry, a major in another scientific field with sufficient

semester hours in chemistry, or other qualifications as determined by the Breath Alcohol Program Manager;

(b) Employment with the OCME; and

(c) Satisfactory completion of a course of instruction as set forth in the Quality Manual.

3706 TECHNICIAN LICENSURE ACTIVATION AND SUSPENSION

3706.1 Technician licensure shall be deactivated at the discretion of the Breath Alcohol Program Manager if the technician is no longer actively engaged in the breath alcohol testing program.

3706.2 Technician licensure shall be suspended by the Breath Alcohol Program Manager for malfeasance, falsely or deceitfully obtaining certification, or purposeful failure to carry out the responsibilities set forth in this title.

3706.3 A technician whose license has been suspended may file an appeal in accordance with the procedures established in the District Personnel Manual.

3707 ACCEPTABLE RANGES FOR EVIDENTIARY BREATH TESTS

3707.1 The reference standard used to conduct an accuracy check of an evidentiary instrument must agree within ±.005 grams of alcohol per 210 liters of air of the predicted value.

3707.2 If the instrument's accuracy check falls outside of the acceptable range as defined in Subsection 3707.1, the evidentiary instrument shall be disabled and licensed operators will not be able to administer evidential breath tests with that instrument.

3707.3 Duplicate breath specimens shall be collected and the analytical results for the consecutive breath specimens shall correlate within ±0.02 grams of alcohol per 210 liters of breath/ of each other.

3708 DEFINITIONS

3708.1 For the purposes of this section, the following terms shall have the meanings ascribed below:

"Accuracy Check" – The evaluation made by the breath test instrument of a reference standard with a predicted value which occurs during the evidentiary breath test sequence.

"Breath Alcohol Program Manager" - The OCME employee designated by the Chief Medical Examiner for the District of Columbia to oversee licensure

of operators and technicians and certification of instruments used by licensed operators to test the alcohol content of breath.

"Certification"- The process by which reference standards are evaluated and a series of tests performed at least every one-hundred and eighty days (180) to verify accuracy of the breath testing instrument.

"Evidentiary Instrument" - An analytical breath alcohol measuring device which has been issued a "Certificate of Instrument Accuracy" as defined by the Quality Manual and has been placed into field service used to collect evidence.

"Licensed Operator" - An operator who is licensed by the Breath Alcohol Program Manager to perform evidentiary breath tests.

"Licensed Technician"- A person designated by the Breath Alcohol Program Manager to be responsible for the certification, calibration and maintenance of breath testing instrument.

"Operator License"- A certificate issued by the Breath Alcohol Program Manager.

"Operator's Manual" – The "Basic Training Program for Breath Alcohol Operators", training manual maintained by the Breath Alcohol Program Manager.

"Predicted Value" – A value produced by the evidentiary instrument for each evidentiary breath test based upon the barometric pressure compensation and the reference standard value.

"Quality Manual" – The "Quality Management Manual Breath Alcohol Program', training manual maintained by the Breath Alcohol Program Manager.

"Reference Standard" – A commercial dry gas standard consisting of ethanol and balanced nitrogen traceable to the National Institute of Standards and Technology with a verified known value. The verified known value for evidentiary breath tests is 0.082g of alcohol per 210L of air.

"Subject Test" – The evidentiary breath alcohol test which meets the criteria defined in the Operator's Manual.

Comments on these rules should be submitted in writing to Max M. Houck, PhD., Director, Department of Forensic Sciences, Government of the District of Columbia, 401 E Street, SW, 4th Floor, Washington DC 20024, via telephone on (202) 727-8267, via email at contactDFS@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 CARE FINANCE

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the intent to adopt the following new Chapter 96 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Money Follows The Person Rebalancing Demonstration Project For Persons With Intellectual and Developmental Disabilities and Persons who are Elderly or have Physical Disabilities."

Money Follows the Person (MFP) Rebalancing Demonstration Program Services shall be administered pursuant to Section 6071 of the Deficit Reduction Act of 2005, approved February 8, 2006 (Pub. L. No. 109-171; 120 Stat. 102), as amended by Section 2403 of the Patient Protection and Affordable Care Act, approved March 23, 2010 (Pub. L. No. 111-148; 124 Stat. 304), These rules establish standards governing Medicaid eligibility for services under the MFP Rebalancing Demonstration Project and establish conditions of participation for providers of MFP services.

These rules also adopt two new services, Enhanced Primary Care Coordination (EPCC) and Peer Counseling (PC). Both services, like all MFP services, are provided for three hundred and sixty five (365) days to Medicaid beneficiaries currently transitioning from Intermediate Care Facilities (ICFs), nursing facilities and other qualified institutions to qualified residential housing. EPCC services are designed to support and encourage the continuous and comprehensive provision of quality primary care to each participant. The outcomes achieved through this service are expected to increase the level of communication between all members of the health care team, reduce threats to patient safety, including medication error, and reduce reliance on unnecessary emergency services. PC services are designed to allow people to receive peer counseling assistance to make informed choices regarding where they live and types of supports to be received once they transition to a qualified residence.

The MFP Rebalancing Demonstration grant was awarded to the District by the Department of Health and Human Services' Centers for Medicare and Medicaid Services. Further, the Demonstration is designed to eliminate barriers that prevent or restrict the flexible use of Medicaid funds enabling Medicaid-eligible people to receive support for appropriate and necessary long-term services in the settings of their choice, pursuant to Section 6071 of the Deficit Reduction Act of 2005, approved February 8, 2006 (Pub. L. No. 109-171; 120 Stat. 102).

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

Title 29 (Public Welfare) of the District of Columbia Municipal Regulations is amended by adding the following new Chapter 96 to read as follows:

CHAPTER 96 MONEY FOLLOWS THE PERSON REBALANCING DEMONSTRATION FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AND PERSONS WHO ARE ELDERLY OR HAVE PHYSICAL DISABILITIES

9600 GENERAL PROVISIONS

9600.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for services under the Money Follows the Person Rebalancing Demonstration (MFP Demonstration) and to establish conditions of participation for providers of MFP services.

9600.2 MFP Demonstration services shall be used to transition individuals who are eligible for the MFP program from a qualified institution to a qualified residence in the community. For purposes of this chapter, these individuals shall be referred to as "person/ persons".

9600.3 A qualified institution shall include:

(a) Hospitals licensed in accordance with Chapter 20 of Title 22B of the District of Columbia Municipal Regulations (DCMR);

(b) Nursing facilities licensed in accordance with Chapter 32 of Title 22B of the DCMR;

(c) Medicaid eligible Institutions for Mental Diseases as defined in 42 U.S.C.A. § 1396d9(i) and 42 C.F.R. § 435.1010; and

(d) Intermediate care facilities for people with intellectual disabilities and developmental disabilities (ICF/IID) certified in compliance with federal standards set forth in 42 C.F.R. Part 483, Subpart I.

9600.4 A qualified residence shall include:

(a) A home owned or leased by the person or the person's family member;

(b) An apartment with an individual lease with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the person or the person's family has domain and control including assisted living facilities as defined in the Centers for Medicare and Medicaid (CMS) policy guidance available at:

http://www.alfa.org/images/alfa/PDFs/PublicPolicy/MFPGuidanceAHQualifiedResidence.pdf;

(c) A community residential facility licensed in accordance with Chapter B-31 of Title 22 of the DCMR, in which no more than four (4) unrelated individuals reside;

(d) A supported living provider, defined in accordance with Section 1934 (Supported Living Services) of Chapter 19 of Title 29 of the DCMR;

(e) A host home provider defined in accordance with Section 1915 (Host Home) of Chapter 19 of Title 29 of the DCMR; and

(f) An individual home or apartment where the care-giver is the housemate.

9600.5 The MFP Demonstration shall consist of:

(a) Pre-transition services that are provided by the Department on Disability Services (DDS) Developmental Disabilities Administration (DDA), DC Office on Aging/Aging and Disability Resource Center (DCOA/ADRC), and the Department of Health Care Finance (DHCF) staff, which include program outreach/education, obtaining the person's or the person's substitute decision-maker's signed consent to transition from a qualified institution to a qualified residence, and program assessment and enrollment; and

(b) Transition services that ensure that appropriate services are in place on day one (1) and for three hundred and sixty-four (364) days thereafter in the qualified residence including services to prepare for day three hundred and sixty-six (366) to enable continuity of care after the MFP demonstration period.

9600.6 MFP Demonstration transition services shall only be provided for a three hundred and sixty-five (365) day period, referred to as the MFP demonstration period.

9600.7 In the event that a person is re-institutionalized during the MFP demonstration period for more than thirty (30) days, the person will be dis-enrolled from the MFP Demonstration. If dis-enrolled, DHCF or its agent shall issue a notice which complies with Federal and District law and rules.

9600.8 A dis-enrolled person may seek to re-enroll for the remainder of the three hundred and sixty-five (365) day MFP demonstration period.

9601 ELIGIBILITY

9601.1 A person transitioning from a qualified institution shall be eligible for DDA-operated MFP Demonstration services when:

(a) The person resides in a qualified institution for at least ninety (90) consecutive days;

(b) The person has been receiving Medicaid benefits for inpatient services in the qualified institution;

(c) The person would continue to require the level of care provided in the qualified institution if discharged;

(d) The person is eligible for the Home and Community-based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver) in accordance with Section 1902 of Chapter 19 of Title 29 of the DCMR; and

(e) An ID/DD Waiver slot is available.

9601.2 A person transitioning from a qualified institution shall be eligible for DHCF/DCOA-operated MFP Demonstration services when:

(a) The person resides in a qualified institution for at least ninety (90) consecutive days;

(b) The person has been receiving Medicaid benefits for inpatient services in the qualified institution;

(c) The person would continue to require the level of care provided in the qualified institution if discharged;

(d) The person is eligible for the Home and Community-based Services Waiver for the Elderly and People with Disabilities (EPD Waiver) in accordance with the requirements set forth in Chapter 42 of Title 29 of the DCMR; and

(e) An EPD Waiver slot is available.

9601.3 Eligible residents from qualified institutions shall be selected for participation in MFP Demonstration in accordance with DHCF policy (DHCF Transmittal No. 12-32) set forth at *Money Follows the Person Demonstration-Selection of Participants for the Elderly and Physically Disabled Home and Community-Based Services Waiver Population,* available at http://dhcf.dc.gov/page/2011-listing.

9601.4 When the EPD Waiver is at its service capacity, MFP Demonstration shall implement a lottery system to select those people participating in the program who intend to transition from qualified institutions to a qualified residence from the pool of people who have met the eligibility requirement set forth in Subsection 9601.2(d).

9601.5 Participation in the MFP Demonstration is contingent on the execution of a written agreement between the DDA or DHCF and the person, and the verification and confirmation of the person's eligibility for MFP services in the DDA's and DHCF's respective electronic database systems.

9602 PROGRAM ROLES AND RESPONSIBILITIES

9602.1 For persons receiving DDA-operated MFP Demonstration services, the DDA Service Coordinator shall:

(a) Refer a person who receives support through DDA to the MFP Project Coordinator;

(b) Consult with the person who is entering the MFP Demonstration about selecting members of his or her support team;

(c) Facilitate the person's Individual Support Plan (ISP) meeting including the MFP transition plan;

(d) Request authorization for Enhanced Primary Care Coordination (EPCC) and Peer Counseling services;

(e) Assist the person to select a qualified residence and qualified residential service provider under the ID/DD Waiver;

(f) Enroll the person in the MFP Demonstration;

(g) Ensure implementation and revision of the person's ISP during the pre-transition and MFP demonstration period;

(h) Hold an ISP meeting at least sixty (60) days prior to the expiration of the person's MFP demonstration period to begin preparing the new ISP and service range, with an emphasis on continuity of supports; and

(i) Ensure that the person's Medicaid program eligibility code is changed by Economic Security Administration (ESA) from a long term care institutional program code to the ID/DD Waiver code on the day of discharge.

9602.2 For persons receiving DDA-operated MFP Demonstration services, the MFP Project Coordinator shall:

(a) Explain the MFP Demonstration's purpose, risks, benefits, and person's rights and responsibilities under the program;

(b) Administer an intake interview to confirm the person's desire to transition to the community;

(c) Obtain the informed consent to transition from the person or person's substitute decision-maker; and

(d) Obtain a signed residential referral form to determine the person's housing needs.

9602.3 For persons receiving DHCF/DCOA operated MFP Demonstration services, the DCOA/ADRC shall:

(a) Refer people from qualified institutions to the MFP Project Coordinator who coordinates MFP services for DHCF;

(b) Explain the MFP Demonstration's purpose, risks, benefits, and the person's rights and responsibilities under the program;

(c) Administer an intake interview to confirm the person's desire to transition to the community pursuant to Subsection 9601.2 and determine his or her housing needs;

(d) Refer selected persons to the MFP Project Coordinator for assignment to a Transition Coordinator once the person has been selected in accordance with the process referenced under Subsection 9601.3;

(e) Refer people who do not meet MFP Demonstration selection criteria referenced under Subsection 9601.3 to the DCOA\ADRC Nursing Home Transition Unit;

(f) Provide information to each qualified institution to facilitate the coordination of related services for each person; and

(g) Appoint a staff member to assist residents who desire to transition to the community as indicated in the Long-Term Care Minimum Data Set.

9602.4 For persons receiving DCHF/DCOA-operated MFP Demonstration services, the MFP Project Coordinator shall:

(a) Review DCOA/ADRC's intake interviews to verify appropriateness of the MFP Demonstration for each person's needs; and

(b) Assign a Transition Coordinator to each person selected for participation in the MFP Demonstration.

9602.5 For persons receiving DHCF/DCOA-operated MFP Demonstration services, the Transition Coordinator shall:

(a) Consult the person about selecting members of the person's support team to assist in transition planning;

(b) Co-facilitate the person's MFP transitional planning meeting with staff from the qualified institution;

(c) Assist the person to select a qualified residence, case management agency, and other providers under the EPD Waiver;

(d) Assist the person to select other community-based providers as needed;

(e) Address any barriers that may prevent a person from transitioning into the community;

(f) Work collaboratively with the DCOA/ADRC MFP Case Manager to implement the responsibilities described under Subsection 9602.5(a)-(e); and

(g) Ensure that the person's Medicaid program eligibility code is changed by ESA from the long term care institutional program code to the EPD Waiver code on the day of discharge.

9602.6 For persons receiving DHCF/DCOA-operated MFP Demonstration services, the DCOA/ADRC MFP Case Manager shall:

(a) Manage the implementation and revision of the person's ISP during the pre-transition and MFP demonstration period with the EPD Waiver case manager; and

(b) Ensure that the person's code is changed by ESA from an MFP EPD Waiver program code to the EPD Waiver code on day three hundred and sixty-six (366).

9603 SERVICES

9603.1 Persons receiving DDA-operated MFP Demonstration services shall receive the following services:

(a) Services available under the ID/DD Waiver as set forth in Section 1901 of Title 29 of the DCMR;

(b) Medicaid State Plan services;

(c) Enhanced Primary Care Coordination;

(d) Peer Counseling;

(e) Household-setup funds not to exceed five thousand dollars ($5,000) to facilitate community transition; and

(f) Community Integration funds not to exceed one thousand five hundred dollars ($1,500) to ease the person's transition to the community, if included in the ISP.

9603.2 Persons receiving DHCF/DCOA-operated MFP Demonstration services shall receive the following services:

(a) Services available under the EPD Waiver as set forth in Chapter 42 of Title 29 of the DCMR;

(b) Medicaid State Plan services;

(c) Household-setup funds not to exceed five thousand dollars ($5,000) to facilitate community transition;

(d) Community Integration funds not to exceed one thousand five hundred dollars ($1,500) to ease the person's transition to the community, if included in the ISP;

(e) EPCC; and

(f) Peer Counseling.

9603.3 EPCC services are designed to ensure coordination and continuity of care consistent with the person's ISP.

9603.4 EPCC services shall be determined by an assessment pursuant to guidance issued by DHCF and included in the person's ISP.

9603.5 EPCC services include:

(a) Completion and uploading of the person's care coordination checklist to the DDA's and DHCF's respective electronic management systems;

(b) Management, coordination, and monitoring of the person's health care services, specifically between and among the person's health care providers to ensure information sharing and integrated health management;

(c) Identification of gaps and opportunities for improvement in the person's health care services;

(d) Reporting of enhanced care coordination to the MFP Transition Coordinator every ninety (90) days;

(e) Development and implementation of additional actions to reduce health care service gaps; and

(f) Development and implementation of a primary care plan or modification of an existing plan.

9603.6 Peer counseling services shall be determined by an assessment pursuant to guidance issued by DHCF and included in the person's ISP.

9603.7 Peer counseling services shall be provided by individuals with intellectual or developmental disabilities, individuals who are elderly, and individuals with physical disabilities to support the person's transition into the community.

9603.8 Peer counseling shall include the following services:

(a) Assist the person to make informed choices about his/her choice of possible living arrangements from the list of qualified residences;

(b) Assist the person to make informed choices about additional services and supports that the person may need and the providers who can deliver those services and supports;

(c) Support the person's transition into the community; and

(d) Accompany the person to any activities in the community.

9604 PROVIDER PARTICIPATION CRITERIA AND REIMBURSEMENT

9604.1 Providers who deliver DDA-operated MFP Demonstration services shall qualify by submitting to DDS a Medicaid provider enrollment application and organizational information in accordance with Section 1904 of Title 29 of the DCMR.

9604.2 Providers who deliver DHCF/DCOA-operated MFP Demonstration services shall qualify by submitting to DHCF a Medicaid provider enrollment application and any necessary information in accordance with Section 4215 of Title 29 of the DCMR.

9604.3 EPCC service providers include the following:

(a) A clinic;

(b) A home care agency; or

(c) A physician's practice.

9604.4 Each EPCC provider entity shall have a valid Medicaid provider agreement.

9604.5 The EPCC Coordinator hired by a provider entity shall be:

(a) A physician licensed to practice medicine in accordance with the requirements of Chapter 46 of Title 17 of the DCMR;

(b) A registered nurse licensed to practice registered nursing in accordance with the requirements of Chapter 54 of Title 17 of the DCMR;

(c) A nurse practitioner licensed to practice registered nursing in accordance with the requirements of Chapter 59 of Title 17 of the DCMR;

(d) A clinical social worker licensed to practice social work in accordance with the requirements of Chapter 70 of Title 17 of the DCMR; or

(e) A physician's assistant licensed to practice as a physician assistant in accordance with the requirements of Chapter 49 of Title 17 of the DCMR.

9604.6 The EPCC Coordinator shall have a minimum of two (2) years of clinical experience providing services to persons with intellectual and developmental disabilities or the elderly and persons with physical disabilities.

9604.7 EPCC services shall be reimbursed at one hundred and eight dollars ($108.00) per hour by a provider entity at a maximum of twenty (20) hours per year per participant. The billable unit of services shall be thirty (30) minutes at a rate of fifty-four dollars ($54.00) per billable unit. A provider shall provide a minimum of sixteen (16) minutes of services in a span of thirty (30) continuous minutes to qualify for a billable unit of service.

9604.8 Medicaid enrolled providers delivering Peer Counseling services shall be non-profits or community-based organizations offering independent living services or supporting persons with physical and/or intellectual and developmental disabilities.

9604.9 The Peer Counselor hired by the provider entity shall:

(a) Be at least eighteen (18) years of age;

(b) Be acceptable to the person to whom services are provided;

(c) Be employed by a Medicaid enrolled provider;

(d) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);

(e) Have an intellectual, developmental and/or physical disability; and

(f) Have experience with at least two (2) of the following:

(1) Participating in advocacy meetings;

(2) Advocating on behalf of people with disabilities;

(3) Be trained in advocacy on behalf of people with disabilities by an advocacy organization; or

(4) Be trained and certified in peer counseling by a certified peer counseling program.

9604.10 Peer counselors shall be exempt from the DDA's competency based training requirements as it relates to DDA's Direct Support Professional Training Policy, but shall be trained on DDA Incident Management and Enforcement Unit and Human Rights policies.

9604.11 Peer counseling services shall be reimbursed at twenty dollars ($20) per hour by a provider entity at a maximum of ten (10) hours per month per participant. The billable unit of services shall be thirty (30) minutes at a rate of ten dollars ($10) per billable unit. A provider shall provide a minimum of sixteen (16) minutes of services in a span of thirty (30) continuous minutes to qualify for a billable unit of service

9605 NOTICE AND HEARING RIGHTS

9605.1 Each person enrolled in the MFP Demonstration shall be entitled to a fair hearing in accordance with 42 C.F.R. § 431 and D.C. Official Code § 4-210.01 if the Department or its agent:

(a) Denies participation in the MFP Demonstration;

(b) Discontinues a waiver service requested by the person; or

(c) Terminates, suspends, or reduces a waiver service.

9605.2 The Department or its agent shall be responsible for issuing each legally required notice to the person enrolled in the MFP Demonstration or their representative regarding the right to request a hearing as described under Subsection 9605.1.

9605.3 The content of the notice issued pursuant to Subsection 9605.1 shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55.

9605.4 The hearing process shall be conducted in accordance with D.C. Official Code §§ 4-210.01 *et seq.*

9699 DEFINITIONS

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

Community Integration Funds- A one-time support fee in an amount not to exceed one thousand five hundred dollars ($1,500) that may be used during the person's first transition year to cover expenses relating to community integration activities.

Department- The Department of Health Care Finance

DDA Service Coordinator - An employee of DDS DDA responsible for helping people and their families receive DDA services, and find, utilize, and coordinate available resources and opportunities in the community on the basis of individual needs.

Home and Community-based Services Waiver- Services for individuals with intellectual and developmental disabilities and individuals who are elderly or have physical disabilities outside the scope of approved state plan services which allow them to reside in community-based, non-institutional settings.

Household Set-Up Funds- Funds in an amount not to exceed five thousand dollars ($5,000) to assist people transitioning from a nursing facility or

other qualified institution and limited to expenses incurred up to sixty (60) days after discharge from the qualified institution.

Individual Support Plan (ISP) – The document describing the results of the person-centered planning process which addresses the strengths, preferences, needs and aspirations described by the person and the ISP team. The ISP also serves as the home and community-based services waiver plan of care to authorize waiver services by type, amount and duration.

The Long-Term Care Minimum Data Set (MDS) - A standardized, primary screening and assessment tool of a person's physical and psychological functioning to form the foundation of the comprehensive assessment for all residents in a Medicare and/or Medicaid-certified long-term care facility.

MFP Demonstration Period - The three hundred and sixty-five (365) days beginning on the date that an MFP participant is discharged from a qualified institution to receive qualified home and community-based services.

Primary Care Plan - A plan that results from MFP enhanced primary care coordination services to coordinate a person's primary care with their other support needs.

Qualified Residential Service Provider - A Medicaid enrolled and DDA certified provider that provides housing and services and, when appropriate, overnight supports to people living in group homes, apartments, or single family dwellings. The group home residential programs are operated by DDA provider agencies whose programs are certified by DDA and licensed by Department of Health, Health Regulation and Licensing Administration.

Transitional planning meeting- Meeting held during the person's ISP year to discuss his/her transition into the community.

Comments on the proposed rules shall be submitted, in writing, to Claudia Schlosberg, J.D, Interim Medicaid Director, Department of Health Care Finance, 441 4th Street, NW, Suite 900 South, Washington, DC 20001, via email at DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone at (202) 442-8742, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the above address.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in the Law to Legalize Lotteries, Daily Numbers, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code § 3-1306 and 3-1321 (2012 Repl.)); District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996; and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapters 9 (Description of On-Line Games) and 99 (Definitions) of Title 30 (Lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking creates a new DC FAST PLAY Game entitled ROLLING JACKPOT SMOKIN' HOT DICE GAME.

The Executive Director gives notice of 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*.

Chapter 9, DESCRIPTION OF ON-LINE GAMES, of Title 30, LOTTERY AND CHARITABLE GAMES, of the DCMR, Sections 953 and 954, is amended to read as follows:

953 ROLLING JACKPOT SMOKIN' HOT DICE FAST PLAY GAME

953.1 The Agency may conduct a game enhancement to the DC Fast Play game called Rolling Jackpot Smokin' Hot Dice to the public and for such time periods as determined by the Executive Director.

953.2 Rolling Smokin' Hot Dice is an instant ticket style Fast Play game with the option of adding a Progressive Jackpot top prize. The tickets are printed and played through the Agency agent's online terminal.

953.3 Each Fast Play Rolling Jackpot Smokin' Hot Dice ticket will cost $1.00 per ticket.

953.4 Each $1.00 play will be on a separate ticket and is not cancellable.

951.5 Each ticket will have one (1) "Smokin' Hot Roll" consisting of two die. Each Ticket will have twelve (12) "Your Rolls" consisting of two die per roll. There is

a random prize amount associated with each of the twelve (12) "Your Rolls". A player wins by matching the sum of the "Smokin' Hot Roll" to one or more of the twelve (12) "Your Rolls" Each of the "Your Rolls" are played separately. A player can win up to 5 times on a ticket, per the prize structure.

951.5 15% of sales from all Fast Play Rolling Jackpot Smokin' Hot Dice will be added into a progressive jackpot. The base jackpot amount will begin at $500 and return to this amount each time the jackpot is won.

951.6 The advertised jackpot will not begin increasing in value until the jackpot is funded and supports the base $500 prize. In the event that the jackpot is won before the $500 base is funded, the advertised jackpot will begin again at $500 but not roll until the deficit from the underfunded jackpot is covered and the jackpot is fully funded. After the base jackpot of $500 is funded, the jackpot will increase based on 15% of sales from the games per the prize structure.
Additionally, the overall odds and PRIZE LEGEND are printed on the game ticket.

952 ROLLING JACKPOT SMOKIN' HOT DICE PRIZE POOL AND PRIZE STRUCTURE

952.1 Rolling Jackpot Smokin' Hot Dice tickets will be drawn from a pool of two hundred forty thousand (240,000) tickets for ($1); one dollar per ticket. The Prize payout will be 79.00%

The prize structure below shows the estimated average Rolling Jackpot amount.

Prize Level	# of Wins	Find	Win	Odds per Grid	Expected Number of Winners/Grid	Total Prize	Prize %	Payout %	Percent Low Tier	Percent Mid Tier	Percent High Tier	Combined Probability per Tier	
1	1	Jackpot*	$3,000	20,000	12	$ 36,000	18.99%	15.00%			18.99%	Jackpot	20000.00
2	1	$500	$500	48,000	5	$ 2,500	1.32%	1.04%		1.32%		$500	24000.00
3	5	$100*5	$500	48,000	5	$ 2,500	1.32%	1.04%		1.32%			
4	1	$100	$100	48,000	5	$ 500	0.26%	0.21%		0.26%		$100	9230.77
5	2	$50*2	$100	40,000	6	$ 600	0.32%	0.25%		0.32%			
6	4	$25*4	$100	16,000	15	$ 1,500	0.79%	0.63%		0.79%			
7	1	$50	$50	16,000	15	$ 750	0.40%	0.31%		0.40%		$50	5333.33
8	5	$10*5	$50	8,000	30	$ 1,500	0.79%	0.63%		0.79%			
9	1	$25	$25	2,400	100	$ 2,500	1.32%	1.04%	1.32%			$25	1200.00
10	5	$5*5	$25	2,400	100	$ 2,500	1.32%	1.04%	1.32%				
11	1	$10	$10	471	510	$ 5,100	2.69%	2.13%	2.69%			$10	95.62
12	2	$5*2	$10	120	2,000	$ 20,000	10.55%	8.33%	10.55%				
13	1	$5	$5	48	5,000	$ 25,000	13.19%	10.42%	13.19%			$5	48.00
14	1	$2	$2	9	28,000	$ 56,000	29.54%	23.33%	29.54%			$2	8.57
15	1	$1	$1	7	32,650	$ 32,650	17.22%	13.60%	17.22%			$1	7.35
Total				3.51	68,453.00	$ 189,600	100.00%	79.00%	75.82%	5.20%	18.99%		

Chapter 99, DEFINITIONS, of Title 30 (LOTTERY AND CHARITABLE GAMES) of the DCMR is amended as follows:

Section 9900, DEFINITIONS, is amended by adding the following terms and definitions:

ROLLING JACKPOT – Displayed on a Rolling Jackpot Smokin' Hot Dice Ticket. This progressive jackpot starts at $1,000 and grows with each ticket sold, once the jackpot is funded. The progressive jackpot is rounded down to the lower whole dollar amount, no progressive amount of pennies will be used. Any remaining pennies will be used to fund the next jackpot. The jackpot wins will be randomly located throughout the pool and therefore the actual jackpot amount when hit will fluctuate accordingly. The Progressive Jackpot is updated throughout the day. The percentage of jackpot paid to the winner depends on the price point of purchase.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Antar Johnson, Senior Counsel, Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020, or e-mailed to antar.johnson@dc.gov, or filed online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in the Law to Legalize Lotteries, Daily Numbers, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 3-1306, 3-1321 (2012 Repl.)); District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996; and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapter 9 (Description of On-Line Games) of Title 30 (Lottery and Charitable Games) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking are necessary to create DC Lucky Sum, a game enhancement for the DC3 and DC4 games.

The Executive Director gives notice of 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*.

Chapter 9, DESCRIPTION OF ON-LINE GAMES, of Title 30, LOTTERY AND CHARITABLE GAMES, of the DCMR, Sections 955 and 956, is amended to read as follows:

955 DC LUCKY SUM GAME

955.1 The Agency may conduct a game enhancement for the DC 3 and DC 4 on-line games called DC Lucky Sum to the public and for such time periods as determined by the Executive Director.

955.2 Lucky Sum is an add-on game feature to the *DC3* and *DC4* on-line games and offers the player another opportunity to win prizes by matching the sum of the selected numbers on the tickets to the sum of the numbers drawn.

955.3 A Lucky Sum play is a separate play from the *DC3* or *DC4* play. The Lucky Sum game is offered to players at an additional cost on top of the price of the specified draw game ticket. The actual cost of the Lucky Sum game will be the same cost as the specified draw game ticket (*i.e.*, for a $1.00 draw game wager, the cost of the Lucky Sum game will be an additional $1.00).

955.4 If selected, the words “Sum It Up” and the sum of the numbers played will be printed on the ticket. Each play will be on a separate ticket and is not cancellable.

955.5 Lucky Sum can be played for both day and evening drawings for *DC3* or *DC4* and excluding Front Pair and Back Pair for DC3 and Front Three and Back Three for DC4, Lucky Sum can be added to any of the play types. If Lucky Sum is selected, it will be applied to every wager produced by the play slip. If a play slip contains more than one play, then each play will produce a separate ticket.

956 DC LUCKY SUM DC 3 and DC4 PRIZE POOL AND PRIZE STRUCTURE

956.1 Prizes won depend on whether the play is for $.50 or $1.00, as well as the odds of winning for the sum. The odds of matching some number combinations are greater than others. Prizes associated with winning Lucky Sum DC3 & DC4 numbers are detailed below:

DC 3 Lucky Sum Payout Chart

Tier	Sum of 3 Numbers Played	Possible Combinations	Odds	Winners/1,000 Plays	Prize $0.50 Base Play	$.50 Payout per tier	Prize $1.00 Base Play	$1 Payout per tier
1	0	1	1,000.00	1.00	$ 325.00	65%	$ 650.00	65%
2	1	3	333.33	3.00	$ 110.00	66%	$ 220.00	66%
3	2	6	166.67	6.00	$ 55.00	66%	$ 110.00	66%
4	3	10	100.00	10.00	$ 33.00	66%	$ 66.00	66%
5	4	15	66.67	15.00	$ 23.00	69%	$ 46.00	69%
6	5	21	47.62	21.00	$ 15.00	63%	$ 30.00	63%
7	6	28	35.71	28.00	$ 12.00	67%	$ 24.00	67%
8	7	36	27.78	36.00	$ 9.00	65%	$ 18.00	65%
9	8	45	22.22	45.00	$ 7.00	63%	$ 14.00	63%
10	9	55	18.18	55.00	$ 6.00	66%	$ 12.00	66%
11	10	63	15.87	63.00	$ 5.00	63%	$ 10.00	63%
12	11	69	14.49	69.00	$ 5.00	69%	$ 10.00	69%
13	12	73	13.70	73.00	$ 5.00	73%	$ 10.00	73%
14	13	75	13.33	75.00	$ 4.00	60%	$ 8.00	60%
15	14	75	13.33	75.00	$ 4.00	60%	$ 8.00	60%
16	15	73	13.70	73.00	$ 5.00	73%	$ 10.00	73%
17	16	69	14.49	69.00	$ 5.00	69%	$ 10.00	69%
18	17	63	15.87	63.00	$ 5.00	63%	$ 10.00	63%
19	18	55	18.18	55.00	$ 6.00	66%	$ 12.00	66%
20	19	45	22.22	45.00	$ 7.00	63%	$ 14.00	63%
21	20	36	27.78	36.00	$ 9.00	65%	$ 18.00	65%
22	21	28	35.71	28.00	$ 12.00	67%	$ 24.00	67%
23	22	21	47.62	21.00	$ 15.00	63%	$ 30.00	63%
24	23	15	66.67	15.00	$ 23.00	69%	$ 46.00	69%
25	24	10	100.00	10.00	$ 33.00	66%	$ 66.00	66%
26	25	6	166.67	6.00	$ 55.00	66%	$ 110.00	66%
27	26	3	333.33	3.00	$ 110.00	66%	$ 220.00	66%
28	27	1	1,000.00	1.00	$ 325.00	65%	$ 650.00	65%
					Average Estimated Payout:	65.79%		65.79%

DC 4 Lucky Sum Payout Chart

Tier	Sum of 4 Numbers Played	Possible Combinations	Odds	Winners/1,000 Plays	Prize $0.50 Base Play	$.50 Payout per tier	Prize $1.00 Base Play	$1 Payout per tier
1	0	1	10,000.00	1.00	$ 3,200.00	64%	$ 6,400.00	64%
2	1	4	2,500.00	4.00	$ 800.00	64%	$ 1,600.00	64%
3	2	10	1,000.00	10.00	$ 320.00	64%	$ 640.00	64%
4	3	20	500.00	20.00	$ 160.00	64%	$ 320.00	64%
5	4	35	285.71	35.00	$ 95.00	67%	$ 190.00	67%
6	5	56	178.57	56.00	$ 58.00	65%	$ 116.00	65%
7	6	84	119.05	84.00	$ 38.00	64%	$ 76.00	64%
8	7	120	83.33	120.00	$ 27.00	65%	$ 54.00	65%
9	8	165	60.61	165.00	$ 20.00	66%	$ 40.00	66%
10	9	220	45.45	220.00	$ 15.00	66%	$ 30.00	66%
11	10	282	35.46	282.00	$ 12.00	68%	$ 24.00	68%
12	11	348	28.74	348.00	$ 9.00	63%	$ 18.00	63%
13	12	415	24.10	415.00	$ 8.00	66%	$ 16.00	66%
14	13	480	20.83	480.00	$ 7.00	67%	$ 14.00	67%
15	14	540	18.52	540.00	$ 6.00	65%	$ 12.00	65%
16	15	592	16.89	592.00	$ 6.00	71%	$ 12.00	71%
17	16	633	15.80	633.00	$ 5.00	63%	$ 10.00	63%
18	17	660	15.15	660.00	$ 5.00	66%	$ 10.00	66%
19	18	670	14.93	670.00	$ 5.00	67%	$ 10.00	67%
20	19	660	15.15	660.00	$ 5.00	66%	$ 10.00	66%
21	20	633	15.80	633.00	$ 5.00	63%	$ 10.00	63%
22	21	592	16.89	592.00	$ 6.00	71%	$ 12.00	71%
23	22	540	18.52	540.00	$ 6.00	65%	$ 12.00	65%
24	23	480	20.83	480.00	$ 7.00	67%	$ 14.00	67%
25	24	415	24.10	415.00	$ 8.00	66%	$ 16.00	66%
26	25	348	28.74	348.00	$ 9.00	63%	$ 18.00	63%
27	26	282	35.46	282.00	$ 12.00	68%	$ 24.00	68%
28	27	220	45.45	220.00	$ 15.00	66%	$ 30.00	66%
29	28	165	60.61	165.00	$ 20.00	66%	$ 40.00	66%
30	29	120	83.33	120.00	$ 27.00	65%	$ 54.00	65%
31	30	84	119.05	84.00	$ 38.00	64%	$ 76.00	64%
32	31	56	178.57	56.00	$ 58.00	65%	$ 116.00	65%
33	32	35	285.71	35.00	$ 95.00	67%	$ 190.00	67%
34	33	20	500.00	20.00	$ 160.00	64%	$ 320.00	64%
35	34	10	1,000.00	10.00	$ 320.00	64%	$ 640.00	64%
36	35	4	2,500.00	4.00	$ 800.00	64%	$ 1,600.00	64%
37	36	1	10,000.00	1.00	$ 3,200.00	64%	$ 6,400.00	64%
					Average Estimated Payout:	65.44%		65.44%

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Antar Johnson, Senior Counsel, Lottery and Charitable Games Control Board, 2101 Martin Luther King, Jr., Avenue, S.E., Washington, D.C. 20020, or e-mailed to antar.johnson@dc.gov, or filed online at www.dcregs.gov. Additional copies of these proposed rules may be obtained at the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO ELECTRIC SERVICES MARKET COMPETITION AND REGULATORY PRACTICES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Sections 34-802 and 2-505 of the District of Columbia Code,[1] of its intent to amend Chapter 29, "Renewable Energy Portfolio Standard," of Title 15, "Public Utilities and Cable Television", of the District of Columbia Municipal Regulations, in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking in the *D.C. Register*.

2. The proposed amendments modify Section 2901 ("RPS Compliance Requirements") of Chapter 29 of the Commission's rules. The purpose of the amendments is to change the deadlines for submission of electricity suppliers' annual Renewable Energy Portfolio Standard compliance reports and for submission of suppliers' compliance fees from May 1 to March 1.

3. Section 2901.7 is amended to read as follows:

2901.7 Each Electricity Supplier's annual compliance report shall be submitted to the Commission by March 1 of the calendar year following the year of compliance. After notification of a decision of non-compliance by the Commission, a supplier shall, within ten (10) days, submit the appropriate payment, take the actions necessary to come into compliance, or file its response contesting the decision.

4. Section 2901.9 is amended to read as follows:

2901.9 Any Electricity Supplier that fails to meet its Renewable Energy Portfolio Standard requirements must submit the required annual Compliance Fee to the District of Columbia Renewable Energy Development Fund administered by the District of Columbia Department of the Environment's Energy Office (DDOE or Energy Office) by March 1 of the calendar year following the year of compliance.

5. Any person interested in commenting on the subject matter of this proposed rulemaking must submit comments and reply comments in writing no later than thirty (30) days and forty-five (45) days, respectively, from the date of publication of this Notice in the *D.C. Register*. Comments and reply comments are to be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite

[1] D.C. Official Code § 34-802 (2001 ed.); D.C. Official Code § 2-505 (2001 ed.).

200, Washington D.C., 20005. After the comment period expires, the Commission will take final rulemaking action.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments (Act), effective November 1, 1975 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06)(3),(13) (2012 Repl.), hereby gives notice of its intent to amend Chapter 7 (Admissions and Academic Standards) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the proposed rule is to adjust tuition and fee rates for degree-granting programs, beginning in the spring semester of 2015.

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 7, ADMISSIONS AND ACADEMIC STANDARDS, of Subtitle B, UNIVERSITY OF THE DISTRICT OF COLUMBIA, of Title 8, HIGHER EDUCATION, is amended as follows:

Section 728, TUITION AND FEES: DEGREE-GRANTING PROGRAMS, is amended as follows:

728 TUITION AND FEES: DEGREE-GRANTING PROGRAMS

728.1 The following tuition and fees have been approved by the Board of Trustees consistent with D.C. Official Code § 38-1202.06(8):

728.2 COMMUNITY COLLEGE ASSOCIATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$102.50
Metropolitan Area Residents	$172.20
All Other Residents	$290.08

728.3 FLAGSHIP BACCALAUREATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$283.38
Metropolitan Area Residents	$327.80
All Other Residents	$594.30

728.4 FLAGSHIP GRADUATE DEGREE-GRANTING PROGRAMS

	Per Credit Hour
Washington, D.C. Residents	$448.91
Metropolitan Area Residents	$508.12

	All Other Residents	$863.46

728.5 DAVID A. CLARKE SCHOOL OF LAW DEGREE-GRANTING PROGRAMS
FULL TIME PROGRAM STUDENTS (FALL & SPRING SEMESTERS ONLY)

	Per Semester
Washington, D.C. Residents	$5,443.00
All Other Residents	$10,886.00

728.6 ALL OTHER STUDENTS

	Per Credit Hour
Washington, D.C. Residents	$369.00
All Other Residents	$738.00

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of General Counsel, Building 39-Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Comments may also be submitted by email to smills@udc.edu. Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Tuition and Fees" in the subject line.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF SECOND PROPOSED RULEMAKING
Z.C. Case No. 14-03
(Text Amendment to § 2802.1)
June 5, 2014

The Zoning Commission for the District of Columbia (Commission), pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)) hereby gives second notice of its intent to amend § 2802.1(f)(3) of Chapter 28 (Hill East (HE) District) of the Zoning Regulations of the District of Columbia (Title 11 DCMR, Zoning)) to permit the use of Building 27 on the District of Columbia General Hospital Campus as an emergency shelter for up to one hundred (100) persons for a five- (5) year period.

The Commission originally proposed a text amendment to § 2802.1 and adopted the rule on an emergency basis in a Notice of Emergency and Proposed Rulemaking published in the *D.C. Register* on April 18, 2014 at 61 DCR 4033. This emergency rule will expire July 8, 2014.

As originally proposed, the amendment permitted an emergency shelter at the District of Columbia General Hospital Campus for not more than one hundred (100) persons, not including supervisors or staff and their families in Building 9 and Building 27 provided that only one (1) of the buildings may be used for an emergency shelter at any one time. Building 9 presently houses the shelter use, but due the health and safety issues the Department of Human Services (DHS) needed to temporarily move the shelter's occupants to a different location while Building 9 was being renovated. Building 27 was selected as a suitable site for the relocation.

In a letter dated May 28, 2014, the DHS Director informed the Commission that the Agency had abandoned its plans to renovate Building 9 and that the the structure would be demolished instead. The Director therefore requested the Commission allow the shelter use in Building 27 for a five- (5) year period to allow for a replacement facility to be designed and constructed. In a Supplemental Hearing Report dated May 29, 2014, the Office of Planning (OP) offered revised text to permit the interim emergency shelter use of Building 27. DHS and OP representatives offered testimony at the Commission's public hearing consistent with these recommendations. OP further clarified that the five- (5) year period would begin on the date the Commission's final order is published in the *D.C. Register*. The Commission voted to propose the amendment as revised by OP[1].

The proposed amendments to the Zoning Regulations are as follows:

[1] In its written report and public testimony, ANC 6B expressed opposition to the proposed five- (5) year period, believing instead that the emergency shelter use should be reviewed as part of a special exception application or, if the Commission disagreed with that approach, that the maximum period for the use should not exceed two (2) years. If the Commission ultimately decides to adopt the rule, its final order will explain a discussion of the ANC position as required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) (2012 Repl.).

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 28, HILL EAST (HE) DISTRICT, § 2802, USES AS A MATTER OF RIGHT (HE), § 2802.1(f) is amended as follows:

The introductory phrase in § 2802.1 (f) is amended by striking the reference to "subparagraph (o)" and inserting a reference to "paragraph (g)" in its place; and

By amending § 2802.1(f)(3) by adding the phrase ", except that an emergency shelter for not more than one hundred (100) persons, not including supervisors or staff and their families shall be permitted in Building 27 for a period of five (5) years effective years beginning on [THE EFFECTIVE DATE OF ZONING COMMISSION ORDER NO. 14-03]" so that the subsection reads as follows:

2802.1 The following uses shall be permitted as a matter of right in the HE District, provided that no use may be located on a site that has not been designated for that use by the Master Plan:

(a) Adult day treatment facility;

(b) Antenna, subject to the standards and procedures that apply to the particular class of antenna pursuant to Chapter 27 of this title;

(c) Child/Elderly development center;

(d) Church or other place of worship;

(e) Clinic;

(f) Community-based residential facility not described in paragraph (g), subject to the following limitations:

(1) Youth residential care home, community residence facility, or health care facility for not more than six (6) persons, not including resident supervisors or staff and their families;

(2) Youth residential care home or community residence facility for seven (7) to fifteen (15) persons, not including resident supervisors or staff and their families; provided that there shall be no property containing an existing community-based residential facility for seven (7) or more persons either in the same Square or within a radius of five hundred (500) feet from any portion of the subject property; and

(3) Emergency shelter for not more than four (4) persons, not including resident supervisors or staff and their families, except that an emergency shelter for not more than one hundred (100) persons, not including supervisors or staff and their families shall be permitted in Building 27 for a period of five (5) years beginning on [THE EFFECTIVE DATE OF ZONING COMMISSION ORDER NO. 14-03];

(g) Community-based residential facility to be occupied by persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant to 11 DCMR §§ 201.1 (f) and 330.5 (d);

(h) Fire Station;

(i) Government offices and facilities;

(j) Hotel or inn;

(k) Library, public or private;

(l) Museum;

(m) Office;

(n) Park or open space;

(o) Police Department Local Facility;

(p) Private club, restaurant, fast food restaurant, or food delivery service; provided, a fast food restaurant or food delivery service shall not include a drive-through;

(q) Public recreation and community center;

(r) Public school;

(s) Residential dwellings, including row dwellings, flats, and multiple dwellings; and

(t) Retail sales and services involving the sale, lease, or servicing of new or used products to the general public, or which provide personal services or entertainment, or provide product repair or services for consumer and business goods.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or signed electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6 (6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6)) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 41 (Medicaid Reimbursement for Intermediate Care Facilities for Individuals with Intellectual Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules amend the methodology used to calculate Medicaid reimbursement for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) and update the current reimbursement rates. The current rate methodology, as approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for implementation in Fiscal Year (FY) 2013, authorizes adjustments for inflation beginning in FY2014 and annually thereafter. This emergency and proposed rulemaking reflects inflation-adjusted rates for FY2014. This rulemaking also supports a proposed amendment to the District of Columbia State Plan for Medical Assistance (State Plan) intended to clarify the methodology with respect to: 1) calculating holiday pay for direct service personnel and active treatment providers; 2) aligning the non-emergency transportation rate with providers' actual costs; 3) implementing the previously approved option for annual rate adjustments – independent of rebasing years; 4) incorporating Capital rates that account for fully depreciated premises and assets; 5) ensuring the ICFs/IID understand DHCF's right to review records and confirm compliance with the District's living wage standards; 6) clarifying the relationship between this reimbursement methodology and the fee-for-service Durable Medical Equipment, Prosthetics, Orthotics, and Supplies benefit; and 7) implementing a uniform Administrative rate. This rulemaking also updates the title of a Qualified Intellectual Disabilities Professional to comport with Rosa's Law (Pub. L. 111-256, 42 U.S.C. § 1400 note) and 42 C.F.R. § 483.430. Finally, by clarifying the annual renewal process for acuity level assignments, this rulemaking offers providers the flexibility to produce evidence of the interdisciplinary team's consensus around the appropriate acuity level assignment for a beneficiary, without having to delay recertification submissions while awaiting the Individual Service Plan. In providing this enhanced flexibility, this rulemaking also clarifies that DHCF will not retroactively adjust payments made at the Base level, if the provider failed to submit the documentation necessary for recertification within the prescribed timeframe.

The increase in total expenditures related to these updates is approximately $6.5 million for FY2014. The corresponding State Plan amendment must be approved by the Council of the District of Columbia (Council) and CMS. While awaiting approval from the Council and CMS a second emergency rulemaking is necessary for the immediate preservation of the health, safety, and welfare of the persons who are in need of services provided in an ICF/IID.

An initial Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 20, 2013 at 60 DCR 017052. No comments were received and no substantive changes have been made. This emergency rulemaking was adopted on March 11, 2014 and became effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until July 8, 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 this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 41 of Title 29 (Public Welfare) DCMR is amended to read as follows:

CHAPTER 41 MEDICAID REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES

4100 GENERAL PROVISIONS

4100.1 This chapter shall establish principles of reimbursement that shall apply to each intermediate care facility for individuals with intellectual disabilities (ICF/IID) participating in the District of Columbia Medicaid program.

4100.2 For an ICF/IID to be eligible to receive reimbursement under this chapter, it shall be certified as an Intermediate Care Facility by the Health Regulation and Licensing Administration (HRLA) in the Department of Health (DOH), pursuant to 22 DCMR §§ 3100 *et seq.* for a period up to fifteen (15) months.

4100.3 Medicaid reimbursement to ICFs/IID for services provided beginning on or after October 1, 2012, shall be on a prospective payment system consistent with the requirements set forth in this chapter.

4100.4 The Department of Health Care Finance (DHCF) shall pay for ICF/IID services through the use of rates that are reasonable and adequate to meet the costs that are incurred by efficiently, economically operated facilities in order to provide services in conformity with applicable District and federal laws, regulations, and quality and safety standards. DHCF used the following financial principles in developing the reimbursement methodology described in this chapter:

(a) Basing payment rates on the acuity of each individual;

(b) Establishing uniform reimbursement of services constituting the active treatment program for individuals who meet the requirements of 42 C.F.R. § 483.440(a);

(c) Establishing consistent payment rates for the same classes of facilities serving individuals with comparable levels of need; and

(d) Establishing one (1) day, inclusive of residential care and active treatment, as the unit of service.

4100.5 The reimbursement rates paid to ICFs/IID for Medicaid individuals residing in the facility shall be equal to one hundred percent (100%) of the following components:

(a) Residential component base rate determined by acuity level, as defined in § 4101 of this chapter, and inclusive of the following:

(1) Direct service;

(2) All other health care and program related expenses;

(3) Non-personnel operations;

(4) Administration;

(5) Non-Emergency Transportation;

(6) Capital; and

(7) Allowable share of the Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment.

(b) Services constituting an active treatment program, described in § 4103, as set forth in the individual's Individual Service Plan (ISP); and

(c) Payments associated with participation in quality improvement initiatives, as set forth in § 4104.

4100.6 The reimbursement rates paid to ICFs/IID shall exclude all of the following services that are provided outside of the ICF/IID:

(a) Inpatient and outpatient hospital visits;

(b) Physician and specialty services;

(c) Clinic services;

(d) Emergency department services;

(e) Services delivered by any other long-term care facility;

(f) Durable medical equipment, prosthetic, orthotic, and supply items that either require prior authorization or are solely for the use of one (1) individual (such as a wheelchair); and

(g) Prescription drug costs, excluding copays for individuals who are also subject to the *Evans* court order.

4100.7 Medicaid reimbursement to each ICF/IID shall comply with the "Policy on Reserved Beds," as set forth on page 2 of Attachment 4.19C of the State Plan for Medical Assistance.

4100.8 An organization related to an enrolled ICF/IID ("related organization") may furnish services and supplies under the prudent buyer concept, provided the costs of such services and supplies are consistent with costs of such items furnished by independent third party providers in the same geographic area. These requirements shall apply to the sale, transfer, leaseback, or rental of property, plant, or equipment or purchase of services of any facility or organization.

4100.9 In accordance with 42 C.F.R. § 456.360, 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*.), and implementing rules, a qualified physician shall certify that an individual needs ICF/IID services. The certification shall be made at the time of admission for current Medicaid individuals, or for individuals who apply for Medicaid while residing in an ICF/IID, before any payment is made to the facility.

4100.10 Recertification of an individual's need for continued ICF/IID services is required, at minimum, twelve (12) months following the date of the previous certification, pursuant to 42 C.F.R. § 456.360(b).

4100.11 A Medicaid individual shall be assessed by an interdisciplinary team within thirty (30) days of admission to an ICF/IID. This determination shall provide the foundation for requests to elevate an acuity level assignment beyond Acuity Level 1.

4101 ACUITY LEVEL ASSIGNMENTS

4101.1 Reimbursement rates shall be differentiated based on the individual's acuity level, as recommended by DDS, through the Level of Need Assessment and Risk Screening Tool (LON), and interdisciplinary teams of health and habilitation professionals, pursuant to the Individual Service Plan (ISP).

4101.2 Acuity levels higher than Acuity Level 1 (Base), specific to the medical and health needs of each qualified individual, shall be requested by the ICF/IID, recommended by DDS, and approved by DHCF.

4101.3 Reimbursement under this chapter shall be governed according to the following acuity levels:

(a) Acuity Level 1 (Base) shall represent the health, habilitation, and support needs of a beneficiary whose level of care determination (LOC) reflects a need for ICF/IID services. Acuity Level 1 shall be the base acuity level.

(b) Acuity Level 2 (Moderate) shall represent the health, habilitation, and support needs of a beneficiary who:

(1) Meets the requirements of § 4101.3(a); and

(2) Requires moderate levels of services in order to effectively support functional impairments, as described in § 4101.7.

(c) Acuity Level 3 (Extensive – Behavioral) shall represent the health, habilitation, and support needs of a beneficiary who:

(1) Meets the requirements of § 4101.3(a); and

(2) Requires services and interventions that can address conditions associated with an extensive intellectual and developmental disability and significant behavioral challenges as described in § 4101.8.

(d) Acuity Level 4 (Extensive – Medical) shall represent the health, habilitation, and support needs of a beneficiary who:

(1) Meets the requirements of § 4101.3(a); and

(2) Requires services and interventions that can address conditions associated with a significant intellectual and developmental disability and significant medical and support challenges as described in § 4101.9.

(e) Acuity Level 5 (Pervasive) shall represent the health, habilitation, and support needs of a beneficiary who:

(1) Meets the requirements of § 4101.3;

(2) Requires services and interventions that can address conditions associated with a significant intellectual and developmental disability; and

(3) Exhibits dangerous behaviors or conditions that require one-to-one (1:1) supervision for twenty-four (24) hours per day or less, as described in § 4101.10.

(f) Acuity Level 6 (Pervasive Plus Skilled Nursing) shall represent the health, habilitation, and support needs of a beneficiary who:

(1) Meets the requirements of § 4101.3(a);

(2) Requires services and interventions that can address conditions associated with a pervasive level of care to accommodate individuals with dangerous behaviors or conditions that require one to one (1:1) supervision twenty-four (24) hours per day; and

(3) Requires extensive skilled nursing services as described in § 4101.11.

4101.4 For purposes of reimbursement, a beneficiary admitted on or after October 1, 2012, shall be assumed to be at Acuity Level 1 (Base). An ICF/IID may request through, and with supporting documentation by, DDS that DHCF assign a beneficiary to an enhanced level, above Acuity Level 1. This request must be accompanied by documentation submitted by the ICF/IID that justifies the enhanced acuity level.

4101.5 In order for a beneficiary to qualify at an acuity level beyond Acuity Level 1 (Base), the ICF/IID shall ensure that qualified health and habilitation practitioners assess each beneficiary using the LON.

4101.6 A beneficiary shall qualify for Acuity Level 2 (Moderate) when assessed to have at least one (1) of the following characteristics:

(a) Is unable to perform two (2) or more activities of daily living (ADL);

(b) Is non-ambulatory;

(c) Is unable to evacuate self without assistance in the event of a fire or other emergency situation;

(d) Is assessed to lack life safety skills to ensure self-preservation; or

(e) Has a diagnosis of one (1) of the following conditions:

(1) Blindness;

(2) Deafness;

(3) Autism Spectrum Disorder; or

(4) Epilepsy.

4101.7 A beneficiary shall qualify for Acuity Level 3 (Extensive – Behavioral) when he or she is dually diagnosed with an intellectual and developmental disability and with one (1) or more behavioral disorders that:

(a) Are assaultive, self-abusive, including pica, or aggressive;

(b) Require a Behavior Support Plan (BSP) which shall be based on current data and targets the identified behaviors; and

(c) Require intensive staff intervention and additional staff resources to manage the behaviors set forth in § 4101.8(a).

4101.8 A beneficiary shall qualify for Acuity Level 4 (Extensive – Medical) when he or she requires skilled nursing and extensive health and habilitation supports on a daily basis. Skilled nursing and extensive health and habilitation supports shall be prescribed by the individual's primary care physician or advanced practice registered nurse (APRN).

4101.9 A beneficiary shall qualify for Acuity Level 5 (Pervasive) when he or she requires one-to-one (1:1) staffing and exhibits one (1) or more of the following characteristics:

(a) Has a history of, or is at high risk for, elopement resulting in risk to the beneficiary or others;

(b) Exhibits behavior that is life-threatening to the beneficiary or others;

(c) Exhibits destructive behavior that poses serious property damage, including fire-setting;

(d) Is a sexual predator; or

(e) Has a history of, or is at high risk for, falls with injury and a primary care physician or advanced practice registered nurse order for one-to-one (1:1) supervision.

4101.10 A beneficiary shall qualify for Level 6 (Pervasive Plus Skilled Nursing) if the beneficiary requires at least one (1) type of skilled nursing that shall be ordered by a primary care physician or advanced practice registered nurse and provided, at a minimum, on an hourly basis.

4101.11 For a beneficiary who requires services at or above Acuity Level 4, the prescription of the physician or advanced practice registered nurse, shall specify the type, frequency, scope, and duration of the skilled nursing and health and habilitation support services required.

4101.12 The number of one-to-one (1:1) staffing hours shall be approved by DHCF using results from assessments conducted by ICFs/IID. Under Levels 5 and 6 (Pervasive and Pervasive Plus Skilled Nursing), DHCF's approval shall be based on having staff member(s) assigned to the beneficiary who have no other duties while assigned to the beneficiary.

4101.13 Each ICF/IID shall have responsible direct care staff on duty and awake on a twenty-four (24) hour basis when residents are present in the facility to ensure prompt, appropriate action in the event of injury, illness, fire, or other emergency.

4101.14 Acuity level assignments shall be renewed annually. Each ICF/IID shall be responsible for requesting renewal of the beneficiary's acuity level assignment by compiling and submitting the beneficiary's information in the required format(s) at least twenty (20) days before the ISP effective date. Each ICF/IID shall ensure that the individual has an approved acuity level assignment by the ISP effective date. At minimum, the ICF/IID shall provide DHCF with the following:

(a) Level of Need Assessment and Risk Screening Tool (LON); and

(b) Current ISP document including medical, psychological, occupational or physical therapy assessment, or in the absence of a current ISP document, evidence of consensus by a majority of the members of the beneficiary's interdisciplinary team for the proposed acuity level assignment.

4101.15 Late submission of the documentation required for renewals as set forth in § 4101.14 shall result in payment at the rates that correspond to Acuity Level 1 (Base) beginning on the first day following the expiration of the assignment. DHCF shall not make retroactive adjustments to the reimbursement rates for late submissions of renewal documentation.

4101.16 Additional documentation shall be required to support the acuity level assignment for a beneficiary. Depending on acuity level, additional documentation shall be required as follows:

(a) For Acuity Level 3 (Extensive – Behavioral) the following additional documentation is required:

(1) A BSP addressing the targeted behaviors;

(2) A written behavior plan that shall be based on current data and which targets the identified behaviors; and

(3) A concise statement that summarizes thirty (30) days of behavioral data prior to the date of the request and justification of the need for intensive staff intervention and additional staff resources to manage targeted behaviors.

(b) For Acuity Level 4 (Extensive – Medical) documentation that includes an order for daily skilled nursing and extensive health supports prepared by the beneficiary's primary care physician or an advance practice registered nurse is required.

(c) For Acuity Level 5 (Pervasive) the following additional documentation is required:

(1) A concise statement setting forth the presenting problem that necessitates one to one (1:1) supervision and the number of requested one to one (1:1) hours;

(2) Evidence of a history or risk of elopement that results in risk to the beneficiary and/or others;

(3) Evidence of behavior that is life threatening to self and/or others;

(4) Evidence of destructive behavior causing serious property damage, including fire starting;

(5) Evidence of sexually predatory behavior;

(6) Evidence of a history of, or risk of, falls with injury, and an order from the beneficiary's primary care physician or APRN;

(7) A BSP that shall be based on current data and targets the behaviors identified;

(8) A job description for one to one (1:1) staff based on the beneficiary's individual needs; and

(9) Thirty (30) days of behavioral data prior to the date of the request in support of the targeted behaviors.

(d) For Acuity Level 6 (Pervasive plus Skilled Nursing) the following additional documentation is required:

(1) An order for skilled nursing services prepared by the beneficiary's primary care physician or APRN;

(2) A concise statement setting forth the presenting problem that necessitates one to one (1:1) supervision and skilled nursing and the number of requested one to one (1:1) hours; and

(3) A job description for one to one (1:1) staff based on the beneficiary's individual needs.

4101.17 Documentation required to review a beneficiary's acuity level shall be submitted to DHCF within sixty (60) days of the event that necessitates assignment to a higher acuity level.

4101.18 On a case-by-case basis, DHCF shall consider requests for retroactive adjustment to a beneficiary's acuity level that may result in a change to the reimbursement rate. DHCF decisions shall be based on the facility's submission of required documentation as set forth below:

(a) A concise statement setting forth the situation that necessitates retroactive adjustment;

(b) Evidence of the higher acuity level for the specified period of time for which the change in acuity level is requested. This evidence shall include the LON and other clinical and professional documentation such as discharge planning notes, physician's notes, other clinician's notes, interdisciplinary team meeting notes, and healthcare reports for the same defined period of time; and

(c) Evidence that a higher level of service was delivered for the defined period and that the higher level of service delivered is that required for the higher acuity level. This evidence shall include documentation of staffing levels detailing hours and types of services delivered for each day in the defined period of time. Evidence shall also include the identity of the specific staff delivering the higher acuity services and an attestation from the staff of the higher acuity service they delivered.

4101.19 Any retroactive adjustment based on § 4101.18 shall be limited to the time that has lapsed since the date of the beneficiary's last continuous stay review, as set forth in § 4109.

4101.20 DHCF, or its designee, shall have access to all approved ISP documents.

4101.21 Each ICF/IID shall notify DHCF of the transfer or death of a beneficiary at least seven (7) business days after the date of the event.

4102 REIMBURSEMENT METHODOLOGY

4102.1 The rates for ICF/IID services were developed based on Fiscal Year (FY) 2010 cost data reported by providers of different sizes serving individuals at varying acuity levels. The rates shall vary based on staffing ratios, facility size, and beneficiary acuity level.

4102.2 For the purposes of rate-setting, and independent of the classification used by the Department of Health for licensing, DHCF shall classify ICFs/IID as follows:

(a) Class I - A facility with five (5) or fewer licensed beds; and

(b) Class II - A facility with six (6) or more licensed beds.

4102.3 The residential component of the rate, as described in § 4100.5(a), shall be based on a model that includes the following seven (7) cost centers:

(a) The "Direct Service" cost center, which shall include expenditures as follows:

(1) Nurses, including registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs);

(2) Qualified Intellectual Disabilities Professionals (QIDPs);

(3) House managers;

(4) Direct Support Personnel;

(5) Allocated time of staff with administrative duties and who are also utilized in direct service support, subject to the results of a time study or time sheet process that has been approved by DHCF; and

(6) Fringe benefits, including but not limited to required taxes, health insurance, retirement benefits, vacation days, paid holidays, and sick leave.

(b) The "All Other Health Care and Program Related" cost center, which shall include expenditures for:

(1) Pharmacy co-pays and over-the-counter medications;

(2) Medical supplies;

(3) Therapy costs, including physical therapy, occupational therapy, and speech therapy;

(4) Physician services;

(5) Behavioral health services provided by psychologists or psychiatrists;

(6) Nutrition and food;

(7) Medical record maintenance and review;

(8) Insurance for non-direct care health staff;

(9) Program materials excluding active treatment;

(10) Training for direct care staff;

(11) Program development and management, including recreation;

(12) Incident management;

(13) Clothing for beneficiaries; and

(14) Quality Assurance.

(c) The "Non-Personnel Operations" cost center, which shall include expenditures for:

(1) Food service and supplies related to food service;

(2) Laundry;

(3) Housekeeping and linen; and

(4) Non-capital repair and maintenance.

(d) The "Administration" cost center which shall include expenditures for:

(1) Payroll taxes;

(2) Salaries and consulting fees to non-direct care staff;

(3) Insurance for administrators and executives;

(4) Travel and entertainment;

(5) Training costs;

(6) Office expenses;

(7) Office space rent or depreciation;

(8) Clerical staff;

(9) Interest on working capital;

(10) Staff transportation; and

(11) Licenses.

(e) The "Non-Emergency Transportation" cost center, which shall include expenditures for:

(1) Vehicle license, lease, and fees;

(2) Vehicle maintenance;

(3) Depreciation of vehicle;

(4) Staffing costs for drivers and aides not otherwise covered by, or in excess of costs for, direct support personnel;

(5) Fuel; and

(6) Vehicle insurance.

(f) The "Capital" cost center, which shall include expenditures for leased, owned, or fully depreciated properties, less all amounts received for days reimbursed pursuant to the "Policy on Reserved Beds," as set forth on page 2 of Attachment 4.19C of the State Plan for Medical Assistance, for the following:

(1) Depreciation and amortization;

(2) Interest on capital debt;

(3) Rent;

(4) Minor equipment;

(5) Real estate taxes;

(6) Property insurance;

(7) Other capital; and

(8) Utilities, including electricity, gas, telephone, cable, and water.

(g) The "Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment" cost center shall include only the allowable share of the Assessment expenditure consistent with 42 U.S.C. § 1396(b)(w) and 42 C.F.R. §§ 433.68, 433.70 and 433.72.

4102.4 Fiscal Year (FY) 2013 rates shall be based on Fiscal Year (FY) 2010 cost data reported by providers, legal requirements, and industry standards, and shall be paid for services delivered beginning on October 1, 2012, through September 30, 2013. FY 2013 rates, and all rates thereafter, shall be set forth in this Chapter. FY 2013 rates were developed based upon the following assumptions:

(a) FY 2013 Non-Personnel Operations per diem rates shall be based on FY 2010 costs, inflated twelve percent (12%);

(b) FY 2013 Capital per diem rates shall be based on FY 2010 costs, inflated fifteen percent (15%);

(c) FY 2013 rates for the cost centers described in § 4102.4(a) and (b) shall be calculated as the quotient of total industry expenditures divided by the total number of industry licensed bed days as reported for FY 2010;

(d) The FY 2013 rate for Non-Emergency Transportation shall be eighteen dollars ($18) per person, per day; and

(e) Capital expenditures for Class I and Class II facilities shall be calculated separately.

4102.5 FY 2014 rates shall be based on the reported FY 2013 cost reports, adjusted for inflation, in accordance with the index described in § 4102.13. In establishing the rates for FY 2014, DHCF shall use FY 2013 rates as a baseline to compare to the FY 2013 cost reports. After inflationary adjustments, DHCF may make operational adjustments as described in this section to each cost center based on the provider's actual reported costs. These adjustments may increase or decrease the per diem rates for each cost center. For services rendered on or after January 1, 2014, DHCF shall also incorporate the following rate setting principles:

(a) Effective January 1, 2014, and beginning October 1, 2014 and annually thereafter, DHCF may make appropriate outlier adjustments. Outlier adjustments refer to uncharacteristically low or high costs (e.g., wage increases) experienced by the entire ICF/IID provider community. With respect to the Capital cost center, market induced fluctuations in the cost of items comprising that rate (*e.g.*, property appreciation/depreciation,

significant increase in the cost of utilities, etc.) shall be documented and confirmed using national indices, reports, and metrics;

(1) All adjustments shall be limited to one (1) time in any given fiscal year. Except for the Capital cost center, operational and outlier adjustments shall be subject to a five percent (5%) maximum. Operational and outlier adjustments to the Capital cost center shall be subject to a maximum of ten percent (10%);

(2) Except for inflationary adjustments, all other adjustments under this section shall be supported through provider documentation and data reflecting the economic landscape of the Washington, D.C. Metropolitan area; and

(3) All adjustments described in § 4102.5 shall be limited to fiscal years when rebasing does not occur.

(b) Effective January 1, 2014, the rate for Non-Emergency Transportation shall be twelve dollars and sixteen cents ($12.16).

4102.6 For dates of service on or after October 1, 2016, final reimbursement rates for the residential component will be based on providers' FY 2014 cost reports subject to audit and adjustment by DHCF.

4102.7 Direct Service cost center reimbursement rates shall be calculated based on staffing ratios, facility size, and individuals' acuity levels. All rates shall accommodate the following staffing patterns:

(a) Two (2) Direct Support Personnel (DSP) at three (3) shifts per day for three hundred sixty-five (365) days per year, at the following staffing ratios:

(1) Class I Facilities: One (1) DSP to every two (2) individuals (1:2); and

(2) Class II Facilities: One (1) DSP to every three (3) individuals (1:3).

(b) One (1) LPN for each facility at one (1) shift per day for three hundred sixty-five (365) days per year, for all ICFs/IID;

(c) One (1) additional LPN for each ICF/IID at one (1) shift per weekend day (Saturday and Sunday) for fifty-two (52) weeks per year. This staffing pattern shall apply only to Class II facilities;

(d) One (1) RN, one (1) QIDP, and one (1) house manager, each at one (1) shift per day for two hundred sixty (260) days per year, at a ratio of one (1) staff person to every twelve (12) individuals (1:12) for all ICFs/IID;

(e) For services provided to individuals assigned to acuity levels higher than Acuity Level I, an ICF/IID shall be paid rates that can accommodate additional staffing needs as follows:

(1) Acuity Level 2 (Moderate) rates shall also include one (1) additional DSP at three (3) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP for every two (2) individuals (1:2) for all ICFs/IID;

(2) Acuity Level 3 (Extensive – Behavioral) rates shall also include costs associated with two (2) additional DSPs. The rates for Acuity Level 3 shall include one (1) DSP at three (3) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP staff member for every two (2) individuals for all ICFs/IID. The rate shall also include one (1) DSP at two (2) shifts per day for three hundred sixty-five (365) days per year, at a staffing ratio of one (1) DSP staff member for every two (2) individuals for all ICFs/IID;

(3) Acuity Level 4 (Extensive – Medical) rates shall also include costs associated with one (1) additional LPN at two (2) shifts per day for three hundred sixty-five (365) days per year, for all ICFs/IID. Class II facilities shall also receive a rate that includes one (1) certified nurse aide (CNA) at two (2) shifts per day for three hundred sixty-five (365) days per year;

(4) Acuity Level 5 (Pervasive) rates shall vary based on the number of one-to-one services prescribed for a beneficiary. Acuity Level 5 rates shall also include one (1) DSP at two (2) or three (3) shifts per day, for five (5) or seven (7) days per week for fifty-two (52) weeks per year, at a staffing ratio of one (1) DSP to one (1) beneficiary (1:1); and

(5) Acuity Level 6 (Pervasive Plus Skilled Nursing) rates shall vary based on the number of one-to-one services prescribed for a beneficiary. Acuity Level 6 rates shall also include one (1) LPN at one (1), two (2), or three (3) shifts per day for seven (7) days per week for fifty-two (52) weeks per year, at a staffing ratio of one (1) LPN to one (1) beneficiary (1:1).

(f) The base salaries used in the development of FY 2013 rates for direct care staff wages and salaries, subject to annual inflationary adjustment, shall be as follows:

(1) DSP: Twelve dollars and fifty cents ($12.50) per hour;

(2) LPN: Twenty one dolllars ($21.00) per hour;

(3) CNA: Sixteen dollars and eighty-three cents ($16.83) per hour;

(4) House Manager: Forty-five thoushand dollars ($45,000) per year;

(5) RN: Seventy thousand dollars ($70,000) per year; and

(6) QIDP: Sixty thousand dollars ($60,000) per year.

(g) Salaries set forth in Section 4102.7(f) shall be treated as follows:

(1) "Paid time off" shall include the addition of eighty (80) hours of paid leave. Holiday pay shall include the addition of forty-four (44) hours to ensure that the rate includes the rate of pay plus one-half (1/2) the rate of pay (time and one-half) for holidays worked;

(2) Salaries shall be inflated by twenty percent (20%) and paid leave and holiday pay shall be inflated by twelve percent (12%), to accommodate fringe benefits; and

(3) All rates shall include paid time off and holiday pay for all hourly full-time equivalents (FTEs).

(h) Beginning in FY 2014 and each fiscal year thereafter, Direct Care Staff Compensation shall be inflated by the greater of any adjustment to the living wage or the associated costs of benefits and inflation based on the Centers for Medicare and Medicaid Services (CMS) Skilled Nursing Facility Market Basket Index or other appropriate index if the CMS Skilled Nursing Facility Market Basket Index is discontinued.

4102.8 The "All Other Health Care and Program Related Expenses" cost center reimbursement rates shall be calculated based on the facility size and the direct care cost center rate, which varies by staffing ratios and individuals' acuity levels. The rate for this cost center shall be calculated as a fixed percentage of the rate for direct services, at twelve percent (12%) for Class I facilities and at seventeen percent (17%) for Class II facilities.

4102.9 The "Non-Personnel Operations" cost center reimbursement rates shall be calculated based on industry average reported costs. The Non-Personnel

Operations reimbursement rate shall be equal to the industry average reported expenses per licensed bed day for the line items included in the cost center, and shall be uniformly set for all providers.

4102.10 During FY 2013, the "Administration" cost center reimbursement rates shall be calculated based on the staffing ratios, facility size, and individuals' acuity levels. The Administration reimbursement rate shall vary based on the nature of ownership of the physical premises where the ICF/IID is housed. The Administration rate shall be a uniform percentage of the sum of the rates for all other cost centers and acuity levels. Beginning January 1, 2014, and on October 1, 2014 and annually thereafter, reimbursement rates for the Administration cost center shall be uniform for Class I and Class II facilities. The Administration rate shall be a uniform percentage of the sum of the Acuity Level I (Base) rates comprising the Residential cost center for leased, Class I facilities, as set forth in this Chapter

4102.11 The "Non-Emergency Transportation" cost center reimbursement rates shall be based on the industry average expenses divided by the total number of licensed bed days. Beginning January 1, 2014, and on October 1, 2014 and annually thereafter, Non-Emergency Transportation cost center reimbursement rates shall be based on actual, reported costs.

4102.12 The "Capital" cost center reimbursement rates shall be determined in accordance with 42 C.F.R. § 413.130 and based on the industry average reported expenses per licensed bed day for the line items included in this cost center as described in Section § 4102.3. The rate shall vary based on the nature of ownership of the physical premises where the ICF/IID is housed. The Capital rate for leased premises shall be equal to the industry average reported expenses per licensed bed day for the line items included. The Capital rate for provider-owned premises shall be equal to fifty percent (50%) of the rate for leased premises. The Capital rate for fully depreciated premises shall be equal to fifty percent (50%) of the rate for provider owned premises. The Capital rate shall also be subject to the following principles:

(a) When a sale/leaseback of an existing ICF/IID facility occurs, the ICF/IID's allowable capital related cost may not exceed the amount that the seller/lessor would have recorded had the seller/lessor retained legal title;

(b) Depreciation shall incorporate the following principles:

(1) When depreciated buildings and building improvements are acquired, the cost basis of the depreciable asset shall be the lesser of the cost or acquisition value of the previous owner(s) less all reimbursement attributable to the asset as determined by DHCF or the fair market value of the asset at time of acquisition.

Notwithstanding, if the seller makes the full payback in accordance with paragraph (e) below, the cost basis to the new owner shall be the lesser of the fair market value or the purchase price;

(2) Facilities shall employ the straight-line method for calculating depreciation subject to the limits set forth in paragraphs (d) and (e) below. Accelerated methods for calculating depreciation shall not be allowed. Subject to the limits set forth in paragraphs (d) and (e), the annual depreciation expense of an asset shall be determined by dividing the basis of the asset reduced by any estimated salvage or resale value by the estimated years of useful life of the asset at the time it is placed in service;

(3) Depreciation expense of buildings and building improvements shall be limited to the basis of each asset and shall not exceed the basis of such assets less the aggregate amount received in reimbursement for such assets in the current and prior years;

(4) Fully depreciated buildings and building improvements subsequently sold or disposed of shall be subject to payback by the owner to the program of all depreciation expense paid to the owner and all previous owners when such assets are no longer used to provide ICF/IID services or have been transferred to new owners in an arm's length transaction, provided that such payback shall be reduced by all amounts previously paid back, if any, by prior owners;

(5) ICFs/IID shall estimate assets' years of useful life in accordance with the most recent edition of "Estimated Useful Lives of Depreciable Hospital Assets" published by the American Hospital Association, or if not applicable, relevant guidance issued by the U.S. Internal Revenue Service. Subject to the limits set forth in paragraphs (d) and (e), depreciation expense for the year of disposal can be computed by using either the half-year method or the actual time method;

(6) Assets shall be recorded using historical cost, except for donated assets which shall be recorded at fair market value at the time received and based on the lesser of at least two (2) bona fide appraisals. Costs during the construction of an asset, consulting and legal fees, interest, and fund raising, should be capitalized as a part of the cost of the asset;

(7) When an asset is acquired by a trade-in, the cost of the new asset shall be the sum of the book value of the old asset and any cash or issuance of debt as consideration paid;

(8) Facilities that previously did not maintain fixed asset records and did not record depreciation in prior years shall be entitled to any straight-line depreciation of the remaining useful life of the asset. The depreciation shall be based on the cost of the asset or fair market value of a donated asset at the time of purchase, construction or donation over its normal useful life. Fully depreciated assets shall not be included in the Capital cost center, except for the costs associated with utilities and relevant leasehold improvements. No depreciation may be taken on an asset that would have been fully depreciated if it had been properly recorded at the time of acquisition;

(9) Leasehold improvements made to rental property by the lessor shall be depreciated over the lesser of the asset's useful life or the remaining life of the lease;

(c) On a case by case basis, DHCF may reimburse an ICF/IID by providing an offset to capital costs that shall be equal to the daily amount computed under this subsection in situations when DDS has not filled vacant bed space(s). The ICF/IID shall receive the product of the capital cost multiplied by the administrative rate anytime this payment is made;

(d) The daily cost described in paragraph (k) shall be computed as the capital component of the daily per-diem rate, multiplied by the number of vacant bed space(s); and

(e) ICFs/IID shall incur costs and provide DHCF with proof of the vacant bed space, in order to be eligible.

4102.13 Effective October 1, 2013, and annually thereafter, the per diem rates for "Non-Personnel Operations", "Non-Emergency Transportation", "Capital", and "Active Treatment" cost centers shall be adjusted for inflation in accordance with the Centers for Medicare and Medicaid Services (CMS) Skilled Nursing Facility Market Basket Index or other appropriate index if the CMS Skilled Nursing Facility Market Basket Index is discontinued.

4102.14 The Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Fund Assessment shall be a broad based assessment on all ICF/IID providers in the District of Columbia at a uniform rate of five and one-half percent (5.5%) of each ICF/IID's gross revenue. The allowable cost of the Assessment shall be calculated consistently with 42 U.S.C. § 1396(b)(w) and 42 C.F.R. §§ 433.68, 433.70, and 433.72.

4102.15 Beginning January 1, 2014, ICF/IID reimbursement rates, shall be as follows:

Acuity	Beds	Facility	Direct care staffing	Other health care & program Total	Non-Pers Oper	Transp.	Capital	Admin	Active Tx	Total Rate	Tax	Total rate paid
Base	4 - 5	Leased	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 609.15	$ 33.50	$ 642.66
		Owned	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 579.52	$ 31.87	$ 611.39
		Depreciated	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 564.70	$ 31.06	$ 595.76
	6	Leased	$ 246.77	$ 44.42	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 523.80	$ 28.81	$ 552.61
		Owned	$ 246.77	$ 44.42	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 496.73	$ 27.32	$ 524.05
		Depreciated	$ 246.77	$ 44.42	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 483.20	$ 26.58	$ 509.77
Moderate	4 - 5	Leased	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 609.15	$ 33.50	$ 642.66
		Owned	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 579.52	$ 31.87	$ 611.39
		Depreciated	$ 328.68	$ 42.73	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 564.70	$ 31.06	$ 595.76
	6	Leased	$ 321.79	$ 57.92	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 612.33	$ 33.68	$ 646.01
		Owned	$ 321.79	$ 57.92	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 585.26	$ 32.19	$ 617.45
		Depreciated	$ 321.79	$ 57.92	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 571.72	$ 31.44	$ 603.17
Extensive behavioral	4 - 5	Leased	$ 398.96	$ 51.86	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 688.57	$ 37.87	$ 726.44
		Owned	$ 398.96	$ 51.86	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 658.93	$ 36.24	$ 695.17
		Depreciated	$ 398.96	$ 51.86	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 644.11	$ 35.43	$ 679.54
	6	Leased	$ 368.64	$ 66.36	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 667.61	$ 36.72	$ 704.33
		Owned	$ 368.64	$ 66.36	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 640.54	$ 35.23	$ 675.77
		Depreciated	$ 368.64	$ 66.36	$ 19.12	$ 12.16	$13.53	$60.05	$87.15	$627.01	$34.49	$ 661.49

Acuity	Beds	Facility	Direct care staffing	Other health care & program Total	Non-Pers Oper	Transp.	Capital	Admin	Active Tx	Total Rate	Tax	Total rate paid
Extensive medical	4 - 5	Leased	$ 446.74	$ 58.08	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 742.57	$ 40.84	$ 783.41
		Owned	$ 446.74	$ 58.08	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 712.93	$ 39.21	$ 752.14
		Depreciated	$ 446.74	$ 58.08	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 698.11	$ 38.40	$ 736.51
	6	Leased	$ 388.55	$ 69.94	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 691.10	$ 38.01	$ 729.11
		Owned	$ 388.55	$ 69.94	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 664.03	$ 36.52	$ 700.55
		Depreciated	$ 388.55	$ 69.94	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 650.49	$ 35.78	$ 686.27
Pervasive 8 h / 7 d	4 - 5	Leased	$ 459.74	$ 59.77	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 757.25	$ 41.65	$ 798.90
		Owned	$ 459.74	$ 59.77	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 727.61	$ 40.02	$ 767.63
		Depreciated	$ 459.74	$ 59.77	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 712.79	$ 39.20	$ 752.00
	6	Leased	$ 377.83	$ 68.01	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 678.45	$ 37.31	$ 715.76
		Owned	$ 377.83	$ 68.01	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 651.38	$ 35.83	$ 687.20
		Depreciated	$ 377.83	$ 68.01	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 637.84	$ 35.08	$ 672.92
Pervasive 8 h / 5 d	4 - 5	Leased	$ 416.03	$ 54.08	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 707.86	$ 38.93	$ 746.79
		Owned	$ 416.03	$ 54.08	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 678.22	$ 37.30	$ 715.52
		Depreciated	$ 416.03	$ 54.08	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 663.40	$ 36.49	$ 699.89
	6	Leased	$ 334.12	$ 60.14	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 626.87	$ 34.48	$ 661.35
		Owned	$ 334.12	$ 60.14	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 599.80	$ 32.99	$ 632.79
		Depreciated	$ 334.12	$ 60.14	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 586.27	$ 32.24	$ 618.51
Pervasive 16 h	4 - 5	Leased	$ 609.78	$ 79.27	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 926.80	$ 50.97	$ 977.77
		Owned	$ 609.78	$ 79.27	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 897.16	$ 49.34	$ 946.51
		Depreciated	$ 609.78	$ 79.27	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 882.34	$ 48.53	$ 930.87
	6	Leased	$ 527.87	$ 95.02	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 855.50	$ 47.05	$ 902.55
		Owned	$ 527.87	$ 95.02	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 828.43	$ 45.56	$ 873.99
		Depreciated	$ 527.87	$ 95.02	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 814.90	$ 44.82	$ 859.72

Acuity	Beds	Facility	Direct care staffing	Other health care & program Total	Non-Pers Oper	Transp.	Capital	Admin	Active Tx	Total Rate	Tax	Total rate paid
Pervasive 24 h	4 - 5	Leased	$ 778.82	$ 101.25	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 1,117.81	$ 61.48	$ 1,179.29
		Owned	$ 778.82	$ 101.25	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 1,088.17	$ 59.85	$ 1,148.02
		Depreciated	$ 778.82	$ 101.25	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 1,073.35	$ 59.03	$ 1,132.39
	6	Leased	$ 696.91	$ 125.44	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 1,054.96	$ 58.02	$ 1,112.98
		Owned	$ 696.91	$ 125.44	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 1,027.89	$ 56.53	$ 1,084.43
		Depreciated	$ 696.91	$ 125.44	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 1,014.36	$ 55.79	$ 1,070.15
Nursing 1:1 8 h / 7 d	4 - 5	Leased	$ 548.85	$ 71.35	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 857.95	$ 47.19	$ 905.14
		Owned	$ 548.85	$ 71.35	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 828.31	$ 45.56	$ 873.87
		Depreciated	$ 548.85	$ 71.35	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 726.35	$ 39.95	$ 766.30
	6	Leased	$ 466.94	$ 84.05	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 783.60	$ 43.10	$ 826.70
		Owned	$ 466.94	$ 84.05	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 756.54	$ 41.61	$ 798.14
		Depreciated	$ 466.94	$ 84.05	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 655.85	$ 36.07	$ 691.92
Nursing 1:1 8 h / 5 d	4 - 5	Leased	$ 475.42	$ 61.80	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 774.97	$ 42.62	$ 817.60
		Owned	$ 475.42	$ 61.80	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 745.34	$ 40.99	$ 786.33
		Depreciated	$ 475.42	$ 61.80	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 643.37	$ 35.39	$ 678.76
	6	Leased	$ 393.51	$ 70.83	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 696.96	$ 38.33	$ 735.29
		Owned	$ 393.51	$ 70.83	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 669.89	$ 36.84	$ 706.73
		Depreciated	$ 393.51	$ 70.83	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 569.20	$ 31.31	$ 600.51
Nursing 1:1 16 hours	4 - 5	Leased	$ 800.93	$ 104.12	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 1,142.80	$ 62.85	$ 1,205.65
		Owned	$ 800.93	$ 104.12	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 1,113.16	$ 61.22	$ 1,174.38
		Depreciated	$ 800.93	$ 104.12	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 1,099.47	$ 60.47	$ 1,159.95
	6	Leased	$ 719.02	$ 129.42	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 1,081.05	$ 59.46	$ 1,140.51
		Owned	$ 719.02	$ 129.42	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 1,053.99	$ 57.97	$ 1,111.96
		Depreciated	$ 719.02	$ 129.42	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 1,041.58	$ 57.29	$ 1,098.87

Acuity	Beds	Facility	Direct care staffing	Other health care & program Total	Non-Pers Oper	Transp.	Capital	Admin	Active Tx	Total Rate	Tax	Total rate paid
Nursing 1:1 24 hours	4 - 5	Leased	$1,084.91	$ 141.04	$ 19.12	$ 12.16	$ 59.27	$ 60.05	$ 87.15	$ 1,463.69	$ 80.50	$ 1,544.20
		Owned	$1,084.91	$ 141.04	$ 19.12	$ 12.16	$ 29.64	$ 60.05	$ 87.15	$ 1,434.06	$ 78.87	$ 1,512.93
		Depreciated	$1,084.91	$ 141.04	$ 19.12	$ 12.16	$ 14.82	$ 60.05	$ 87.15	$ 1,420.37	$ 78.12	$ 1,498.49
	6	Leased	$1,003.00	$ 180.54	$ 19.12	$ 12.16	$ 54.14	$ 60.05	$ 87.15	$ 1,416.15	$ 77.89	$ 1,494.04
		Owned	$1,003.00	$ 180.54	$ 19.12	$ 12.16	$ 27.07	$ 60.05	$ 87.15	$ 1,389.08	$ 76.40	$ 1,465.48
		Depreciated	$1,003.00	$ 180.54	$ 19.12	$ 12.16	$ 13.53	$ 60.05	$ 87.15	$ 1,376.68	$ 75.72	$ 1,452.40

4103 ACTIVE TREATMENT SERVICES

4103.1 An individual residing in an ICF/IID shall receive continuous active treatment services, consistent with the requirements set forth in 42 CFR § 483.440. Active treatment services shall vary depending on the needs of the beneficiary, as determined by the interdisciplinary team.

4103.2 An ICF/IID shall ensure that a beneficiary receives active treatment services on a daily basis. The ICF/IID may affiliate with outside resources to assist with program planning and service delivery or the facility may provide active treatment services directly.

4103.3 A program of active treatment services shall include aggressive, consistent implementation of a program of specialized training, treatment, health services, and other related services that is directed towards:

(a) The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

(b) The prevention or deceleration of regression or loss of current optimal functional status.

4103.4 In accordance with 42 C.F.R. §§ 483.440(c) - (d), an interdisciplinary team shall determine the type of active treatment services that a beneficiary needs based on preliminary evaluations, assessments, and re-assessments. Each beneficiary's active treatment requirements shall be described in his Individual Program Plan (IPP), pursuant to 42 C.F.R. § 483.440(c). The ICF/IID shall ensure that each beneficiary receives all of the services described in the IPP.

4103.5 For dates of service on or after January 1, 2014, the per diem reimbursement rate for active treatment shall equal the average of FY13 active treatment rates multiplied by two hundred sixty (260) days of service, to account for the maximum days of service provided, inclusive of holidays, and divided by three hundred sixty-five (365).

4104 SUPPLEMENTAL PAYMENT FOR QUALITY OF CARE IMPROVEMENTS

4104.1 Consistent with the requirements set forth in the Stevie Sellows Intermediate Care Facility for the Intellectually and Developmentally Disabled Quality Improvement Act of 2005, effective March 8, 2006 (D.C. Law 16-68; D.C. Official Code §§ 47-1270 *et seq.*), implementing rules, and subsequent amendments, beginning in FY 2014 an ICF/IID that meets the criteria in this section shall be eligible to receive a supplemental payment based on the cost of training provided to employees other than managers, administrators, and contract employees.

4104.2 In addition to the aggregate per diem described in § 4102, an ICF/IID may receive an additional payment for participation in quality improvement initiatives that are intended to increase the qualifications of employees by making available educational opportunities.

4104.3 To qualify for a supplemental payment for quality improvements under this Section for a fiscal year, an ICF/IID shall, by June 30 of the preceding fiscal year, provide DHCF with documentation verifying that it:

(a) Has a legally binding written agreement with its employees to fund quality of care improvements through measurable efforts to develop and improve staff skills by increasing staff training and educational opportunities;

(b) Has written procedures outlining the process, such as arbitration, for employees to follow to enforce this agreement. The process shall:

(1) Be expeditious;

(2) Be economical for the employees; and

(3) Provide for a neutral decision maker to resolve disputes; and

(c) Has provided copies of the agreement and the written procedures to its employees and their representatives.

4104.4 To establish the cost amount for purposes of determining the facility's supplemental payment amount, an ICF/IID shall provide DHCF with documentation verifying the amount of training costs no later than June 30 of the preceding fiscal year.

4104.5 The training cost amount shall include the cost of providing training for employees other than managers, administrators, and contractors, and shall be the actual costs incurred by the facility in providing training to these employees. For training costs to be included, the training shall be:

(a) Related to patient care;

(b) Related to improving the skills, competency, and qualifications of employees in providing care; and

(c) Approved by DHCF.

4104.6 In order to be eligible for the supplemental payment, an ICF/IID shall incur costs and provide DHCF with evidence that payment has been made in full. Acceptable forms of evidence shall include a copy of any invoice(s) for training costs and cancelled check(s) reflecting the facility's payment of the invoice(s).

4104.7 All supplemental payments shall be subject to a uniform percentage of thirteen percent (13%) for administrative costs for FY 2013. The administrative cost percentage may be adjusted in subsequent fiscal years. Adjusted rates will be set forth in the *D.C. Register*.

4104.8 Supplemental payments associated with the costs of implementing quality improvement initiatives shall be recorded as an offset to the costs incurred, and shall be included in the cost report submitted annually.

4104.9 The supplemental payments described in this § shall not be used to enhance training or educational opportunities for management, administration, and contractual staff.

4104.10 The amount and availability of the supplemental payment shall be contingent upon the availability of funding from DHCF. If the total amount of payments to be made to all eligible providers exceeds the amount of available funds, then payments made to all eligible facilities shall be proportionately reduced.

4104.11 DHCF shall issue a Notice of Eligibility and Proposed Reimbursement to each provider within sixty (60) days of receipt of all required information. The written notice shall contain at a minimum all of the following information:

(a) A determination indicating whether the provider is eligible or ineligible to receive the supplemental payment;

(b) If a provider is determined to be ineligible to receive the supplemental payment, a written statement explaining why the facility is ineligible; and

(c) Language describing the procedures and timeframes for requesting an administrative review with DHCF.

4104.12 A provider who disagrees with the Notice of Eligibility and Proposed Reimbursement may request an administrative review by submitting a written request for an administrative review to DHCF within thirty (30) days after the date of the Notice of Eligibility and Proposed Reimbursement.

4104.13 The written request for an administrative review shall include:

(a) The reason(s) for the request, including an identification of the specific item(s) to be reviewed; and

(b) Supporting documentation.

4104.14 No later than ninety (90) days after receipt of all requests for administrative review DHCF shall issue a Final Notice of Eligibility and Reimbursement to each

provider that has applied for the supplemental payment. The notice shall contain at a minimum the following information:

(a) A final determination indicating whether the provider is eligible to receive the supplemental payment. If ineligible, the notice shall contain a written statement explaining why the provider is ineligible;

(b) The total amount of the supplemental payment, including the annual salary, benefit, and training cost amounts;

(c) The annul number of employee hours excluding managers, administrators, and contract employees;

(d) The timeframe for payment of the supplemental payment; and

(e) Language describing the procedures and timeframes for requesting an appeal with the Office of Administrative Hearings (OAH).

4104.15 A provider who disagrees with the Final Notice of Eligibility and Reimbursement may file an appeal with the OAH within forty-five (45) days of the date of the Final Notice of Eligibility and Reimbursement.

4104.16 Any adjustments to the supplemental payment as a result of a decision rendered by the OAH shall be offset against payments the following fiscal year.

4105 REBASING

4105.1 Effective October 1, 2016, final reimbursement rates for the residential component will be based on providers' FY 2014 cost reports subject to audit and adjustment by DHCF. Subsequent rebasing to adjust the residential component will occur every three (3) years thereafter.

4106 COST REPORTING AND RECORD MAINTENANCE

4106.1 Each ICF/IID shall report costs annually to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception. All cost reports shall cover a twelve (12) month cost reporting period unless the facility obtains advance permission from DHCF to allow an alternative reporting period, for good cause.

4106.2 In accordance with instructions from DHCF, providers shall file an initial interim cost report.

4106.3 A cost report that is not completed in accordance with the requirements of this section shall be considered an incomplete filing, and DHCF shall notify the

ICF/IID within thirty (30) days of the date on which DHCF received the incomplete cost report.

4106.4 DHCF shall issue a delinquency notice if the ICF/IID does not submit the cost report as specified in § 4106.1 and has not previously received an extension of the deadline for good cause.

4106.5 Late submission of cost reports shall result in a refundable withholding of an amount equal to seventy-five percent (75%) of the facility's total payment for the month that the cost report was due, and the same amount shall be withheld each month until the cost report is received.

4106.6 The costs described in § 4102 shall be reported on a cost report template developed by DHCF. The cost report shall be completed in accordance with accompanying instructions. The cost report instructions shall include, at minimum, guidelines and standards for determining and reporting allowable costs.

4106.7 If the ICF/IID utilizes outside resources pursuant to § 4103.2, the ICF/IID shall submit the cost reports or invoices provided by the outside resources as an attachment to the submitted cost report required under § 4106.6. Where the active treatment program is provided in house, the provider shall provide its own cost report in the active treatment section of the cost report.

4106.8 In the absence of specific instructions or definitions contained in the accompanying regulations, cost report forms, and instructions, the treatment and allowability of costs shall be determined in accordance with the Medicare Principles of Reimbursement, 42 C.F.R. Part 413, and the interpretation found in the relevant Provider Reimbursement Manual.

4106.9 A facility reporting expenditures associated with holiday pay within the Direct Service cost center, as described under §§ 4102.7 and 4103.5, shall submit supporting documentation, along with the cost report, to DHCF, or its designee. Supporting documentation required under this section shall include employee timesheets or comparable document(s)

4106.10 Any allocated time claimed under § 4102.3(a)(5) shall be supported by contemporaneous time sheets attested to by the persons concerned, or a random moment time study designed and reviewed by an independent firm. Such documentation shall be submitted with the cost report in support of all amounts claimed.

4106.11 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.

4106.12 If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is complete.

4106.13 In accordance with § 4100.9, the ICF/IID shall disclose a list of related organizations, associated amounts, and the reason(s) for payment to each related organization in the cost report.

4106.14 Costs incurred during a period when an ICF/IID is subject to denial of payment for new admissions, described in § 4112, shall be included on the cost report for the period during which payment was denied, in order to accurately determine rates in subsequent periods.

4107 FISCAL ACCOUNTABILITY

4107.1 Beginning in FY 2014, except for the Administration, Capital, and Active Treatment cost centers, each facility shall spend at least ninety-five percent (95%) of the rate under each cost center on service delivery to Medicaid individuals. Facilities expending less than ninety-five percent (95%) of each cost center shall be subject to repayment requirements.

4107.2 Beginning in FY 2014, each ICF/IID shall spend one hundred percent (100%) of the rate for Active Treatment on service delivery to Medicaid individuals. Facilities expending less than one hundred percent (100%) of the rate for Active Treatment shall be subject to repayment requirements. Effective January 1, 2014, each ICF/IID shall spend one hundred percent (100%) of the rate associated with the Capital cost center. A facility that fails to expend one hundred percent (100%) on capital shall be subject to repayment requirements.

4107.3 The repayment amount described in § 4107.1 shall be the difference between ninety-five percent (95%) of the rate component and the facility's reported expenses. The repayment amount for Active Treatment described in § 4107.2 shall be the difference between one hundred percent (100%) of the payments made for active treatment services and reported expenses for active treatment services. The repayment amount for Capital costs shall be the difference between 100 hundred percent (100%) of the payments made for Capital costs and reported Capital expenses.

4107.4 In accordance with D.C. Official Code § 47-1272(c), DHCF, or its designee, has the right to inspect payroll and personnel records to support the Department's obligations pursuant to the Living Wage Act of 2006, effective March 8, 2006 (D.C. Law 16-118; D.C. Official Code §§ 47-1270 *et seq.*), and implementing regulations

4107.5 DHCF shall evaluate expenditures subject to the requirements in this section through annual review of cost reports. DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness through a desk audit.

4107.6 On-site audits shall be conducted not less than once every three (3) years. Each ICF/IID shall allow access, during on-site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records and statistical data to verify costs previously reported to DHCF.

4107.7 DHCF shall issue a notice to each ICF/IID that is required to repay as set forth in this section. The notice shall set forth the repayment amount and include language describing the procedure and timeframes for requesting an appeal before OAH. Filing an appeal with OAH shall not stay any action to recover the amounts prescribed in this section.

4108 RIGHT TO APPEAL

4108.1 DHCF shall issue a notice to each beneficiary when DHCF disapproves the acuity level assignment submitted by the provider. The notice shall comply with District and federal law and rules. A copy of the notice shall also be sent to the provider. If the beneficiary consents, a provider may appeal the determination described in this section on behalf of the beneficiary.

4108.2 For Fiscal Years 2013 and after, DHCF shall send a transmittal to all providers notifying them of the rates.

4108.3 Provider appeals shall be limited to challenges based on acuity level assignments and audit adjustments.

4108.4 At the conclusion of each rebasing year audit or any other required audit, an ICF/IID facility shall receive an audited cost report including a description of each audit adjustment and the reason for each adjustment. An ICF/IID facility that disagrees with the audited cost report may request an administrative review of the audited cost report by sending a written request for administrative review to DHCF within thirty (30) days of the date of receipt of the audited cost report.

4108.5 For annual cost reports submitted by the ICF/IID facility, any determinations made following reviews conducted by DHCF shall be communicated to the ICF/IID Facility within thirty (30) days. Within thirty (30) days of the date of receipt of the DHCF communication on the submitted annual cost report, an ICF/IID facility that disagrees with the determination may request an administrative review by sending a written request for administrative review to DHCF.

4108.6 The written request for an administrative review shall include an identification of the specific audit adjustment to be reviewed, the reason for the request for review of each audit adjustment and supporting documentation.

4108.7 DHCF shall mail a formal response to the ICF/IID facility no later than forty-five (45) days from the date of receipt of the written request for administrative review.

4108.8 Decisions made by DHCF and communicated in the formal response may be appealed, within thirty (30) days of the date of DHCF's letter notifying the facility of the decision, to OAH.

4108.9 Filing an appeal with OAH pursuant to this section shall not stay any action to recover any overpayment to the ICF/IID, and the provider shall be immediately liable to the program for overpayments set forth in the Department's decision.

4109 UTILIZATION REVIEW REQUIREMENTS

4109.1 In accordance with 42 C.F.R. § 456.401, each ICF/IID shall develop, implement, and maintain a written Utilization Review Plan (URP) for each Medicaid beneficiary receiving services furnished by the ICF/IID. The URP shall provide for a review of each beneficiary's need for the services that the ICF furnished him or her.

4109.2 Utilization review for ICFs/IID enrolled in D.C. Medicaid may be conducted by any of the following:

(a) The ICF/IID;

(b) DHCF or its designee; or

(c) Any other approved method.

4109.3 The URP shall, at minimum, include the following:

(a) A description of how utilization review shall be performed;

(b) The frequency of utilization review;

(c) Assurances and documentation establishing that the personnel who shall perform utilization review meet the requirements of 42 C.F.R. § 456.406;

(d) Administrative staff responsibilities related to utilization review;

(e) The types of records maintained by the utilization review team;

(f) The types and frequency of any reports developed by the utilization review team, and related plan for dissemination; and

(g) The procedures that shall be used when corrective action is necessary.

4109.4 In accordance with 42 C.F.R. §§ 456.431 - 456.438, each URP shall establish a process whereby each individual residing in the ICF/IID receives continued stay reviews, at minimum, every six (6) months.

4109.5 The URP shall establish written methods and criteria used to conduct continued stay reviews. The URP shall also set forth enhanced criteria used to assess a case if the individual's circumstances reflect any of the following associations:

(a) High costs;

(b) Frequent and excessive services; or

(c) Attended by a physician or other practitioner whose practices reflect questionable billing patterns or misrepresentation of facts needed in order to secure claims reimbursement, including but not limited to ordering and/or providing services that are not medically necessary or that fail to meet professionally recognized standards of care.

4110 TERMINATION AND ALTERNATIVE SANCTIONS FOR ICF/IID NONCOMPLIANCE

4110.1 In order to qualify for Medicaid reimbursement, intermediate care facilities for persons with intellectual and developmental disabilities (ICFs/IID) shall comply with federal conditions of participation (CoPs), pursuant to 42 C.F.R. §§ 483.400-483.480. The CoPs include adherence to acceptable standards in the following areas:

(a) Governing body and management;

(b) Client protections;

(c) Facility staffing;

(d) Active treatment services;

(e) Client behavior and facility practices;

(f) Health care services;

(g) Physical environment; and

(h) Dietetic services.

4110.2 An ICF/IID that fails to maintain compliance with the CoPs may be subject to alternative sanctions and/or termination of its participation in the Medicaid program.

4111 ALTERNATIVE SANCTIONS FOR ICFs/IID – NON-IMMEDIATE JEOPARDY

4111.1 In accordance with Section 1902(i)(1)(B) of the Social Security Act, the District of Columbia may impose alternative sanctions against an ICF/IID when that facility fails to meet the CoPs, but the violation does not place beneficiary health or safety in immediate jeopardy.

4111.2 In lieu of terminating the provider agreement, DHCF may impose one (1) or more alternative sanctions against an ICF/IID as set forth below:

(a) Denial of payment, as described in § 4112;

(b) Directed Plan of Correction (DPoC), as described in § 4113;

(c) Directed In-Service Training (DIST), as described in § 4114; or

(d) State Monitoring, as described in § 4115.

4111.3 DHCF shall determine the appropriateness of alternative sanctions against an ICF/IID upon notification by the Department of Health that an ICF/IID is not in compliance with any of the federal CoPs. A determination to terminate a provider from the Medicaid program, or to impose an alternative sanction shall be made based on the following factors:

(a) Seriousness of the violation(s);

(b) Number and nature of the violation(s);

(c) Potential for immediate and serious threat(s) to ICF/IID residents;

(d) Potential for serious harm to ICF/IID residents;

(e) Any history of prior violation(s) and/or sanction(s);

(f) Actions or recommendations of DDS, developmental disability advocacy groups, or health care entities;

(g) Mitigating circumstances; and

(h) Other relevant factors.

4111.4 DHCF shall issue a written notice to each ICF/IID notifying the facility of termination of the Medicaid provider agreement or the imposition of an alternative sanction. The written notice shall comply with District and federal law and rules.

4111.5 All costs associated with the imposition of an alternative sanction against an ICF/IID pursuant to these rules shall be borne by the facility.

4112 DENIAL OF PAYMENT

4112.1 Pursuant to Section 1902(i) of the Act and 42 C.F.R. § 442.118, and in lieu of termination in situations where residents are not in immediate jeopardy, DHCF may initiate a one-time denial of payment for claims associated with new admissions at ICFs/IID that fail to comply with one (1) or more of the CoPs for Medicaid enrollment.

4112.2 The denial of payment term shall be eleven (11) months in duration, beginning on the first day of the month after DHCF imposes the denial of payments.

4112.3 DHCF shall also deny payment to ICFs/IID if DOH previously initiated enforcement actions due to immediate jeopardy, and the facility has failed to mitigate the circumstances that caused immediate jeopardy.

4112.4 DHCF, in coordination with DOH, shall notify the ICF/IID that it is subject to denial of payment. The written notification shall indicate the following:

(a) The ICF/IID has up to sixty (60) days to correct the cited deficiencies; and

(b) The procedures that shall commence once the sixty (60) days have lapsed, pursuant to § 4112.5.

4112.5 If the ICF/IID does not correct the violations within the sixty (60) day timeframe, DHCF shall notify the facility of its intention to deny payment. This written notification shall include:

(a) Reasons for denial of payment;

(b) Information on the right to request a hearing though OAH, pursuant to 29 DCMR §§ 1300 *et seq.*;

(c) Details of public notice; and

(d) The effective date for denial of payments.

4112.6 If an ICF/IID appeals DHCF's decision to deny payment, DHCF shall notify the provider that the effective date of the sanction, established in § 4112.2, shall be suspended until the appeal is resolved.

4112.7 If denial of payment is upheld at the appeal, the DHCF shall notify the facility and the public at least thirty (30) days before the newly established effective date of the sanction.

4112.8 DHCF, in coordination with other District agencies, shall monitor the facility's progress in improving cited violation(s) throughout the eleven (11) month period.

4112.9 The Director of DHCF shall consider modifying or rescinding denial of payment upon the occurrence of one of the following:

(a) Circumstances have changed and resulted in alterations of the CoPs violation(s) in such a manner as to immediately jeopardize patient health and safety; or

(b) The ICF/IID achieves full compliance with the CoPs in fewer than eleven (11) months; or

(c) The ICF/IID makes significant progress in achieving compliance with the CoPs through good faith efforts.

4112.10 DHCF shall terminate the provider agreement of an ICF/IID that has been unable to achieve compliance with the CoPs during the full eleven (11) month period of denial of payment. Termination shall be effective on the first day following the last day of the denial payment period.

4112.11 An ICF/IID provider agreement that is subject to denial of payment shall be automatically extended for the eleven (11) month period if the provider agreement does not lapse on or before the effective date of denial of payments.

4112.12 ICF/IID provider agreements that are subject to denial of payment may only be renewed when the denial period expires or is rescinded.

4113 DIRECTED PLAN OF CORRECTION (DPoC)

4113.1 In lieu of termination in situations where the ICF/IID is not in compliance with the federal CoPs, and residents are not in immediate jeopardy, DHCF may require an ICF/IID to take prompt, timely action specified by DHCF to achieve and maintain compliance with CoPs and other District of Columbia Medicaid requirements. These actions specified by DHCF shall constitute a Directed Plan of Correction (DPoC).

4113.2 The DPoC shall be developed in coordination with and approved by DOH, DHCF, and DDS, incorporating findings from DDS' Continuous Quality Improvement Plan.

4113.3 The DPoC shall specify:

(a) How corrective action shall be accomplished for beneficiaries found to have been affected by the deficient practice and include remedies that shall be implemented;

(b) How the facility shall identify other individuals who may have been affected by the same deficient practice but not previously identified, and how the facility shall act to remedy the effect of the deficient practices for these individuals;

(c) What measures and actions shall be put into place to ensure that the deficient practice(s) is/are being corrected and future noncompliance prevented;

(d) Timelines, including major milestones for completion of all corrective action in the DCoP;

(e) How compliance shall be determined; and

(f) How the DPoC relates to other alternative sanctions.

4113.4 A state monitor shall oversee implementation of the DPoC and evaluate compliance with the plan.

4113.5 DHCF may terminate the Medicaid provider agreement of an ICF/IID that is unable to meet the timeline for completion of all corrective actions in the DCoP.

4114 DIRECTED IN-SERVICE TRAINING (DIST)

4114.1 In lieu of termination in situations where the ICF/IID is not in compliance with federal CoPs, but residents are not in immediate jeopardy, DHCF may require an ICF/IID to implement Directed In-Service Training (DIST) for deficiencies determined by the District to be correctable through education. This alternative sanction shall require the staff and relevant contractors of the ICF/IID to attend in-service trainings and demonstrate competency in the knowledge and skills presented during the trainings.

4114.2 DHCF, in consultation with DOH and DDS, shall develop the areas for ICF/IID staff and contractor training by incorporating the findings from the Continuous Quality Improvement Plan.

4114.3 Facilities shall use training programs developed by well-established organizations with prior experience and expertise in training, services for individuals with intellectual disabilities, and the operation of ICF/IID to meet training requirements described in this section. All programs and personnel used to deliver the training shall be approved by DHCF prior to their use.

4114.4 The ICF/IID shall bear the expense of the DIST.

4114.5 A state monitor shall oversee implementation of DIST, and shall ensure compliance with the requirements.

4114.6 DHCF may terminate the provider agreement of an ICF/IID that is unable to meet the timeline for full and successful completion of the DIST.

4115 STATE MONITORING

4115.1 State monitoring shall be the District's oversight of efforts made by the ICF/IID to correct cited deficiencies. State monitoring shall be a safeguard against the facility's further noncompliance.

4115.2 The following entities may serve as the State Monitor:

(a) DOH;

(b) DHCF;

(c) DDS; or

(d) A District of Columbia contractor that meets the following requirements:

(1) Is not a designee or current contractor of the monitored facility;

(2) Does not have an immediate family member who is a resident of the facility;

(3) Is not a person who has been terminated for cause by the facility; and

(4) Is not a former contractor who has had a contract canceled, for cause, by the facility.

4115.3 State monitoring shall be discontinued under the following circumstances:

(a) The facility's provider agreement is terminated;

(b) The facility has demonstrated to the satisfaction of the District of Columbia that it substantially complies with the CoPs as described in § 4113; or

(c) The facility has demonstrated to the satisfaction of the District of Columbia that it has substantially implemented the DIST as described in § 4114.

4116 ACCESS TO RECORDS

4116.1 Each ICF/IID shall grant full access to all records during announced and unannounced audits and reviews by DHCF personnel, representatives of the U.S. Department of Health and Human Services, and any authorized agent(s) or official(s) of the federal or District of Columbia government.

4199 DEFINITIONS

4199.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

Active Treatment - A program of specialized and generic training, treatment, health services, and related services designed toward the acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible, and the prevention or deceleration of regression or loss of current optimal functional status. These services shall be provided consistent with Federal standards.

Activities of Daily Living - The ability to bathe, transfer, dress, eat and feed oneself, engage in toileting, and maintain bowel and bladder control (continence).

Acuity Level - The intensity of services required for a Medicaid beneficiary residing in an ICF/IID. Individuals with a high acuity level require more care; those with lower acuity levels require less care.

Administrator - An individual responsible for the administration or implementation of ICF/IID policies or procedures, and other roles other than delivering services directly related to resident treatment and care, food service, or maintenance of the facility.

Allowable costs - Actual costs, after appropriate adjustments, incurred by an ICF/IID, which are reimbursable under the Medicaid program.

Base year - The standardized year on which rates for all facilities are calculated to derive a prospective reimbursement rate.

Behavior Support Plan - A written document requested by the Individual Support Team that is developed by a psychologist or psychology associate and incorporated into the Individual Support Plan. If developed by a psychology associate, the plan shall be approved by the psychologist.

Current Individual Support Plan (ISP) - An Individual Support Plan with a range of effective dates that includes the date on which the plan is being reviewed.

Depreciation - The systematic distribution of the cost or other basis of depreciable assets, less salvage value, over the estimated useful life of the assets.

Direct service costs - Costs incurred by a provider that are attributable to the operation of providing services to individuals.

Elopement - To run away; abscond.

Employee - A worker in an ICF/IID that does not serve as a manager or administrator, and is not under contract to provide professional services.

Facility - An intermediate care facility for individuals with intellectual disabilities.

Habilitation – The process by which an individual is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under D.C. Official Code § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency.

Holiday pay – The term used in a labor agreement, provider policy, or in the absence of either, by the U.S. Department of Labor.

Individual Support Plan (ISP) - The document produced through coordinated efforts of ICFs/IID and DDS. The ISP is the successor to the Individual Habilitation Plan as defined in the court-approved *Joy Evans* Exit Plan. For purposes of Medicaid reimbursement, the individual program plan, as described in 42 C.F.R. § 483.440(c), shall be included within the ISP.

Industry Average - The sum of total industry expenditures divided by total industry licensed bed days per reported fiscal year costs.

Interdisciplinary team - A group of persons, with special training and experience in the diagnosis and habilitation of individuals with

intellectual and developmental disabilities, with the responsibility to perform a comprehensive evaluation of each beneficiary and participating in the development, implementation, and monitoring of the beneficiary's individual habilitation plan. The "core team" shall include the individual, the individual's representative, the service coordinator, and relevant clinical staff.

Level of Care Determination (LOC) - The assessment used by DDS to determine a beneficiary's eligibility for ICF/IID services.

Level of Need Assessment and Risk Screening Tool (LON) - The comprehensive and uniform assessment tool developed by DDS that determines the beneficiary's individual support needs and identifies potential risks to be addressed by the interdisciplinary team.

Licensed bed days - Three hundred and sixty-five (365) days or the number of days of that calendar year.

Life safety skills - An individual's ability to protect oneself from perceived and apparent risks and life-threatening situations such as fires, evacuation emergencies, traffic, and ingestion of toxic substances.

Manager - An individual who is responsible for the administration of an ICF/IID facility inclusive of human resources, maintenance, and policy management.

Non-ambulatory - A beneficiary who spends all of his or her time out of bed in a wheelchair or a chair.

One-to-One - An altered staffing pattern that allows one staff to provide services to an individual with intellectual disabilities exclusively for an authorized period of time.

Owner - A person who is a sole proprietor, partner, or corporate stockholder-employee owning any of the outstanding stock of the contracted provider.

Per diem rate - The rate per day established by DHCF.

Professional services - Services provided pursuant to any legal arrangement, which include occupational and speech therapies and nursing care services provided by an individual or a corporation.

Quality of care improvements - The same definition as set forth in D.C. Official Code § 47-1270, and any subsequent amendments thereto.

Related organization - In accordance with 42 C.F.R. § 413.17(b)(1), an organization is related to an ICF/IID when the ICF/IID, to a significant extent, is associated or affiliated with, or has control over, or is controlled by the organization furnishing the services, facilities, or supplies.

Comments on the proposed rule shall be submitted in writing to Linda Elam, Ph.D., M.P.H., Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, One Judiciary Square, 441 4th Street, NW, Suite 900-S, Washington, DC 20001, via email at DHCFPubliccomments@dc.gov, online at www.dcregs.dc.gov, or by telephone at (202) 442-9115, within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules may be obtained from the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 201(a) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-902.01(a) (2012 Repl.)) and Mayor's Order 98-49, dated April 15, 1998, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 12 (Controlled Substances Act Rules) of Subtitle B (Public Health & Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The emergency and proposed rules would amend the list of drugs on Schedules I through V.

Emergency action is necessary because a substantial part of the revised schedule is the addition of numerous cannabimimetic drugs that have no legitimate medical use, are readily available, and pose an immediate risk to public health and safety because of their harmful effects when abused. Those effects of abuse include vomiting, anxiety, agitation, irritability, seizures, hallucinations, tachycardia, elevated blood pressure, and loss of consciousness.

The emergency rulemaking was adopted on June 20, 2014, became effective immediately, and will remain in effect for one hundred twenty (120) days, until October 18, 2014, unless superseded by publication of a Notice of Final rulemaking in the *D.C. Register*. The Director also gives notice of his 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*.

Chapter 12 (Controlled Substances Act Rules) of 22-B DCMR (Public Health & Medicine) is amended to read as follows:

CHAPTER 12 CONTROLLED SUBSTANCES ACT RULES

1200 PURPOSE

1200.1 This chapter shall comprise all the enumerated schedules of controlled substances under the District of Columbia Uniform Controlled Substances Act of 1981 (Act), effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-902.01), and all final rulemakings made by the Mayor or designee that add, delete, or reschedule a controlled substance under the authority of Section 201 of the Act (D.C. Official Code § 48-902.01).

1201 SCHEDULE I ENUMERATED

1201.1 The controlled substances listed in this section are included in Schedule I of the Act unless removed therefrom pursuant to Section 201 of the Act:

(a) Opiates: Unless specifically excepted or unless listed in another schedule, any of the following opiates including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) 1-Methyl-4-phenyl-4-propionoxypiperidine (MPPP);

(2) 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);

(3) 3-Methylfentanyl;

(4) 3-Methylthiofentanyl;

(5) Acetyl-Alpha-Methylfentanyl;

(6) Acetylmethadol;

(7) Allylprodine;

(8) Alphacetylmethadol except Levo-alphacetylmethadol

(9) Alphameprodine;

(10) Alphamethadol;

(11) Alpha-Methylfentanyl;

(12) Alpha-Methylthiofentanyl;

(13) Benzethidine;

(14) Betacetylmethadol;

(15) Beta-hydroxyfentanyl;

(16) Beta-hydroxy-3-Methylfentanyl;

(17) Betameprodine;

(18) Betamethadol;

(19) Betaprodine;

(20) Clonitazene;

(21) Dextromoramide;

(22) Diampromide;

(23) Diethylthiambutene;

(24) Difenoxin;

(25) Dimenoxadol;

(26) Dimepheptanol;

(27) Dimethylthiambutene;

(28) Dioxaphetyl butyrate;

(29) Dipipanone;

(30) Ethylmethylthiambutene;

(31) Etonitazene;

(32) Etoxeridine;

(33) Furethidine;

(34) Hydroxypethidine;

(35) Ketobemidone;

(36) Levomoramide;

(37) Levophenacylmorphan;

(38) Morpheridine;

(39) Noracymethadol;

(40) Norlevorphanol;

(41) Normethadone;

(42) Norpipanone;

(43) Para-fluorofentanyl;

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl;

(54) Thiophene;

(55) Tilidine; and

(56) Trimeperidine;

(b) Opium Derivates: Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Diacetylmorphine (heroin);

(9) Dihydromorphine;

(10) Drotebanol;

(11) Etorphine (except hydrochloride salt);

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon;

(c) Hallucinogenic Substances: Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 1-[1-(2-Thienyl)cyclohexyl]piperidine;

(2) 1- [1-(2-thienyl)cyclohexyl]pyrrolidine;

(3) 1-(1-Phenylcyclohexyl)-pyrrolidine,Pyrrolidine analog of phencyclidine, PCPy, PHP;

(4) (2C-C) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine;

(5) (2C-D) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine;

(6) (2C-E) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine;

(7) (2C-H) 2-(2,5-Dimethoxyphenyl)ethanamine;

(8) (2C-I) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine;

(9) (2C-N) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine;

(10) (2C-P) 2-(2,5-Dimethoxy-4(n)-propylphenyl)ethanamine;

(11) (2C-T-2) 2-[4-(ethylthio)-2,5-dimethoxyphenyl)ethanamine;

(12) (2C-T-4)2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine;

(13) (2C-T-7) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine);

(14) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe);

(15) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine 25C-NBOMe); and

(16) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe);

(17) 2,5-Dimethoxyamphetamine;

(18) 2,5-Dimethoxy-4-ethylamphetamine;

(19) 3,4-Methylenedioxymethamphetamine;

(20) 3,4-Methylenedioxyamphetamine;

(21) 3,4-Methylenedioxy-N-ethylamphetamine;

(22) 3,4,5-Trimethoxyamphetamine;

(23) 4-Bromo-2,5-dimethoxy-amphetamine;

(24) 4-Bromo-2,5-dimethoxyphenethylamine;

(25) 4-Methoxyamphetamine;

(26) 4-Methylaminorex;

(27) 4-Methyl-2,5-dimethoxyamphetamine;

(28) 5-flouro-UR-144 and XLR11[1-(5-Fluoro-pentyl)1Hindol-3-yl](2,2,3,3- tetramethylcyclopropyl)methanone;

(29) 5-Methoxy-3,4-methylenedioxyamphetamine;

(30) 5-Methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT);

(31) 5-Methoxy-N,N-dimethyltryptamine;

(32) Bufotenine;

(33) Diethyltryptamine;

(34) Dimethyltryptamine;

(35) N-Ethyl-1-phenylcyclohexylamine;

(36) Ibogaine;

(37) Lysergic acid diethylamide;

(38) Mescaline;

(39) N-Ethyl-1-phenylcyclohexylamine;

(40) N-Ethyl-3-piperidyl benzilate;

(41) N-Methyl-3-piperidyl benzilate;

(42) Parahexyl--7374; some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6Hdibenzo[b,d]pyran; Synhexyl;

(43) Peyote;

(44) Psilocybin;

(45) Psilocyn; and

(46) Thiophene analog of phencyclidine;

(d) Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible, within the specific chemical designation:

(1) Gamma-Hydroxybutyric Acid [other names include GHB; gamma- hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium xybutyrate];

(2) Mecloqualone; and

(3) Methaqualone;

(e) Stimulants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Alpha-ethyltryptamine;

(2) Alpha-methyltryptamine;

(3) Aminorex;

(4) Cathinone;

(5) Fenethylline;

(6) Mephedrone (4-methyl-N-methylcathinone);

(7) Methcathinone;

(8) Methylenedioxypyrovalerone (MDPV**);**

(9) Methylone;

(10) N-Benzylpiperazine;

(11) N-ethylamphetamine;

(12) N-Hydroxy-3,4-methylenedioxyamphetamine; and

(13) N,N-Dimethylamphetamine; and

(14) 4-methyl-N-ethylcathinone ("4-MEC")

(15) 4-methyl-alpha-pyrrolidinopropiophenone ("4-MePPP")

(16) Alpha-pyrrolidinopentiophenone ("α-PVP")

(17) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one ("butylone")

(18) 2-(methylamino)-1-phenylpentan-1-one ("pentedrone")

(19) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one ("pentylone")

(20) 4-fluoro-N-methylcathinone ("4-FMC")

(21) 3-fluoro-N-methylcathinone ("3-FMC")

(22) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one ("naphyrone")

(23) Alpha-pyrrolidinobutiophenone ("α-PBP")

(f) Synthetic cannabinoids: Unless specifically exempted or unless listed in another schedule, any material, mixture, preparation, any compound structurally derived from, or that contains any quantity of the following synthetic substances, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) Classified Synthetic Cannabinoids:

(A) Adamantoylindoles or adamantoylindazoles, including adamantyl carboxamide indoles and adamantyl carboxamide indazoles, or any compound structurally derived from 3-(1-adamantoyl) indole, 3-(1-adamantoyl)indazole, 3-(2-adamantoyl)indole, N-(1-adamantyl)-1H-indole-3-carboxamide, or N-(1-adamantyl)-1H-indazole-3-carboxamide by substitution at the nitrogen atom of the indole or indazole ring with alkyl, haloalkyl, alkenyl, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-

methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole or indazole ring to any extent and whether or not substituted in the adamantyl ring to any extent, including the following: 2NE1, 5F-AKB-48, AB-001, APINACA and AKB-48, AM-1248, JWH-018 adamantyl carboxamide, STS-135;

(B) Benzoylindoles - any compound structurally derived from a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including the following: AM-630, AM-661, AM-679, AM-694, AM-1241, AM-2233, RCS-4 or SR-19, WIN 48,098 (Pravadoline);

(C) Cyclohexylphenols - any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the cyclohexyl ring to any extent, including, but not limited to, the following: CP 47,497, CP 47,497 C8 homologue, CP 55,490, CP 55,940, CP 56,667, cannabicyclohexanol;

(D) Cyclopropanoylindoles – any compound structurally derived from 3-(cyclopropylmethanoyl)indole, 3-(cyclopropylmethanone)indole, 3-(cyclobutylmethanone)indole or 3-(cyclopentylmethanone)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl, or cyclopentyl rings to any extent;

(E) Naphthoylindoles – any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl,

hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl group, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the naphthyl ring to any extent, including the following: AM-678, AM-1220, AM-1221, AM-1235, AM-2201, AM-2232, EAM-2201, JWH-004, JWH-007, JWH-009, JWH-011, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-022, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-164, JWH-166, JWH-180, JWH-181, JWH-182, JWH-189, JWH-193, JWH-198, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-258, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414, JWH-415, JWH-424, MAM-2201, WIN 55,212;

(F) Naphthoylnaphthalenes – any compound structurally derived from naphthalene-1-yl-(naphthalene-1-yl) methanone with substitutions on either of the naphthalene rings to any extent, including CB-13;

(G) Naphthoylpyrroles - any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following: JWH-030, JWH-031, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-309, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373, JWH-392;

(H) Naphthylmethylindenes - any compound containing a naphthylideneindene structure or that is structurally derived from 1-(1-naphthylmethyl)indene with

substitution at the 3-position of the indene ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following: JWH-171, JWH-176, JWH-220;

(I) Naphthylmethylindoles – any compound structurally derived from an H-indol-3-yl-(1-naphthyl) methane by substitution at the nitrogen atom of the indole ring by alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent, including the following: JWH-175, JWH-184, JWH-185, JWH-192, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199;

(J) Phenylacetylindoles - any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, or 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent, including the following: Cannabipiperidiethanone, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-249, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-8, or SR-18;

(K) Quinolinylindolecarboxylates – any compound structurally derived from quinolin-8-yl-1H-indole-3-carboxylate by substitution at the nitrogen atom of the indole ring with alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-

2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the quinoline ring to any extent, including the following: BB-22, 5-Fluoro-PB-22, and PB-22;

(L) Tetramethylcyclopropanoylindoles – any compound structurally derived from 3-tetramethylcyclopropanoylindole, 3-(1-tetramethylcyclopropyl)indole, 3-(2,2,3,3-tetramethylcyclopropyl)indole or 3-(2,2,3,3-tetramethylcyclopropylcarbonyl)indole with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, hydroxyalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent, including the following: 5-bromo-UR-144, 5-chloro-UR-144, 5-fluoro-UR-144, A-796,260, A-834,735, AB-034, UR-144, and XLR11; and

(M) Tetramethylcyclopropane-thiazole carboxamides – any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol-2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring by alkyl, haloalkyl, benzyl, halobenzyl, alkenyl, haloalkenyl, alkoxy, cyanoalkyl, hydroxyalkyl, cycloalkylmethyl, cycloalkylethyl, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including A-836,339; and

(2) Unclassified Synthetic Cannabinoids:

(A) AM-087 (6aR,10aR)-3-(2-methyl-6-bromohex-2-yl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(B) AM-356 (methanandamide);

(C) (5Z,8Z,11Z,14Z)-N-[(1R)-2-hydroxy-1-methylethyl] icosa-5,8,11,14-tetraenamide; or arachidonyl-1'-hydroxy-2'-propylamide;

(D) AM-411(6aR,10aR)-3-(1-adamantyl)-6,6,9-trimethyl-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(E) AM-855(4aR,12bR)-8-hexyl-2,5,5-trimethyl-1,4,4a,8,9,10,11,12b-octahydronaphtho[3,2-c]isochromen-12-ol;

(F) AM-905(6aR,9R,10aR)-3-[(E)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol;

(G) AM-906(6aR,9R,10aR)-3-[(Z)-hept-1-enyl]-9-(hydroxymethyl)-6,6-dimethyl-6a,7,8,9,10,10a-hexahydrobenzo[c]chromen-1-ol;

(H) AM-2389(6aR,9R,10aR)-3-(1-hexyl-cyclobut-1-yl)-6a,7,8,9,10,10a-hexahydro-6,6-dimethyl-6H-dibenzo[b,d]pyran-1,9 diol;

(I) BAY38-7271(-)-(R)-3-(2-Hydroxymethylindanyl-4-oxy) phenyl-4,4,4-trifluorobutyl-1-sulfonate;

(J) CP 50,556-1 (Levonantradol);

(K) 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate; or [(6S,6aR,9R,10aR)-9-hydroxy-6-methyl-3-[(2R)-5- phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-;

(L) octahydrophenanthridin-1-yl] acetate; or [9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate;

(M) HU-210(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-;

(N) (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or [(6aR,10aR)-9-(hydroxymethyl) -6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or 1,1-Dimethylheptyl- 11-hydroxytetrahydrocannabinol;

(O) HU-211 (Dexanabinol);

(P) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol; or (6aS,10aS)-9-(hydroxymethyl) -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(Q) HU-2433-dimethylheptyl-11-hydroxyhexahydrocannabinol;

(R) HU-308[(91R,2R,5R)-2-[2,6-dimethoxy-4- (2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]methanol;

(S) HU-3313-hydroxy-2-[(1R,6R)-3-methyl-6- (1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione;

(T) JTE-907N-(benzol[1,3]dioxol-5-ylmethyl) -7-methoxy-2-oxo-8-pentyloxy-1,2-dihydroquinoline-3-carboxamide;

(U) JWH-051((6aR,10aR)-6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-9-yl)methanol;

(V) JWH-057(6aR,10aR)-3-(1,1-dimethylheptyl) -6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-Dibenzo[b,d]pyran;

(W) JWH-133(6aR,10aR)-3-(1,1-Dimethylbutyl) -6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran;

(X) JWH-359 (6aR,10aR)- 1-methoxy- 6,6,9-trimethyl- 3-[(2R)-1,1,2-trimethylbutyl]- 6a,7,10,10a-tetrahydrobenzo[c]chromene;

(Y) URB-597[3-(3-carbamoylphenyl)phenyl] -N-cyclohexylcarbamate;

(Z) URB-602 [1,1'-Biphenyl]-3-yl-carbamic acid, cyclohexyl ester; or cyclohexyl [1,1'-biphenyl]-3-ylcarbamate;

(AA) URB-7546-methyl-2-[(4-methylphenyl)amino] -4H-3,1-benzoxazin-4-one;

(BB) URB-937 3'-carbamoyl-6-hydroxy-[1,1'-biphenyl]-3-yl cyclohexylcarbamate;

(CC) WIN 55,212-2(R)-(+)-[2,3-dihydro-5-methyl-3- (4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone; or [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[(1,2,3-de)-1,4-benzoxazin-6-yl]-1-napthalenylmethanone;

(DD) AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole); and

(EE) AM-694 (1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole).

(FF) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate ("PB-22"; QUPIC)

(GG) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate ("5-fluoro-PB-22"; 5F-PB-22)

(HH) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide ("AB-FUBINACA

(II) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide ("ADB-PINACA")

1202 SCHEDULE II ENUMERATED

1202.1 The controlled substances listed in this section are included in Schedule II of the Act unless removed therefrom pursuant to Section 201 of the Act:

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis;

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextophan, nalbuphine, naltrexone, and their respective salts, but including the following:

(A) Codeine;

(B) Ethylmorphine;

(C) Etorphine Hydrochloride;

(D) Granulated opium;

(E) Hydrocodone;

(F) Tincture of opium;

(G) Hydromorphone;

(H) Metopon;

(I) Morphine;

(J) Opium extracts;

(K) Opium fluid extracts;

(L) Oripavine;

(M) Oxycodone;

(N) Oxymorphone;

(O) Powdered opium;

(P) Raw opium; and

(Q) Thebaine;

(2) Opium: Any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subparagraph (1) of this paragraph, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy or poppy straw;

(4) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy); and

(6) Hashish;

(b) Opiates: Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) 4-anilino-N-phenethyl-4-piperidine (ANPP);

(2) Alfentanil;

(3) Alphaprodine;

(4) Anileridine;

(5) Bezitramide;

(6) Bulk Dextropropoxyphene (non-dosage form);

(7) Carfentanil;

(8) Dihydrocodeine;

(9) Dihydroetorphine;

(10) Diphenoxylate;

(11) Fentanyl;

(12) Isomethadone;

(13) Levo-alphacetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM] ;

(14) Levomethorphan;

(15) Levorphanol;

(16) Metazocine;

(17) Methadone;

(18) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(19) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(20) Pethidine (meperidine);

(21) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine; (Meperidine intermediate-A)

(22) Pethidine-Intermediate-B,ethyl-4-phenylpiperidine- 4-carboxylate; (Meperidine intermediate-B);

(23) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid; (Meperidine intermediate-C)

(24) Phenazocine;

(25) Piminodine;

(26) Racemethorphan;

(27) Racemorphan;

(28) Remifentanil

(29) Sufentanil; and

(30) Tapentadol;

(c) Stimulants: Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation that contains

any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamines, its salts, optical isomers, and salts of its optical isomers;

(2) Biphetamine

(3) Eskatrol

(4) Lisdexamfetamine

(5) Methylphenidate and its salts;

(6) Methamphetamine, its salts, isomers, and salts of isomers; and

(7) Phenmetrazine and its salts;

(d) Immediate precursors: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any

(1) Amphetamine/methamphetamine immediate precursor: phenylacetone (other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone);

(2) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP); and

(e) Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide.

(3) Pentobarbital; and

(4) Secobarbital; and

(f) Hallucinogenic substances:

(1) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile (PCC); and

(2) Nabilone.

1203 SCHEDULE III ENUMERATED

1203.1 The controlled substances listed in this section are included in Schedule III of the Act unless removed therefrom pursuant to Section 201 of the Act:

(a) Schedule III shall consist of the following controlled substances by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section:

(1) Stimulants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) The compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971 as excepted compounds under Title 21 § 1308.32 of the Code of Federal Regulations (C.F.R.), and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Clortermine;

(E) Mazindol; and

(F) Phendimetrazine;

(2) Depressants: Unless listed in another schedule, any material compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

(i) Amobarbital;

(ii) Aprobarbital;

(iii) Butabarbital;

(iv) Butabarbital (secbutabarbital);

(v) Butalbital;

(vi) Butobarbital (butethal);

(vii) Secobarbital;

(viii) Pentobarbital; or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule;

(ix) Perampanel;

(x) Talbutal;

(xi) Thiamylal;

(xii) Thiopental; and

(xiii) Vinbarbital;

(B) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Aprobarbital;

(iii) Butabarbital;

(iv) Butabarbital (secbutabarbital);

(v) Butalbital;

(vi) Butobarbital (butethal);

(vii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(viii) Secobarbital; and

(ix) Vinbarbital; and

(C) Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

(i) Chlorhexadol;

(ii) Embutramide;

(iii) Any drug product containing gamma-hydroxybutric acid including its salts, isomers, and salts of isomers.

(iv) Ketamine;

(v) Lysergic acid;

(vi) Lysergic acid amide;

(vii) Methyprylon;

(viii) Sulfondiethylmethane;

(ix) Sulfonethylmethane;

(x) Sulfonmethane; and

(xi) Tiletamine & Zolazepam Combination Product;

(3) Nalorphine;

(4) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than one and eight-tenths (1.8) grams of codeine per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths (1.8) grams of codeine per one hundred (100) milliliters or not more than ninety (90) milligrams dosage unit, with one (1) or more active non-narcotic ingredients in recognized therapeutic amounts;

(C) Not more than three hundred (300) milligrams of dihydrocodeinone per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than three hundred (300) milligrams dihydrocodeine per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(E) Not more than one and eight-tenths (1.8) grams of dihydrocodeine per milliliters or not more than ninety (90) milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(F) Codeine and isoquinoline alkaloid ninety (90) milligrams per dosage unit;

(G) Codeine combination product ninety (90) milligrams per dosage unit;

(H) Dihydrocodeine combination product ninety (90) milligrams per dosage unit;

(I) Ethylmorphine combination product fifteen (15) milligrams per dosage unit;

(J) Hydrocodone and isoquinoline alkaloid less than fifteen (15) milligrams per dosage unit;

(K) Hydrocodone combination product less than fifteen (15) milligrams per dosage unit;

(L) Not more than three hundred (300) milligrams of ethylmorphine per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(M) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams or not more than twenty-five (25) milligrams per dosage unit, with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts;

(N) Opium combination product twenty-five (25) milligrams per dosage unit;

(O) Not more than fifty (50) milligrams of morphine per one hundred (100) milliliters or per one hundred (100) grams with one (1) or more active, non-narcotic ingredients in recognized therapeutic amounts; and

(P) Any material, compound, mixture, or preparation containing Buprenorphine or its salts;

(5) Anabolic Steroids: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and

pharmacologically related to testosterone (other than estrogens, progesterons, and corticosteroids) that promotes muscle growth and includes:

(A) Boldenone (17beta-hydroxyandrost-1,4- diene-3-one);

(B) Chlortestosterone (4-chlortestosterone);

(C) Clostebol(4-chloro-17beta-hydroxyandrost- 4-en-3-one);

(D) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4-dien-3-one);

(E) Delta1-dihydrotestosterone (17beta-hydroxy-5alpha androst-1-en-3-one);

(F) Drostanolone(17beta-hydroxy-2alpha-methyl-5alphaandrostan-3-one);

(G) Ethylestrenol(17alpha-ethyl-17beta-hydroxyestr- 4-ene);

(H) Fluoxymesterone (9-fluoro-17alpha-methy 11beta,17beta- dihydroxyandrost-4-en-3-one);

(I) Formebulone (formebolone);(2-formyl-17alpha-methyl11alpha,17beta-dihydroxyandrost-1,4-dien-3-one);

(J) Furazabol(17alpha-methyl- 17betahydroxyandrostano [2,3-c]-furazan);

(K) Mesterolone; (1alpha-methyl-17beta-hydroxy-5alphaandrostan-3-one);

(L) Methandienone(17alpha-methyl-17betahydroxyandrost- 1,4-diene-3-one);

(M) Methandriol (17alpha-methyl-3beta, 17betadihydroxyandrost-5-ene) (a.k.a. Methandrostenolone);

(N) Methenolone (1-methyl-17beta-hydroxy- 5alpha-androst1-en-3-one);

(O) Methyltestosterone (17alpha-methyl-17betahydroxyandrost- 4-en-3-one);

(P) Mibolerone (7alpha,17alpha-dimethyl-17betahydroxyestr- 4-en-3-one);

(Q) Nandrolone (17beta-hydroxyestr-4-en-3-one);

(R) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr - 4en-3-one);

(S) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa5alpha-androstan-3-one);

(T) Oxymesterone (17alpha-methyl-4, 17betadihydroxyandrost-4-en-3-one);

(U) Oxymetholone (17alpha-methyl-2-hydroxymethylene17beta-hydroxy-5alpha-androstan-3-one);

(V) Stanolone;

(W) Stanozolol (17alpha-methyl-17beta-hydroxy-5alpha androst-2-eno[3,2-c]-pyrazole);

(X) Testolactone (13-hydroxy-3-oxo- 13,17-secoandrosta 1,4-dien-17-oic acid lactone);

(Y) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(Z) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3- one);

(AA) 13β-ethyl-17β-hydroxygon-4-en-3-one;

(BB) 17α-methyl-3α,17β-dihydroxy-5a-androstane;

(CC) 17α-methyl-3β,17β-dihydroxy-5a-androstane;

(DD) 17α-methyl-3β,17β-dihydroxyandrost-4-ene;

(EE) 17α-methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);

(FF) 17α-methyl-Δ1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (a.k.a. '17-α-methyl-1-testosterone');

(GG) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

(HH) 19-nor-4-androstenediol (3α, 17β-dihydroxyestr- 4-ene);

(II) 19-nor-4-androstenediol (3β, 17β-dihydroxyestr- 4-ene);

(JJ) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(KK) 19-nor-5-androstenediol (3α, 17β-dihydroxyestr- 5-ene);

(LL) 19-nor-5-androstenediol (3β, 17β-dihydroxyestr- 5-ene);

(MM) 19-nor-5-androstenedione (estr-5-en-3,17-dione);

(NN) 1-androstenediol (3α,17β-dihydroxy-5α-androst- 1-ene);

(OO) 1-androstenediol (3β,17β-dihydroxy-5α-androst- 1-ene);

(PP) 1-androstenedione ([5α]-androst-1-en-3,17-dione);

(QQ) 3α,17β-dihydroxy-5a-androstane;

(RR) 3β,17-dihydroxy-5a-androstane;

(SS) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene);

(TT) 4-androstenedione (androst-4-en-3,17-dione);

(UU) 4-dihydrotestosterone (17β-hydroxy-androstan- 3-one);

(VV) 4-hydroxy-19-nortestosterone (4,17β-dihydroxy- estr-4-en-3-one);

(WW) 4-hydroxytestosterone (4,17β-dihydroxy-androst- 4-en-3-one);

(XX) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

(YY) 5-androstenedione (androst-5-en-3,17-dione);

(ZZ) Androstanedione 5α-androstan-3,17-dione;

(AAA) Bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(BBB) Boldione (androsta-1,4-diene-3,17-dione);

(CCC) Calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

(DDD) Desoxymethyltestosterone (17α-methyl-5α- androst-2-en-17β-ol) (a.k.a. 'madol');

(EEE) Furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

(FFF) Mestanolone (17α-methyl-17β-hydroxy- 5-androstan-3-one);

(GGG) Methasterone (2α,17α-dimethyl-5α-androstan- 17β-ol-3-one);

(HHH) Methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);

(III) Methyltrienolone (17α-methyl-17β-hydroxyestra-4,9,11-trien-3-one);

(JJJ) Norbolethone (13β, 17α-diethyl-17β-hydroxygon- 4-en-3-one);

(KKK) Norclostebol (4-chloro-17β-hydroxyestr- 4-en-3-one);

(LLL) Normethandrolone (17α-methyl-17β-hydroxyestr- 4-en-3-one);

(MMM) Prostanozol (17β-hydroxy-5α-androstano[3,2-c]pyrazole);

(NNN) Stenbolone (17β-hydroxy-2-methyl-[5α]-androst-1-en-3-one);

(OOO) Tetrahydrogestrinone (13β, 17α-diethyl-17β-hydroxygon- 4,9,11-trien-3-one)

(PPP) Δ1-dihydrotestosterone (a.k.a.'1-testosterone') (17β-hydroxy-5α-androst-1-en-3-one); and

(QQQ) Any salts, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except the term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes that steroid for human use the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph.,

(6) Hallucinogenic substances;

(7) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names for dronabinol: 6aR-trans)-6a,7,8,10a-tetrahydro- 6,6,9- trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-o1] or (-)-delta-9-(trans)-tetrahydrocannabinol]; and

(8) Cannabis.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiates the potential for abuse of the substances that have a stimulant or depressant effect on the central nervous system.

1204 SCHEDULE IV ENUMERATED

1204.1 The controlled substances listed in this section are included in Schedule IV of the Act unless removed therefrom pursuant to Section 201 of the Act:

(a) Schedule IV shall consist of the following controlled substances:

(1) Depressants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Alfaxalone;

(B) Alprazolam;

(C) Barbital;

(D) Bromazepam;

(E) Camazepam;

(F) Chloral betaine;

(G) Chloral hydrate;

(H) Chlordiazepoxide;

(I) Clobazam;

(J) Clonazepam;

(K) Clorazepate;

(L) Clotiazepam;

(M) Cloxazolam;

(N) Delorazepam;

(O) Diazepam;

(P) Dichloralphenazone;

(Q) Estazolam;

(R) Ethyl loflazepate;

(S) Ethchlorvynol;

(T) Ethinamate;

(U) Fludiazepam;

(V) Flunitrazepam;

(W) Flurazepam;

(X) Fospropofol;

(Y) Halazepam;

(Z) Haloxazolam;

(AA) Ketazolam;

(BB) Loprazolam;

(CC) Lorazepam;

(DD) Lormetazepam;

(EE) Mebutamate;

(FF) Medazepam;

(GG) Meprobamate;

(HH) Methohexital;

(II) Methylphenobarbital (mephobarbital);

(JJ) Midazolam;

(KK) Nimetazepam;

(LL) Nitrazepam;

(MM) Nordiazepam;

(NN) Oxazepam;

(OO) Oxazolam;

(PP) Paraldehyde;

(QQ) Petrichloral;

(RR) Phenobarbital;

(SS) Pinazepam;

(TT) Prazepam;

(UU) Quazepam;

(VV) Temazepam;

(WW) Tetrazepam; and

(XX) Triazolam;

(2) Fenfluramine: Any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, (whether optical, position, or geometric), and salts of such isomers, whenever the existence of the salts, isomers, and salts of isomers is possible: Fenfluramine;

(3) Stimulants: Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:

(A) Cathine;

(B) Clortermine;

(C) Dexfenfluramine;

(D) Diethylpropion;

(E) Fencamfamin;

(F) Fenproporex;

(G) Lorcaserin;

(H) Mazindol;

(I) Mefenorex;

(J) Modafinil;

(K) Pemoline (including organometallic complexes and chelates thereof);

(L) Phentermine;

(M) Pipradrol;

(N) Sibutramine; and

(AA) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

(A) Butorphanol;

(B) Dextropropoxyphene (Alpha-(+)-4-demethylamino-1), 2-diphenyl-1-3-methyl-2-propionoxybutane; and

(D) Pentazocine;

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(6) Carisoprodol;

(7) Zaleplon;

(8) Zolpidem; and

(9) Zopiclone.

1205 SCHEDULE V ENUMERATED

1205.1 The following controlled substances listed below are included in Schedule V of the Act unless removed therefrom pursuant to Section 201 of the Act:

(a) Narcotic drugs containing non-narcotic active medicinal ingredients: Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, that also contains one (1) or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than one half-tenth (0.5) milligrams of Difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(b) Propylhexedrine;

(c) Pyrovalerone; and

(g) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

(2) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]; and

(3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 5th Floor, 899 North Capitol Street, NE, Washington, DC 20002, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained Monday through Friday, except holidays, between the hours of 8:15 A.M. and 4:45 P.M. at the same address. Questions

concerning the rulemaking should be directed to Angli Black, Administrative Assistant, at Angli.Black@dc.gov or (202) 442-5977.

THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF EMERGENCY AND THIRD 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, on an emergency basis, the following proposed amendments to Chapter 61 (Public Housing: Admission and Recertification) of Title 14 (Housing) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the 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.

Pursuant to 1 DCMR § 311.4 (e), emergency rulemakings are promulgated when the action is necessary for the immediate preservation of the public peace, health, safety, welfare or morals. There is an urgent need to adopt these emergency regulations to ensure that public housing residents, who are in need of critical assisted living services, have immediate access to the same.

A Notice of Proposed Rulemaking on these rules was published February 28, 2014 at 61 DCR 1755. Comments were received and revised rules were published in a Notice of Second Proposed Rulemaking May 30, 2014, at 61 DCR 005510. This Third Proposed Rulemaking takes into account comments received by DCHA. The DCHA Board of Commissioners adopted the emergency regulations on June 11, 2014, and became effective immediately. They will remain in effect for up to one hundred twenty (120) days from the date of adoption, until October 9, 2014, or upon the publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The DCHA Board of Commissioners also gives notice of its intent to take rulemaking action to adopt these proposed regulations as final not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

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 ("HIPAA"), 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, which DCHA will make available.

(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 Dwelling Lease, Residential Agreement, and any Individual Service Plan, or any addenda thereto.

(c) Grievance Rights.

(i) DCHA assisted living residences shall establish grievance procedures, which include informal and formal settlement procedures, (1) for all grievances arising public housing landlord tenant matters, that are consistent with the requirements of 24 C.F.R. § 966.50, *et seq.*, and (2) for all grievances arising from assisted living matters, including transfer, discharge and relocation, 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.)). The procedures shall be incorporated into the Dwelling Lease, as set forth in 24 C.F.R.§ 966.4(n), and shall be set forth in the Residential Agreement, pursuant to *DC Code* § 44-106.02.

(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. Upon request, a facility employee shall help the resident complete the written request.

(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, and 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 of Relocation, Transfer or Discharge prepared and delivered according to the provisions of D.C. Code § 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 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 (5^{th}) calendar day following his or her notification of the hearing decision or before the 31^{st} calendar day following his or her receipt of notice of discharge required by D.C. Code § 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 8^{th} calendar day following his or her receipt of the notice to relocate or the 3^{rd} calendar day following his or her notification of the hearing decision, whichever is later. The Administrator shall provide

all notices required under this paragraph in written and oral form.

(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. Notice shall be provided orally and in writing.

(8) If the resident prevails in contesting the notice then the discharge is rescinded unless administrator appeals the decision.

(9) 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.

(10) 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.

(11) If the Resident chooses to take the matter to court, he or she must make the filing within the 30 day notice period.

(12) A Resident may seek judicial review of any decision of the Office of Administrative Hearings by filing a petition with the Court of Appeals of the District of Columbia; or any decision of DCHA by filing an action in District of Columbia Superior Court.

(d) 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) So long as a Family pays any applicable assisted living program fees timely, as provided in the Dwelling Lease, then for purposes of calculating adjusted income, as defined in 14 DCMR § 6099, to establish tenant rent for DCHA assisted living residences, such assisted living program fees shall be considered 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 Dwelling 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.

(e) 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.

(f) Assisted Living Residences - Transfers.

(i) A request by a Family 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 Dwelling Lease, 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, then the Family may elect to stay at the assisted living residence, and shall comply with all applicable requirements, as set forth in the Dwelling Lease, or DCHA shall initiate discharge and termination processes, 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 family-initiated 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.)).

(g) DCHA Assisted Living Residences – Discharge/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 criminal activity that threatens the residents health, safety or right to peaceful enjoyment of the assisted living residence, drug related criminal activity on or off the Leased Premises or at the assisted living residence or violent criminal activity, 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. Administrator shall deliver notice orally and in writing.

(iii) The notice shall inform the Family of its right to file an administrative complaint in accordance with Subsection 6113.8 (c), 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, 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 Resident, 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(f).

(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, violent 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: July 30, 2014

DEPARTMENT OF HUMAN SERVICES

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Human Services (Department), pursuant to the authority set forth in sections 7(e) and 31 of the Homeless Services Reform Act of 2005 (HSRA), effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code §§ 4-753.01(e) and 4-756.02 (2012 Repl.)), as amended by Mayor's Order 2006-20, dated February 13, 2006, and Mayor's Order 2007-80, dated April 2, 2007, hereby gives notice of the adoption of the following new Chapter 78 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Family Re-Housing and Stabilization" as an emergency rulemaking to become effective immediately.

The purpose of the new chapter is to establish rules to administer the District of Columbia's Family Re-Housing and Stabilization Program (FRSP). FRSP will provide District residents with financial assistance for purposes of helping them to become re-housed. FRSP is for up to twelve (12) months and may include assistance with security deposits, move-in costs, time-limited rental subsidies, and utility cost, in accordance with the family's approved budget plan.

Emergency rulemaking action, pursuant to Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2012 Repl.)), is necessary for the immediate preservation of the health, safety, and welfare of District residents who are homeless by supporting their rapid return to permanent housing.

These rules were previously published as emergency and proposed in the *D.C. Register* on July 27, 2012, at 59 DCR 8831. Additionally, these rules were published as emergency rules on January 18, 2013, at 60 DCR 415, and May 31, 2013, at 60 DCR 7631. These second emergency rules were adopted on June 2, 2014 and became effective immediately, and shall expire one hundred twenty (120) days from its adoption date on September 30, 2014, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Department also gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the publication of this notice in the *D.C. Register*. In accordance with Section 31 of the HSRA, these proposed rules are being transmitted to the Council of the District of Columbia (Council). The final rules may not become effective until the expiration of the forty-five (45) day Council review period or upon approval by Council resolution, whichever occurs first.

Add the following new Chapter 78 (Family Re-Housing and Stabilization Program) to Title 29 (Public Welfare) of the DCMR, to read as follows:

CHAPTER 78 FAMILY RE-HOUSING AND STABILIZATION PROGRAM

7800 SCOPE

7800.1 The purpose of the Family Re-Housing and Stabilization Program ("FRSP" or "Program") is to provide assistance to rapidly re-house families who are homeless and have the capacity to quickly achieve stable housing independent of FRSP assistance.

7800.2 The provisions of this chapter shall provide the application process, eligibility criteria, assistance determination, and appeal procedures for the Program.

7800.3 Nothing in these rules shall be interpreted to mean that FRSP assistance is an entitlement. This Program shall be subject to annual appropriations and the availability of funds.

7800.4 The Department of Human Services (Department) may execute contracts, grants, and other agreements as necessary to carry out the Program.

7801 APPLICATION PROCESS

7801.1 Each FRSP application shall be in writing on a form prescribed by the Department and signed by the applicant, under the penalty of perjury. An authorized representative may apply on behalf of the applicant, if the applicant provides a written and signed statement stating why he or she cannot apply in person and the name and address of the person authorized to act on his or her behalf. If the applicant is married or in a domestic partnership and living with his or her spouse or domestic partner, both persons shall sign the application.

7801.2 If requested by an applicant with a disability, or the authorized representative of an applicant with a disability, the Provider shall assist such applicant or authorized representative with any aspect of the application process necessary to ensure that the applicant with a disability has an equal opportunity to submit an application.

7801.3 The Department shall provide application forms, and the Provider shall accept applications from each applicant who requests assistance.

7801.4 At the time of application, each applicant shall be provided with a clear, concise, written notice about the program, and shall be required, personally or through an authorized representative, to sign a document acknowledging receipt of this notice. This notice shall contain a description of the program, the Provider's responsibilities, the applicant's rights and responsibilities, and the program requirements, including that receipt of FRSP assistance is conditioned upon:

(a) Selecting an FRSP-approved housing unit in a timely manner;

(b) Completing the steps necessary to lease and move into an FRSP-approved housing unit within thirty (30) days of the date of the Notice of Eligibility, absent a good cause reason for the delay. For purposes of this section, "good cause" shall include delays caused by actions or inactions of persons outside of the applicant's control; and

(3) Signing the FRSP Notice of Rental Subsidy Terms and Conditions form and FRSP Program Rules.

7801.5 As part of the application process, all applicants, personally or through an authorized representative, shall sign a release form authorizing the Provider to obtain or verify information necessary for processing the application.

7801.6 Each applicant shall cooperate fully in establishing his or her eligibility, including the basis of the applicant's homelessness and how the household reasonably expects to be able to sustain housing independent of the Program at the end of FRSP assistance period. This shall include, but not be limited to, providing documentation or collateral proof of:

(a) Household composition;

(b) Employment status and employment history;

(c) Income and assets;

(d) Household expenses;

(e) Facts and circumstances surrounding homelessness, including rental and other relevant housing history;

(f) Financial and other assets available or obtainable in the short and long term to support housing stability;

(g) Facts and circumstances surrounding financial and other barriers to housing stability; and

(h) Facts and circumstances surrounding work experience, education, or training that can contribute to the household's ability to meet its housing costs by the end of the Program period.

7801.7 The Provider shall give to each applicant a written request specifying the information needed to complete the application, and the Provider shall discuss with the applicant how to obtain the information. The application shall be considered complete when all required information is furnished to the Provider.

A documentation requirement may be waived provided the applicant signs a declaration containing the necessary information.

7801.8 The Provider may use, among other things, documents, telephone conversations, personal and collateral interviews, reports, correspondence, and conferences to verify applicant information.

7801.9 An application may be considered abandoned if the applicant has not obtained and provided to the Provider the required information for eligibility determination within thirty (30) calendar days of the date of application.

7802 APPLICANT UNIT

7802.1 The applicant unit shall be composed of each individual who lives in the same household and whose needs, assets, and income are combined to determine eligibility.

7802.2 The applicant unit shall include:

(a) Persons related by full or half blood;

(b) Persons related by legal adoption;

(c) Persons related by marriage or domestic partnership, including stepchildren and unmarried parents of a common child who live together; and

(d) Persons with a legal responsibility for an unrelated minor child or an unrelated adult with a disability.

7802.3 The applicant unit may include any person not included by § 7802.2, regardless of blood relationship, age, or marriage, whose history and statements reasonably tend to demonstrate that the individuals intend to remain together as a family unit.

7802.4 A person temporarily away from home due to employment, hospitalization, vacation, or a visit shall be considered to be living in the household. A minor child who is away at school is considered to be living in the household, if he or she returns to the home on occasional weekends, holidays, school breaks, or during summer vacations.

7803 ELIGIBILITY CRITERIA

7803.1 An applicant shall be eligible to receive FRSP assistance if the applicant unit is a family, as defined in § 7899, that:

(a) Is currently homeless, because the applicant:

(1) Lacks a fixed, regular residence that provides safe housing, and lacks the financial means to acquire such a residence immediately, including any individual or family who is fleeing, or is attempting to flee, domestic violence and who has no other residence and lacks the resources and support networks to obtain safe housing; or

(2) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter or transitional housing facility designed to provide temporary living accommodations; or

(B) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

(3) Has no other housing options identified;

(b) Is a resident of the District of Columbia as defined by Section 2 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-751.01(32)); and

(c) Demonstrates that there is a reasonable expectation that the applicant will have the financial capacity to pay the full rental amount at the end of the FRSP assistance period. Failure to demonstrate that the household will be reasonably likely to sustain stable housing following FRSP assistance may result in a denial of eligibility. Relevant factors for determining whether a household can reasonably be expected to have the financial means to pay the full rental costs following FRSP assistance include, but are not limited to:

(1) Current income;

(2) Expected future income;

(3) Rental history;

(4) Employment history;

(5) Employment potential based on job skills, certifications, or participation in a training or employment program;

(6) Previous receipt of emergency rental assistance, including Emergency Rental Assistance Program or Homelessness Prevention and Rapid Re-Housing Program assistance within the last eighteen (18) months, whether applying for the same or a different financial assistance;

(7) Assessment on a uniform tool as selected by the Department, such as the Service Prioritization Decision Assistance Tool, that identifies Rapid Re-Housing as the appropriate housing assistance option given the acuity of needs; or

(8) Identification by the District of Columbia Housing Authority (DCHA) or other subsidized housing provider, as a household that is reasonably likely to receive DCHA or other subsidized housing within approximately twelve (12) months.

7803.2 Eligible applicants or recipients that are subject to sanction or are currently sanctioned under the Temporary Assistance for Needy Families (TANF) program shall be considered to have failed to demonstrate that the household will be reasonably able to sustain stable housing following the FRSP assistance period, unless the applicant or recipient can demonstrate that they are actively working to have the sanction lifted, or have or will have the financial means and/or resources necessary for sustaining housing independent of receipt of TANF benefits.

7803.3 A FRSP applicant or participant determined eligible under this section shall be subject to a re-determination of eligibility at least once every four (4) months, and may apply for an additional period of assistance, subject to the limitations set forth in Subsection 7805.7.

7803.4 Factors to be considered as part of the re-determination of eligibility shall include whether the recipient:

(a) Has timely paid their share of the housing costs during the previous subsidy period;

(b) Has fully complied with their TANF Individual Responsibility Plan, or other applicable plan; and

(c) Has the ability to pay an increasing share of the housing costs as part of receiving additional rental assistance.

7803.5 A household unable to meet one (1) or more of the requirements in § 7803.4 at the re-determination of eligibility shall be considered to have failed to demonstrate that the household will be reasonably able to sustain stable housing following the FRSP period, unless the applicant or recipient can demonstrate that they are actively working to correct the deficiency, or have or will have the financial means and/or resources necessary for sustaining housing independent of receipt of TANF benefits.

7803.6 The Provider shall complete the eligibility determination or re-determination in as short a time as possible, but not later than ten (10) calendar days after receipt of a completed application or completed re-determination of eligibility request form. The Provider shall not be responsible for delays caused by:

(a) The applicant's failure to supply information to document facts stated in the completed application or re-determination of eligibility request form without which eligibility and type or amount of assistance cannot be determined;

(b) The inability to contact the applicant;

(c) Evidence of misrepresentation in the application;

(d) Delay by a third party from whom the Provider has requested information and over whom the Provider has no control; or

(e) Any other delay in receipt of information or documentation necessary to complete the application or re-determination of eligibility request over which the Provider has no control.

7803.7 The Provider shall create and maintain in the applicant's or participant's file clear and detailed documentation of the Program's eligibility and re-eligibility determinations, particularly as it relates to how the household expects to be able to pay the full rental amount after the FRSP assistance period ends and, for re-determination of eligibility, the factors required to be considered in § 7803.4.

7803.8 If an applicant is determined eligible for FRSP assistance pursuant to § 7803.1, the Provider shall give to the applicant, personally or through an authorized representative, a Notice of Eligibility Determination which shall include:

(a) A clear statement of the eligibility determination;

(b) A clear and detailed statement that receipt of FRSP assistance is conditioned upon selecting an FRSP-approved housing unit and completing steps to lease-up and move into the unit within thirty (30) days

of the date of the Notice of Eligibility Determination, absent good cause. For purposes of this section, "good cause" shall include delays caused by actions or inactions of persons outside of the applicant's control;

(c) A clear statement that all FRSP participants shall actively and satisfactorily participate in case management or risk termination of FRSP assistance; and

(d) A clear and complete statement of the client's right to appeal the eligibility determination through fair hearing and administrative review proceedings in accordance with § 7808, including the appropriate deadlines for instituting the appeal.

7803.9 If an applicant is re-determined eligible for FRSP assistance pursuant to § 7803.3, the Provider shall give to the recipient, personally or through an authorized representative, a Notice of Re-Determination of Eligibility which shall include:

(a) A clear statement of the re-determination of eligibility;

(b) A clear statement that all FRSP participants shall actively and satisfactorily participate in case management or risk termination of FRSP assistance; and

(c) A clear and complete statement of the client's right to appeal the re-determination of eligibility through fair hearing and administrative review proceedings in accordance with § 7808, including the appropriate deadlines for instituting the appeal.

7803.10 If an applicant is determined ineligible for an initial application for FRSP assistance, the Provider shall give to the applicant, personally or through an authorized representative, a Notice of Denial of Eligibility which shall include:

(a) A clear statement of the denial of eligibility;

(b) A clear statement of the factual basis for the denial;

(c) A reference to the statute, regulation, or policy pursuant to which the denial was made; and

(d) A clear and complete statement of the client's right to appeal the denial through fair hearing and administrative review proceedings pursuant to § 7808, including the appropriate deadlines for instituting the appeal.

7803.11 If a recipient is determined ineligible for an additional period of FRSP assistance, the Provider shall give to the recipient, personally or through an authorized representative, a Notice of Denial of Re-Determination of Eligibility which shall include:

(a) A clear statement of the denial of eligibility;

(b) A clear statement of the factual basis for the denial;

(c) A reference to the statute, regulation, or policy pursuant to which the denial was made; and

(d) A clear and complete statement of the client's right to appeal the denial through fair hearing and administrative review proceedings pursuant to § 7808, including the right to continuation of FRSP assistance pending the outcome of a fair hearing requested within fifteen (15) days of receipt of the written Notice of Denial of Re-Determination of Eligibility, and the appropriate deadlines for instituting the appeal.

7803.12 A denial of re-determination of eligibility under this section shall not be considered a termination of FRSP assistance under § 7807.

7803.13 An adult applicant shall be denied FRSP assistance if the household's housing crisis is the result of his or her refusal, without good cause, to accept employment or training for employment.

7803.14 An applicant shall be considered to have refused employment or training if the applicant has:

(a) Voluntarily quit employment or a bona fide training program within three (3) months prior to application; or

(b) Rejected an employment or a bona fide training program opportunity within the three (3) months prior to the application.

7803.15 "Good cause" reasons for voluntarily quitting a job or not participating in an employment training program include circumstances beyond the individual's control, such as when the applicant can show, with reliable or credible information, that:

(a) Wages are below the minimum wage;

(b) The applicant is physically or mentally unable to perform the work or gain access to the worksite;

(c) Working conditions violate health, safety, or worker's compensation regulations and present a substantial risk to health or safety;

(d) The employer discriminated against the applicant based on 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, status as a victim of an intra-family offense, or place of residence or business in violation of the D.C. Human Rights Act of 1978, effective December 13, 1978 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq*. (2012 Repl.)), as amended;

(e) The requirements of the job would be contrary to his or her religious beliefs;

(f) The resignation is recognized by the employer as retirement;

(g) Child care, which is necessary for the adult applicant to accept work or training, is not reasonably available; or

(h) The applicant could not maintain work or participate in a training program because of mitigating circumstances related to a disability, illness, incapacity or emergency of the applicant or a member of the household, including domestic violence.

7804 PRIORITY DETERMINATION

7804.1 Families residing in a Department-funded family hypothermia shelter, temporary shelter, or transitional housing program or determined to be a Priority One for shelter or supportive housing pursuant to 29 DCMR § 2508.1(a)(1), shall receive the first priority for the FRSP.

7804.2 Families residing in a non-Department funded family shelter or housing program within the Continuum of Care shall receive the second priority.

7804.3 Within each priority group, additional priority determinations may be made based on the following:

(a) The family's prospective ability to have the financial capacity to pay the full rental amount at the end of the FRSP assistance period, as demonstrated by income, documented work experience, or other relevant factors;

(b) The length of time the family has resided in such programs since the most recent placement;

(c) The need to provide a reasonable modification based on a disability; and

(d) Other relevant factors.

7805 RE-HOUSING AND STABILIZATION ASSISTANCE

7805.1 FRSP rental assistance is solely for the purpose of assisting eligible households to quickly achieve housing stability by assisting them to obtain a new rental unit.

7805.2 FRSP assistance shall be "needs-based," meaning that the assistance provided shall be the minimum amount, as determined by the Provider, needed to re-house the FRSP applicant or participant and prevent them from returning to homelessness in the future.

7805.3 The Program shall not be obligated to provide a monetary amount for a requested service if a less costly alternative is available.

7805.4 FRSP assistance may consist of a security deposit, move-in assistance, time-limited rental subsidy, and utility assistance, in accordance with the family's approved budget plan.

7805.5 The maximum FRSP payment for a security deposit may be limited to the actual amount of the deposit, not to exceed the cost of one (1) month's unsubsidized rent up to two thousand two hundred dollars ($2,200).

7805.6 The initial rental assistance shall not exceed the equivalent of rental costs accrued over a period of four (4) months.

7805.7 The total assistance period shall not exceed twelve (12) months except where the Department or the Department's designee determines that the recipient household's need for additional assistance is caused by extraordinary circumstances.

7805.8 During the initial four (4) month period of rental assistance, each household shall contribute forty percent (40%) of their monthly adjusted annual income toward housing costs, determined in accordance with the District of Columbia Housing Choice Voucher Program (HCVP) regulations found at 14 DCMR § 6200 (household contribution). For this period, FRSP rental assistance shall be the difference between the cost of housing and the household contribution. For purposes of this section, the cost of housing shall include the cost of utilities, as determined in accordance with the HCVP regulations found at 14 DCMR § 6200.

7805.9 Receipt of FRSP assistance may be conditioned on the applicant household:

(a) Selecting an FRSP-approved housing unit in a timely manner and completing steps necessary to lease and move into the selected unit within thirty (30) days of the date of the Notice of Eligibility Determination, absent a good cause reason for the delay. For purposes of this section, "good cause" shall include delays caused by actions or inactions of persons outside of the applicant's control;

(b) Signing the FRSP Notice of Rental Subsidy Terms and Conditions form and FRSP Program Rules;

(c) Timely payment of the FRSP participant's share of the monthly rent;

(d) Complying with the FRSP case management requirements set out in the Department-approved program rules, and as applicable, in accordance with the family's TANF Individual Responsibility Plan; and

(e) Applying for all applicable public benefits and housing assistance for which the applicant is eligible, including applying for housing assistance from DCHA, if applicable.

7805.10 As part of demonstrating that the household will reasonably be able to sustain stable housing following FRSP assistance, a household requesting additional assistance pursuant to § 7803.3 shall, absent good cause, demonstrate that the recipient:

(a) Has timely paid their share of the housing costs during the previous subsidy period;

(b) Has fully complied with their TANF Individual Responsibility Plan or other applicable plan; and

(c) Has the ability to pay an increasing share of the housing costs during the subsequent subsidy period.

7805.11 Households receiving rental assistance shall be required to report to the Provider written notice of any change in the household's monthly income as soon as possible but no later than ten (10) days after the change occurs.

7805.12 Upon written notification from the household of a change in the household's monthly income, the FRSP Provider shall determine if there is a need to

recalculate the amount of the household's housing cost contribution, based on the following:

(a) If the household reports a decrease in monthly income of fifty dollars ($50) or more, the Provider shall recalculate the household's contribution. Conversely, a household reporting a decrease in monthly income of less than fifty dollars ($50) may request that a recalculation be conducted;

(b) If the recalculation pursuant to paragraph (a) results in an increase in the amount of FRSP rental assistance, the change shall be effective the first day of the month or the next day that rent is due if different from the first of the month, whichever is first, following completion of the calculation. The recalculation shall be completed within five (5) business days of receipt of written notice from the household of the decrease in household income and any documentation necessary for the Provider's recalculation;

(c) If the household is reporting an increase in monthly income of one hundred dollars ($100) or more, a Provider shall conduct a recalculation;

(d) If the recalculation pursuant to paragraph (c) results in a decrease in the amount of FRSP rental assistance, the change shall be effective the first of the month or on the day that rent is next due if different than the first of the month, whichever is first following the month in which notice of the change in accordance with § 7805.13 is provided to the household. Conversely, if the next day rent is due is less than fifteen (15) calendar days from the date the notice is either hand delivered or postmarked, the change in the FRSP rental assistance shall be effective the second month (or the second date upon which rent is due) following the month in which notice of the change in accordance with § 7805.13 is provided to the household; and

(e) Notice of a change in assistance pursuant to this section shall be made in accordance with § 7805.13.

7805.13 When a Provider calculates a change in FRSP rental assistance pursuant to a re-determination of eligibility pursuant to § 7803.3 or as a result of a reported change in income pursuant to § 7805.11, the Provider shall give to the participant household a Notice of Change in FRSP Rental Assistance. This notice shall include:

(a) A clear statement of the factual basis for the change in rental assistance;

(b) A reference to the statute, regulation, or policy pursuant to which the change was made;

(c) A clear and detailed statement of the household's current FRSP rental assistance and the household's current share of the housing costs;

(d) A clear and detailed computation of the new amount of FRSP rental assistance and the new amount of the household's share of the housing costs;

(e) The effective date of the new amount of rental assistance in accordance with § 7805.12(b) or § 7805.12(d), whichever is applicable; and

(f) A clear and complete statement of the client's right to a reconsideration of the recalculation by the Department or the Department's designee, if such reconsideration is requested within five (5) business days of receipt of the Notice of Change in FRSP Rental Assistance; and

7805.14 A request for reconsideration pursuant to § 7805.13(f) shall be completed within five (5) business days of receipt by the designated reviewer of the household's request for a reconsideration. The five (5) business day timeframe may be tolled if the reviewer has requested documentation necessary to the review, and receipt of such documentation is pending and not within the control of the reviewer.

7805.15 Notice required by § 7805.13 shall be either hand-delivered to an adult member of the applicant household or mailed to the household by first class mail within twenty-four (24) hours of the Provider's calculation of the change in the household's rental assistance share. The date from which the timeliness of the notice is measured is either the date of hand delivery, or if mailed, the date the notice is postmarked.

7805.16 Only in the rare circumstance where required by a vendor or a controlling government authority, including but not limited to a court or federal marshal, may the assistance payment be made in the form of cash. In all other cases, all FRSP assistance payments shall be in the form of non-cash direct vendor payments.

7805.17 FRSP assistance not utilized within thirty (30) days of approval shall be considered abandoned, absent a showing that the applicant or recipient has made reasonable efforts to use the assistance or good cause as to why the applicant or recipient could not expend the assistance.

7806 UNIT SELECTION

7806.1 Participation in the FRSP is conditioned upon selecting a unit that passes the FRSP required housing inspection and meets the Rent Reasonableness Standard, except that the Department or the Department's designee may authorize selection

of a housing unit that exceeds the maximum allowable rent for purposes of ensuring the program is readily accessible to and usable by large families and individuals with disabilities.

7806.2 A FRSP eligible applicant shall be required to make a good faith effort to identify and secure a housing unit that meets their needs and meets the FRSP Rent Reasonableness and inspection requirements in a timely manner.

7806.3 If the applicant is unable to secure a housing unit in a timely manner, despite good faith efforts, the applicant shall be offered at least one (1) unit from the available housing inventory to the extent that units are available in the housing inventory.

7806.4 To facilitate timely unit selection and entry into the FRSP, the eligible applicant shall:

(a) Identify a unit that meets the Rent Reasonableness Standard and passes the FRSP required housing inspection or accepts a unit from the FRSP unit inventory list.

(b) Make a reasonable effort to meet with the Program's representative in a timely manner in order to complete the unit selection and leasing process. For purposes of this paragraph, refusing to meet with the Provider's representative two (2) times without good cause shall constitute the applicant's failure to make a reasonable effort to meet with the Program's representative in a timely manner for purpose of completing the unit selection and leasing process.

7806.5 Failure to accept a unit after having been offered or having identified two (2) units that were available and met the applicant's stated needs and preferences, may be a basis for termination from the Program pursuant to § 7807.1(f) and Section 22 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)).

7806.6 FRSP assistance shall be provided only for housing units located within the District of Columbia, unless otherwise approved by the Department or the Department's designee. Any unit constructed before 1978 in which a child under the age of six (6) will be residing must comply with Section 302 of the Lead-Based Paint Poisoning Prevention Act, effective November 9, 1973 (Pub. L. 91-695; 42 U.S.C. § 4822), as amended, and implementing regulations at 24 C.F.R. part 35, subparts A, B, M, and R.

7806.7 A FRSP Provider may not approve or issue FRSP assistance for a housing unit that is owned by the FRSP Provider, its parent, subsidiary, or an affiliated organization of the FRSP Provider.

7807 TERMINATION OF FAMILY RE-HOUSING AND STABILIZATION ASSISTANCE

7807.1 A Provider may terminate payment of a FRSP security deposit or rental subsidy, if a member of the household:

(a) Possesses a weapon illegally on the premises of the property subsidized by the FRSP;

(b) Possesses or sells illegal drugs on the premises of the property subsidized by the FRSP;

(c) Assaults or batters any person on the premises of the property subsidized by the FRSP;

(d) Endangers the safety of oneself or the safety of others on the premises of the property subsidized by the FRSP;

(e) Intentionally or maliciously vandalizes or destroys or steals the property of any person on the premises of the property subsidized by the FRSP;

(f) Fails to accept an offer of appropriate permanent housing or supportive housing that better serves the household's needs after being offered two (2) appropriate permanent or supportive housing opportunities in accordance with Section 22(a)(2)(F) of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36(a)(2)(F)); or

(g) Knowingly engages in repeated violations of the FRSP program rules.

7807.2 For purposes of § 7807.1(f), two (2) offers of appropriate permanent or supportive housing shall include being offered or having identified two (2) units that are available and meet the requirements of the FRSP, or any other supportive or permanent housing program for which the client has been determined eligible, including but not limited to the Local Rent Supplement Program, Housing Choice Voucher Program (HCVP), or public housing.

7807.3 In the case of terminations pursuant to § 7807.1(f) or (g), the Provider must have made reasonable efforts to help the client overcome obstacles to obtaining or maintaining permanent housing.

7807.4 The Provider shall give written and oral notice to a FRSP participating household of their termination from services pursuant to this section at least thirty (30) days before the effective date of the termination.

7807.5 If a recipient is terminated from FRSP services, the Provider shall give to the recipient, personally or through an authorized representative, a Notice of Termination, which shall include:

(a) A clear statement of the effective date of the termination;

(b) A clear and detailed statement of the factual basis for the termination, including the date or dates on which the basis or bases for the termination occurred;

(c) A reference to the statute, regulation, or program rule(s) pursuant to which the termination is being implemented;

(d) A clear and complete statement of the client's right to appeal the termination through a fair hearing and administrative review, including deadlines for instituting the appeal; and

(e) A statement of the client's right to continuation of FRSP services pending the outcome of any fair hearing requested within fifteen (15) days of receipt of written notice of a termination.

7807.6 Termination pursuant to this section refers to a termination of the Program security deposit, rental subsidy, or case management services only and does not provide FRSP with any authority to interfere with a client's tenancy rights under the lease agreement as governed by Title 14 of the District of Columbia Municipal Regulations.

7807.7 For purposes of this section, the requirement set forth in Section 22 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.36), which requires a Provider to first consider suspending the client in accordance with Section 21 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.35) or to have made a reasonable effort, in light of the severity of the act or acts leading to the termination, to transfer the client in accordance with Section 20 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.34), shall be interpreted to mean that the Provider shall have made a reasonable effort to provide the FRSP household with a transfer to another case manager, as a means of assisting the household to meet their budget plan and comply with the FRSP approved program rules, prior to taking steps to terminate FRSP assistance, if appropriate under the circumstances, and if there is reason to believe that the Provider could have foreseen that such a transfer could have been of assistance to the household in complying with the FRSP requirements.

7808 FAIR HEARING AND ADMINISTRATIVE REVIEW

7808.1 An applicant or participating FRSP household shall have ninety (90) calendar days following the receipt of a notice described in §§ 7803.8, 7803.9, 7803.10, 7803.11 or 7807.5 to request a fair hearing, in accordance with the hearing provisions of Section 26 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.41 (2012 Repl.)), for the action that is the subject of the notice.

7808.2 Upon receipt of a fair hearing request, the Department shall offer the appellant or his or her authorized representative an opportunity for an administrative review in accordance with Section 27 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.42 (2012 Repl.)), except that if an eviction is imminent, the Department shall take all reasonable steps to provide an expedited administrative review to maximize resolution of the appeal in time to resolve the housing emergency and prevent the eviction.

7808.3 In accordance with Section 9 of the HSRA (D.C. Law 16-35; D.C. Official Code § 4-754.11(18) (2012 Repl.)), any recipient who requests a fair hearing within fifteen (15) days of receipt of written notice of a termination pursuant to § 7807 shall have the right to continuation of FRSP services pending a final decision from the fair hearing proceedings.

7899 DEFINITIONS

7899.1 The terms and definitions in 29 DCMR § 2599 are incorporated by reference in this chapter.

7899.2 For the purposes of this chapter, the following additional terms shall have the meanings ascribed:

Authorized representative – an individual who is at least eighteen (18) years of age, who is acting responsibly on behalf of the applicant, and has sufficient knowledge of the applicant's circumstances to provide or obtain necessary information about the applicant, or a person who has legal authorization to act on behalf of the applicant.

Housing stability – the ability to pay housing costs, including rent and utilities, necessary to retain housing without FRSP assistance.

Individual Responsibility Plan – the self-sufficiency plan that the FSRP participant has entered into with the shelter, housing, Temporary Assistance for Needy Families, or other service provider that sets out the steps and goals necessary for the participant to achieve greater housing and economic self-sufficiency.

Minor– a child, including those by adoption, eighteen (18) years of age or younger.

Provider – an organization that receives Family Re-Housing and Stabilization Program funds and is authorized to administer and deliver Family Re-Housing and Stabilization Program services.

Rapid Re-Housing – is a supportive housing program that provides a homeless individual or family with financial assistance as a bridge to permanent housing, by providing some or all of a security deposit, first month's rent, short-term rental subsidy, and supportive services in order to help the recipient become self-sufficient

Rent Reasonableness Standard – Rent reasonableness, as defined by the United States Department of Housing and Urban Development to mean that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the owner during the same time period for comparable non-luxury unassisted units.

Rental payment – a regular payment made by a tenant to an owner or landlord for the right to occupy or use property.

Security deposit – a sum of money paid in advance that is required by the owner or landlord for leasing property as security against the tenant's failure to fulfill the lease or security to cover damage to the rental premises.

Vendor – a provider of a service or product, including but not limited to landlords.

All persons who desire to comment on these proposed rules should submit their comments in writing to David A. Berns, Director, Department of Human Services, 64 New York Avenue, N.E., Washington, D.C. 20002, **Attn:** Ms. Michele S. Williams, Administrator, Family Services Administration, or by email to michele.williams@dc.gov. All comments must be received by the Department of Human Services 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, or by calling the Department of Human Services at (202) 671-4200.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-144
June 13, 2014

SUBJECT: Reappointment and Appointments – Domestic Violence Fatality Review Board

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 pursuant to section 2 of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act of 2002, effective April 11, 2003, D.C. Law 14-296, D.C. Official Code § 16-1053 (2012 Repl.), it is hereby **ORDERED** that:

1. **LISA MARTIN** is reappointed as a member of the Domestic Violence Fatality Review Board ("Board"), representing a university legal clinic, for a term to end three years from the effective date of this Order.

2. **JENNIFER WESBERRY** is appointed as a member of the Board, representing a domestic violence advocacy organization, and shall serve in that capacity at the pleasure of the Mayor.

3. **MARCIA RINKER** is appointed as a member of the Board, representing the Office of the Unites States Attorney for the District of Columbia, and shall serve in that capacity at the pleasure of the Office of the Unites States Attorney for the District of Columbia.

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

Vincent C. Gray

VINCENT C. GRAY
MAYOR

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-145
June 16, 2014

SUBJECT: Appointment – Chief Medical Examiner, Office of the Chief Medical Examiner

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2012 Repl.), section 2903 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000, D.C. Law 13-172, D.C. Official Code § 5-1402 (2012 Repl.), and section 2 of the Confirmation Act of 1978, effective March 3, 1979, D.C. Law 2-142, D.C. Official Code § 1-523.01 (2012 Repl. and 2013 Supp.), it is hereby **ORDERED** that:

1. **ROGER A. MITCHELL, Jr., M.D., FASCP,** who was nominated by the Mayor on February 18, 2014, and approved by the Council of the District of Columbia pursuant to Resolution 20-0491 on June 3, 2014, is appointed Chief Medical Examiner, for a term to end June 3, 2020.

2. This Order supersedes Mayor's Order 2014-038, dated February 12, 2014.

3. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to June 3, 2014.

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 2014-146
June 19, 2014

SUBJECT: Appointments – Child Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule 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 4604 of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001, D.C. Law 14-28, D.C. Official Code § 4-1371.04 (2012 Repl.), it is hereby **ORDERED** that:

1. The following persons are appointed to the Child Fatality Review Committee ("Review Committee") as representative members who are knowledgeable in child development, maternal and child health, child abuse and neglect, prevention, intervention, and treatment or research, designated from a judicial agency to the Review Committee for terms to end upon termination of their tenure with the judicial agency designating their availability, or at the pleasure of the judicial agency designating their availability:

   JUDITH W. MELTZER, representing the United States District Court for the District of Columbia; and

   RACHEL PALETTA, representing the United States District Court for the District of Columbia.

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 2014-147
June 19, 2014

SUBJECT: Reappointment – District of Columbia Boxing and Wrestling Commission

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 5 of the Boxing and Wrestling Commission Act of 1975, effective October 8, 1975, D.C. Law 1-20, D.C. Official Code § 3-604 (2012 Repl.), which established the District of Columbia Boxing and Wrestling Commission ("Commission"), it is hereby **ORDERED** that:

1. **BRYAN SCOTT IRVING**, who was nominated by the Mayor on March 24, 2014, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0711 on June 2, 2014, is reappointed as a member to the Commission, for a term to end January 5, 2017.

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 2014-148
June 19, 2014

SUBJECT: Appointments -- District of Columbia Water and Sewer Authority Board of Directors

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and pursuant to section 204 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996, D.C. Law 11-111, D.C. Official Code § 34-2202.04 (2012 Repl.), it is hereby **ORDERED** that:

1. **VICTOR L. HOSKINS** is appointed, as a principal Board member from Prince George's County, Maryland, to the District of Columbia Water and Sewer Authority Board of Directors, replacing Aubrey D. Thagard, pursuant to the recommendation of Rushern L. Baker, III, Prince George's County Executive, dated June 4, 2014, to complete the remainder of an unexpired term to end September 12, 2014 or until a successor is appointed.

2. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to June 16, 2014.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

DC MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS

DC MAYOR'S COMMISSION ON ASIAN AND PACIFIC ISLANDER AFFAIRS

NOTICE OF REGULAR MEETING

The DC Mayor's Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on Thursday, June 26, 2014 at 6:30 pm.

The meeting will be held at the OAPIA office at One Judiciary Square, 441 4th Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov or Andrew Chang at andrew.chang@dc.gov. Telephone: (202) 727-3120.

The DC Commission on Asian and Pacific Islander Affairs convenes monthly meetings to discuss current issues affecting the DC AAPI community.

CAPITAL CITY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Transportation Services
Special Education Testing Services
Payroll Services
Translation Services
School Supplies
Office Supplies
Recruitment of Teacher Residents
Temporary Staffing
Special Education and Therapeutic Services
Information Technology Equipment and Services
Janitorial Supplies
Financial and Retirement Audit
Professional Development and School Design
Budgeting, accounting, financial and grant reporting, audit report, various analyses, and other business or operations consulting services
Printer and Copier Services
Landscaping Services
Electricity
Pest Control
General Contracting Services
Special Education Assessment and Textbooks
Janitorial Services
HVAC Services
Food Service
Math Consultant
Security Guard Services
Planning guides, Curriculum Resources, Quiz Tools, etc. Services
Computers
IT Supplies

Capital City Public Charter School invites all interested and qualified vendors to submit proposals for the above services. Proposals are due no later than 5 P.M. July 11, 2014. The RFP with bidding requirements and supporting documentation can be obtained by contacting Arogya Singh at asingh@ccpcs.org.

CESAR CHAVEZ PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

The Cesar Chavez Public Charter For Public Policy Schools invites interested and qualified vendors to submit proposals to provide services in the following areas:

Speech and Language Therapy Services to provide communication related services in a school setting. Services must be provided across the network of schools containing approximately 70 students with IEP mandated speech therapy services for an approximate total of 45 hours/week plus preparation and administrative time.

Occupational Therapy Services to provide occupational therapy related services in a school setting. Services must be provided across the network of schools containing approximately 20 students with IEP mandated occupational therapy services for an approximate total of 10-15 hours/week plus preparation and administrative time.

Project Management/Grant Management/Program Implementation Services to administer and oversee the third year of its funds from the ToPPP Grant, a Race to the ToPPP grant with a focus on Common Core professional development for teachers. This vendor needs to have significant experience designing and administering Common Core professional development to teachers and leaders, the ability to partner with school leaders to implement professional development, prior experience administering large grants, and the ability to create innovative, responsive programming to a range of different types of schools (grades ranging from PreK3 to grade 12). The vendor is expected to work 25-30 hours a week on the project from July, 2014 to June, 2015 and will work directly with the Chavez Chief Academic Officer during the administration of the grant.

The full text of the proposal(s) are available upon request by sending an email to: Nicoisa.young@chavezschools.org

Proposals are due to chavezbids@chavezschools.org no later than 2:00 PM July 11, 2014.

Bidding requirements can be obtained by contacting: Nicoisa Young at Nicoisa.young@chavezschools.org

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

July 28, 2014 ***(RESCHEDULED)***
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

BOARD RECESS – NO MEETING – August 2014.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

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

Meeting Agenda

July 3, 2014
10:00 A.M.

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Executive Session (Closed to the Public)
5. Comments from the Public
6. Review of Correspondence
7. Draft Minutes, June 12, 2014
8. New Business
9. Old Business
10. Adjourn

11. Next Scheduled Board Meeting – September 4, 2014 at 11:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING
Board of Industrial Trades

1100 4th Street SW, Room 300 A/B
Washington, DC 20024

AGENDA

July 15 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
c) New Board Member

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: August 19, 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

July 24, 2014
11:00 A.M.

1) Meeting Call to Order

2) Attendees

3) Comments from the Public

4) Minutes: Review draft of 26 June 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, 28 August 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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July 16, 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, June 18, 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, September 17, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Real Estate Commission
1100 4th Street, S.W., Room 4302 (4th Floor)
Washington, D.C. 20024

AGENDA

July 8, 2014

1. Call to Order - 9:30 a.m.

2. Executive Session (Closed to the Public) – 9:30 am-10:30 am
   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, June 10, 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 - REEA Annual Meeting – Scottsdale, Arizona – June 20-23, 2014
   B. Commission-sponsored Seminars – July 24, 2014

9. Adjourn

Next Scheduled Regular Meeting, September 9, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

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

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

July 2014

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	RECESS	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	16	8:30 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	25	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	28	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	RECESS	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	3	9:30am-2:00 pm
Daniel Burton	Board of Professional Engineering	24	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	8	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	15	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.

DC BILINGUAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

For the Supply and Delivery of Grocery Products

DC Bilingual 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 and At Risk Supper meal pattern requirements. The proposal can be found at http://dcbilingual.org/who-were-looking. All bids not addressing all areas as outlined in the IFB (RFP) will not be considered.

For more information, please contact Beatriz Zuluaga, Director of Nutrition, 1420 Columbia Rd, NW, Washington, DC 20009. Telephone: 202-332-4200 x1013. Email: bzuluaga@centronia.org.

The deadline for application submission is July 24, 2014 no later than 4:00pm.

DEMOCRACY PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Democracy Prep Public Charter School seeks bids for:

Leasing photocopiers/fax machines and printers, professional interior painting services, trash disposal services, nighttime custodial services including custodial supplies, chemicals and equipment and staff, building maintenance services, classroom and cafeteria furniture. For a copy of the full RFP please send an email to:

DPCongressHeights_Ops@democracyprep.org

Bids must be received by 12:00 PM, Friday, July 11, 2014 to the following location:

Democracy Prep Public Charter School
Attention: Amanda Poole
3100 Martin Luther King Jr. Ave SE
Washington, DC 20032

E.L. Haynes Public Charter School

REQUEST FOR PROPOSALS

Minor Construction Services

E.L. Haynes Public Charter School ("ELH") is converting an open space within its existing high school to an enclosed classroom. The property is located at 4501 Kansas Avenue, NW. The school is requesting proposals from qualified vendors for the design and construction of the new space.

Proposals are due via email to Richard Pohlman no later than 5:00 PM on Wednesday, July 9, 2014. We will notify the final vendor of selection by July 11 and the work to be completed by July 31. The RFP with bidding requirements can be obtained by contacting:

Richard Pohlman
E.L. Haynes Public Charter School
Phone: 202.706.5838x1041
Email: rpohlman@elhaynes.org

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

Fiscal Year 2015 Out-of-School Time Services for Children Who Are Temporary Assistance to Needy Families ("TANF") Eligible

Request for Applications Release Date: June 27, 2014

Pre-Application Conference RSVP: **July 9, 2014**

Mandatory Pre-Application Conference **July 10, 2014** (1:00 p.m.-3:00 p.m.)

Grant Application Submission Deadline: July 25, 2014

The Office of the State Superintendent of Education ("OSSE") is the State Education Agency for the District of Columbia and is charged with raising the quality of education for all DC residents. The Division of Early Learning ("DEL") within OSSE is charged to provide leadership and coordination to ensure that all District of Columbia children, from birth to kindergarten entrance, have access to high quality early childhood development programs and are well prepared for school. OSSE administers a number of federally and locally funded programs for early care, child development and early intervention.

OSSE provides funding for child care services (including before and after school care) to children ages birth through thirteen (13) years, including services through age eighteen (18) for children with disabilities. Quality out-of-school time programs are important elements of an effective system of community supports and services for families and children. Researchers have documented the negative effects of leaving children unsupervised during afterschool hours and highlights the importance of quality out-of-school time programs. These programs provide academic enrichment opportunities for children who come from economically disadvantaged families outside of regular school hours.

Request for Applications: OSSE has a need for structured education and enrichment programs that serve children during out-of-school time hours i.e. before/after care and summer camp programming. The objective of this program is to increase the number of out-of-school time services for at-risk children. In accordance with 45 CFR Parts 98 and 99, in order to be eligible for services under Section 98.50, a child must be under thirteen (13) years of age or under age nineteen (19) if the child has special needs.

Thus, OSSE/DEL seeks proposals from eligible entities to provide educational, sports, and art programming for students attending District of Columbia Public Schools ("DCPS"), Community Based Organizations ("CBOs") and Public Charter Schools ("PCSs") during out-of-school time to include Afterschool and summer programming. Funds are awarded for up to three (3) years to high-quality applicants to provide significant expanded learning time during the school day and out-of-school time programming (i.e. before, after and summer school services).

Anticipated Number of Awards: OSSE seeks to fund grantees to increase the number of out-of-school time services for at-risk children who are TANF eligible. Should a grantee fail to achieve the stated goals and objectives described in the individual proposal under this application that grantee may be subject to penalties that include, but are not limited to, loss of funding, suspension or termination.

Available Funding for Awards: The funding source is Temporary Assistance to Needy Families ("TANF") funding that is transferred to OSSE from the District of Columbia Department of Human Services ("DHS") for the purpose of supporting direct child care services including expanded learning time during the school day and out-of-school time programming (i.e. before, after and summer school services).

There is a total of five million one hundred thousand dollars ($5,100,000): one thousand five hundred dollars ($1,500) per child available for afterschool programming for three thousand four hundred (3,400) TANF eligible children during the School Year ("SY") 14-15 regular school year. There is a total of one million four thousand dollars ($1,400,000): one thousand seventy-five dollars ($1,075) per child available for summer afterschool programming for one thousand three hundred (1, 300) TANF eligible children during summer 2015. The total amount available is six million five hundred thousand dollars ($6,500,000).

All children must be District of Columbia residents. This Notice of Funding Availability and its associated Request for Applications ("RFA") do not commit OSSE to make an award.

Eligibility Criteria: Applicants are from organizations that can provide out-of-school time services to children who reside in the District of Columbia, attend a District of Columbia Public School/Charter School and are TANF eligible. This includes District of Columbia Public Schools/District of Columbia Public Charter Schools, licensed child care providers, not-for-profit organizations, faith-based organizations, and private and for-profit community-based agencies currently serving the needs of the target populations. Applicants must also be licensed to do business in the District of Columbia.

Important Dates:
The Request for Applications (RFA) will be available on **June 27, 2014**. Applications may be obtained from the Office of Partnerships and Grant Services website, Funding Alert link @ http://opgs.dc.gov/page/funding-alert or the Office of the State Superintendent of Education (OSSE) website, http://osse.dc.gov/. Applications may also be obtained from Mr. Walter C. Lundy, Jr., Associate Director, OSSE/DEL: please send an email to Walter.Lundy@dc.gov to request an electronic copy of the application.

Parties interested in applying for this RFA are **required** to attend the **mandatory** Pre-Application Conference that will be held on **July 10, 2014,** 1:00 p.m. to 3:00 p.m. EST at 810 First Street, NE, 3rd Floor Conference Room, Washington, DC 20002. All parties planning to apply for this grant must attend the Pre-Application Conference and are required to RSVP to Ms. Lilian Tetteh via email to **Lilian.Tetteh@dc.gov** by **July 9, 2014**.

The **deadline for application submission is July 25, 2014, via electronic submission at 3:30 p.m. EST.**

DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF WAGE AND HOUR

PUBLIC NOTICE

District of Columbia Minimum Wage Increase

Beginning July 1, 2014, the minimum wage in the District of Columbia will increase from $8.25 per hour to $9.50 per hour for all workers, regardless of size of employer. Mayor Vincent C. Gray signed the Minimum Wage Amendment Act of 2013 into law on January 15, 2014 after unanimous passage by the D.C. Council. The law also includes provisions to further increase the minimum wage in subsequent years.

Under the new law, the minimum wage is slated to increase by $1.00 on July 1 each year through 2016, capping at $11.50 per hour. Beginning July 1, 2017, the District's minimum wage will increase annually in proportion to the annual average increase in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area for the preceding 12 months.

The base minimum wage for tipped restaurant employees will remain at $2.77 per hour. However, if an employee's hourly tip earnings (averaged weekly) added to the base minimum wage do not equal the District's full minimum wage, the employer must pay the difference.

The Department of Employment Services will produce and mail new D.C. Minimum Wage workplace posters to all District employers. Every employer subject to the provisions of the Act must post the D.C. Minimum Wage poster in or about the premises at which any employee covered is employed.

Please direct all inquiries to:

Mohammad Sheikh
Deputy Director, Labor Standards Bureau
(202) 671-0588

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FUNDING AVAILABILITY

GRANTS FOR

Demonstration Projects and Watershed Training Related to Nonpoint Source Pollution

The District Department of the Environment ("DDOE") is seeking eligible entities, as defined below, to install practices to manage stormwater and increase public awareness of stormwater issues in the District of Columbia.

Beginning 7/4/2014, 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 from DDOE's website, www.ddoe.dc.gov. Select "Resources" tab. Cursor over the pull-down list; select "Grants and Funding;" then, on the new page, cursor down to the announcement for this RFA. Click on "Read More," then download and related information from the "attachments" section.

Email a request to 2014nonpointsourcerfa.grants@dc.gov with "Request copy of RFA 2014-1412-WPD" in the subject line;

Pick up a copy in person from the DDOE reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002 (call Stephen Reiling at 442-7700 to make an appointment and mention this RFA by name); or

Write DDOE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Stephen Reiling RE:2014-1412-WPD" on the outside of the letter.

The deadline for application submissions is 8/1/2014, 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 2014nonpointsourcerfa.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 9/30/2017.

Available Funding: The total amount available for this RFA is approximately $500,000.00**.** The amount is subject to continuing 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 2014nonpointsourcerfa.grants@dc.gov.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit #6372-C-A2 to the District of Columbia Water and Sewer Authority (DC Water) to amend and update the permit to construct (and, upon approval by DDOE, operate) Biosolids Handling Facilities previously issued on March 15, 2012. The equipment described below is located at the Blue Plains Advanced Wastewater Treatment Plant at 5000 Overlook Avenue SW, Washington, DC. The contact person for the facility is Meena Gowda, Principal Counsel at (202) 787-2628.

Equipment to be Permitted

- **Combined Heat and Power (CHP)**:
  - Three (3) Solar Mercury 50 Combustion Gas Turbines (CT) rated at 46.3 MMBtu/hr (HHV) heat input firing digester gas (DG) or a combination of digester gas and natural gas;
  - Three (3) Heat Recovery Steam Generators (HRSGs) equipped with supplemental firing by Duct Burners rated at 21 MMBtu/hr (HHV) heat input each, firing DG;
  - One (1) Auxiliary Boiler (AB) rated at 62.52 MMBtu/hr (HHV) heat input, firing DG and 61.79 MMBtu/hr (HHV) heat input firing natural gas (NG); and
  - One (1) Siloxane Destruction Flare (SF) rated at 6.14 MMBtu/hr heat input, firing DG

- **Main Process Train (MPT):**
  - Two (2) Emergency Flares rated at126 MMBtu/hr heat input each, firing DG.
  - One (1) Raw Sludge Blending, Screening and pre-dewatering process;
  - Four (4) CAMBI Thermal Hydrolysis Process (THP) trains;
  - Four (4) 3.8 million gallon Anaerobic Digesters; and
  - One (1) 44,800 scfm Bioscrubber Odor Scrubber (MPTOS).

- **Final Dewatering Facility:**
  - Sixteen (16) Belt Filter Presses (BFP);
  - One (1) 54,000 scfm Dual Stage Chemical Scrubber - Final Dewatering Facility Odor Scrubber (FDFOS); and
  - One (1) new Spent Wash Water Concrete Collection Tank.

- **Installation of Lime Storage Silos**
  - Installation of two (2) new lime storage silos;
  - Installation of Silo Particulate Control Devices; and

- **Installation of Building Make-Up Air Handling Units (Space Heaters) Less than 5 MMBtu/hr Heat Input with Equivalent Combined Full Load of 33.11 MMBtu/hr limited to 94.8 MMCF/yr, firing NG**
  - Final Dewatering Facility (FDF): 12 units, 0.750 MMBtu/hr each, and 1 unit, 1.00 MMBtu/hr (10.00 MMBtu/hr total);
  - CHP Gas Condition Facility: 2 units, 0.70 MMBtu/hr each (1.40 MMBtu/hr total) ;
  - CHP Gas Blower Building: 1 unit,0.25 MMBtu/hr total heat requirement;
  - CP Turbine Plant: 3 units, 0.70 MMBtu/hr each (2.10 MMBtu/hr total);
  - MPT Pre-Dewatering Building: 2 units, 3.52 MMBtu/hr each, and 1 unit, 3.17 MMBtu/hr (10.21 MMBtu/hr total);
  - Digestion Building: 1 unit, 2.20 MMBtu/hr total heat requirement;
  - Sludge Screening Building: 1 unit, 2.38 MMBtu/hr total heat requirement; and
  - Solids Blending Building: 4 units, 1.145 MMBtu/hr each (4.58 MMBtu/hr total)

The purpose of the permit amendment is to correct items that have changed based on the final construction plans of the facilities. The changes are resulting in small potential increases in particulate matter emissions (0,38 tons per year) and carbon monoxide (CO) emissions (0.35 tons per year). Emissions of other pollutants are to be reduced, most notably oxides of nitrogen (NOx) were there is a projected decrease in potential emissions of 7.29 tons per year and volatile organic compounds (VOC) where there is a projected decrease in potential emissions of 6.45 tons per year. As a result of the decrease in NOx, there has been no change in the non-attainment new source review (NNSR) analysis. Other reasons for the amendment include the removal of redundant monitoring requirements and clarification of permit language.

Overall Emissions Limitations

The following emission limits are the overall emission limits for the equipment involved in the project. In addition to these limits, some additional limits can be found in the draft permit.

The emissions shall not exceed the emission limits in the following tables as applicable:

Table 1: Total 12-Month Rolling Emission Limits from Permitted Equipment[1]

Pollutant	12-Month Rolling Emissions Limit (tons/yr)
PM (Total)[2]	18.45
SOx	25.04
NOx	77.07
VOC	11.84
CO	97.51
PM10	18.45
PM2.5	18.45
HAPs (Total)	1.75

1. The equipment covered consists of three Solar Mercury 50 gas turbines, three duct burners, one auxiliary steam boiler, one siloxane removal system, , two emergency flares, space heating units as referenced in this permit, two odor scrubbers (MPTOS and FDFOS), and two lime silo baghouses.
2. Total PM is the sum of the filterable PM and condensable PM

Table 2- Maximum Hourly Emissions (lbs/hr)

Pollutants	Each Solar Mercury 50 Gas Turbine	Each Duct Burner	Auxiliary Boiler	Siloxane Removal System	Each Emergency Flare
PM (Total)	1.06	0.16	2.69	0.21	2.52
SOx	1.21	0.55	1.63	0.16	3.28
NOx	3.56	1.66	2.11	0.37	5.29
VOC	0.40	0.03	0.31	0.53	2.54
CO	4.34	2.31	2.22	1.25	2.52
PM10	1.06	0.16	2.69	0.21	2.52
PM2.5	1.06	0.16	2.69	0.21	2.52
Total HAPs	0.07	0.06	0.17	0.01	0.19

Table 3 – Start-Up Emissions for Two Temporary Boilers and One Emergency Flare

Pollutant	Temporary Sources During Construction	
	Temporary Steam Boilers[(1)] (Natural Gas) (lbs/hr)	Emergency Flare (Digester Gas) (lbs/hr)
PM (Total)	0.0.20	2.52
SOx	0.04	3.28
NOx	2.00	5.29
VOC	0.10	2.54
CO	0.72	2.52
PM10	0.20	2.52
PM2.5	0.20	2.52

[(1)] The emission rates listed in this column are informational only and may be change without the amendment of this permit. The boilers are permitted under separate Permit Nos. 6809 and 6810, issued to Pepco Energy Services, Inc.

The application documentation, the permit amendment request, and the draft permit 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 July 28, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

TITLE AND SETTLEMENT SERVICES

Excel PCS is seeking a title company to provide the following services:

- Title, litigation, property and UCC searches;
- Prepare settlement statement;
- Distribution of funds (potentially, this may also be done through bank trustee);
- Recordation of documents with the District of Columbia, including proper recordation to ensure tax-exempt status of Excel PCS is recognized; and,
- Issue owner's and lender's title policies along with any required endorsements.

For more information or questions, please send via e-mail at pmitchell@excelpcs.org.

No information about the RFP will be provided individually over the phone to bidders. All questions submitted will be answered and sent to all interested bidders with the identity of the questioner removed.

Proposals are due by 5:00PM (EDT) on July 14, 2014 at the school's offices:

Attn: Philip Mitchell
Excel Academy Public Charter School
2501 Martin Luther King Jr. Ave. SE
Washington, DC 20020

Electronic submissions are encouraged: pmitchell@excelpcs.org.

DEPARTMENT OF HEALTH

HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Chiropractic
July 8, 2014

On July 8, 2014 at 1:00 pm, the Board of Chiropractic will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 1:00 pm until 2:30 pm to plan, discuss, or hear reports concerning licensing issues ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 2:30 pm to 3:30 pm to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 4:30 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Chiropractic website www.doh.dc.gov/boc and select BOC Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Jacqueline A. Watson, DO, MBA, (202) 724-8755.

DEPARTMENT OF HEALTH

HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
June 25, 2014

On JUNE 25, 2014 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed from 8:30 am until 10:30 am to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting will be open to the public from 10:30 am to 11:30 am to discuss various agenda items and any comments and/or concerns from the public. After which the Board will reconvene in closed session to continue its deliberations until 2:00 pm.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Jacqueline A. Watson, DO, MBA, (202) 724-8755.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION
NOTICE OF FUNDING AVAILABILITY
CANCELED
Request for Applications (RFA) # CHA_SBHC062014
School Based Health Center

This notice supersedes the notice published in DC Register on 06/06/2014 volume 61/24

The Government of the District of Columbia, Department of Health (DOH), Community Health Administration (CHA) is soliciting applications from qualified not-for-profit organizations located and licensed to conduct business within the District of Columbia to improve access to care for high school students in grades 9-12 by operating an existing school-based health center. The overall goal is to help address the primary and urgent care needs of students in the school that will house the school-based health center. This includes assuring appropriate confidentiality and coordination of care, making referrals for specialty care, and serving as a model medical home.

The school-based health center will be approximately 2,500 square feet and will include practice space for the school nurse. There will be one award for up to $337,500.00 in locally appropriated funds available for this grant. Projected award date: September 1, 2014.

The release date for RFA# CHA_SBHC062014 is Friday, June 20, 2014. The RFA will be posted on the Office of Partnership and Grant Services website under the DC Grants Clearinghouse at www.opgs.dc.gov on **Friday, June 20, 2014**.

The Request for Application (RFA) submission deadline is 4:45 pm Thursday, July 17, 2014.

The **Pre-Application Conference** will be held in the District of Columbia at 899 North Capitol Street, NE, 3rd Floor Conference Room, Washington, DC 20002, **on Thursday, June 26, 2013, from 10:00am – 12:30pm**.

If you have any questions please contact Luigi Buitrago via e-mail luigi.buitrago@dc.gov or by phone at (202) 442-9154.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD)
HOME PURCHASE ASSISTANCE PROGRAM (HPAP)
Effective June 20, 2014

NOTE:

**** Closing Cost Assistance for all eligible households = up to $4,000.**
Closing Cost Assistance is provided to eligible households distinct from and in addition to Gap Financing Assistance, which is shown below.

**** Per Client Gap Financing Assistance Cap for very low, low and moderate incomes.**

Calculated Maximum Assistance Available per Household Income by Household Size is as follows:

Maximum Assistance	Household Size							
	1	2	3	4	5	6	7	8
			per household income less than or equal to:					
Very low income households								
	37,450	42,800	48,150	53,500	57,800	62,100	66,350	70,650
40,000								
Low income households								
55,000	47,950	54,800	61,650	68,500	72,800	77,100	81,350	85,650
	49,000	56,000	63,000	70,000	74,400	78,750	83,150	87,500
	49,700	56,800	63,900	71,000	75,450	79,900	84,300	88,750
	50,400	57,600	64,800	72,000	76,500	81,000	85,500	90,000
30,000	51,100	58,400	65,700	73,000	77,550	82,150	86,700	91,250
	51,800	59,200	66,600	74,000	78,650	83,250	87,900	92,500
	52,500	60,000	67,500	75,000	79,700	84,400	89,100	93,750
	53,200	60,800	68,400	76,000	80,750	85,500	90,250	95,000
20,000								
	53,900	61,600	69,300	77,000	81,800	86,650	91,450	96,250
	54,600	62,400	70,200	78,000	82,900	87,750	92,650	97,500
	59,900	68,500	77,050	85,600	90,950	96,300	101,650	107,000
Moderate income households								
	60,900	69,600	78,300	87,000	92,450	----------	----------	----------
10,000								
	62,300	71,200	80,100	89,000	94,600	----------	----------	----------
	65,100	74,400	83,700	93,000	98,800	98,800	----------	----------
$0*	82,400	94,200	105,950	117,700	125,100	125,100	125,100	125,100

The amount of financial assistance provided to a very low, low or moderate income shall be based on the sum of Gap Financing Assistance and Closing Costs Assistance.
Household incomes eligible for assistance for household sizes other than four persons are adjusted as shown.

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF LEVEL OF ASSISTANCE FOR THE HOME PURCHASE ASSISTANCE PROGRAM

The D.C. Department of Housing and Community Development, pursuant to the authority in Chapter 25, Title 14, DCMR, Section 2503 and Section 2510 of the rules for the Home Purchase Assistance Program (HPAP), hereby gives notice that it has established the income limits and homebuyer assistance for participation of very low income, low income and moderate income households in the HPAP.

The income limits have been determined based on the area median income of $107,000 established by the Secretary of the U.S. Department of Housing and Urban Development for 2014, for the Washington, DC Metropolitan Statistical Area. The amounts have been calculated based on Section 2510 of the HPAP Program rules. The first time Homebuyer Assistance Table reflects the amount of assistance for home purchases through gap financing for first time homebuyers in an amount up to $40,000 plus $4,000 for closing cost assistance. The assistance provided is based on household income and size and shall be effective upon publication of this Notice in the D.C. Register. The Assistance Table shall be effective on June 20, 2014.

DC DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF SOLICITATION FOR OFFERS

(Washington, DC) - On July 11, 2014, the Department of Housing and Community Development (DHCD) released six Solicitations for Offers (SFO) for the development of 27 District-owned properties in Wards 1, 5, 7 & 8.

Through the SFO, DHCD is seeking public offers to build development projects that promote vibrant, walk-able, mixed-use and mixed-income neighborhoods and combat blight in the District on the following sites:

Package	WARD	SSL		Address	Vacancy	Issue Date
1	1	0394	0060	8th & T Street, NW	LOT	11-Jul
2	5	0615	0075	14 Florida Ave NW	LOT	11-Jul
2	5	0615	0148	10 Q Street, NW	BLDG	11-Jul
2	5	0615	0149	6 Q ST NW	LOT	11-Jul
2	5	0615	0150	8 Q ST NW	LOT	11-Jul
2	5	0615	0151	4 Q St NW	LOT	11-Jul
2	5	0615	0152	16 Florida Ave NW	LOT	11-Jul
2	5	0615	0806	12 Q St NW	LOT	11-Jul
2	5	0615	0825	14 Q St NW	LOT	11-Jul
3	7	5336	0036	304 - 310 Saint Louis St., SE	LOT	11-Jul
3	7	5336	0044	320-326 Saint Louis	LOT	11-Jul
3	7	5336	0037	4915 - 4925 C Street, SE	LOT	11-Jul
3	7	5336	0043	4920 Call Place, SE	LOT	11-Jul
4	8	6214	0013	4338 Halley Ter SE	BLDG	11-Jul
4	8	6214	0017	4326 Halley Ter SE	BLDG	11-Jul
4	8	6214	0018	4324 Halley Terrace, SE	BLDG	11-Jul
5	8	5812	0118	2200-2210 Hunter Place, SE	LOT	11-Jul
6	7	5553	0029	2527 Minnesota Ave SE	LOT	11-Jul
6	7	5553	0030	2529 Minnesota Ave SE	LOT	11-Jul
6	7	5553	0031	2531 Minnesota Ave SE	LOT	11-Jul
6	7	5553	0032	2533 Minnesota Ave SE	LOT	11-Jul
6	7	5553	0033	2535 Minnesota Ave SE	LOT	11-Jul
6	7	5553	0034	1303 27th St SE	LOT	11-Jul
6	7	5553	0035	1305 27th St SE	LOT	11-Jul
6	7	5553	0036	1307 27th St SE	LOT	11-Jul
6	7	5553	0037	1309 27th St SE	LOT	11-Jul
6	7	5553	0038	1311 27th St SE	LOT	11-Jul

The Solicitation for Offers application materials will be available by July 11, 2014 on the DHCD website and also at the DHCD Housing Resource Center, located at 1800 Martin Luther King, Jr. Avenue, Washington, DC 20020 in CD format.

A Pre-Bid meeting will be held the week of August 4, 2014, at DHCD's Housing Resource Center. The deadline for submitting proposal applications is 4 p.m. Friday, Oct 10 (Solicitations 1-3) and Oct 24, 2014 (Solicitations 4-6).

For additional updates, information and questions, please go to our website http://dhcd.dc.gov/service/property-acquisition-and-disposition or contact Karanja Slaughter at karanja.slaughter@dc.gov or 202-442-7282.

KIPP DC

PUBLIC NOTICE

National School Lunch Program

KIPP DC Public Charter School serves breakfast, lunch and snack to our students daily. All enrolled students are eligible to participate in KIPP DC's meal program.

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer."

Also, the District of Columbia Human Rights Act, approved December 13, 1977 (DC Law 2-38; DC Official Code §2-1402.11(2006), as amended) States the following: Pertinent section of DC Code § 2-1402.11: It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any individual. To file a complaint alleging discrimination on one of these bases, please contact the District of Columbia's Office of Human Rights at (202) 727-3545.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2013-48

April 24, 2013

Robert Frommer, Esq.

Dear Mr. Frommer:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 8, 2013 (the "Appeal"). You, on behalf of the Institute for Justice ("Appellant"), assert that the Executive Office of the Mayor ("EOM") improperly withheld records in response to your request for information under DC FOIA dated January 2, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

> Any correspondence or any other communications between any representative of the Executive Office of the Mayor and representatives of the Restaurant Association of Metropolitan Washington, the Adams Morgan Business Improvement District, the Golden Triangle Business Improvement District, the Downtown DC Business Improvement District, the Apartment and Office Building Association of Metropolitan Washington, the DC BID Council, DC Map, and the Penn Quarter Neighborhood Association concerning the regulation of food trucks in Washington D. C.

By email dated February 12, 2013, EOM provided records to Appellant. Thereafter, Appellant contacted EOM, questioning the adequacy of the production, and EOM made a supplemental search, using the email addresses of six specified employees and producing additional records.

On Appeal, Appellant challenges the response to the FOIA Request based upon the adequacy of the search. Appellant sets forth a factual chronology as a predicate for its argument. In its initial response to the FOIA Request, EOM provided approximately 12 pages of emails. Appellant states that, in addition to the FOIA Request, it made similar, simultaneous requests to the Department of Consumer and Regulatory Affairs ("DCRA") and the District Department of Transportation ("DDOT"). In response, DDOT provided approximately 250 pages of records. Appellant states that it received records from DDOT which were responsive to the FOIA Request, but which were not included in the records provided by EOM. After Appellant contacted EOM regarding the disparity, EOM conducted a supplemental search and provided 21

pages of records, some of which, according to Appellant, were the same records as EOM previously provided.

As part of the Appeal, Appellant submitted spreadsheets marking 11 records from DDOT which it alleges that it should have received from EOM and 3 records from DCRA which it also alleges that it should have received from EOM.

> The above-described spreadsheet demonstrates that the Executive Office of the Mayor has failed to undertake a reasonable search for responsive records. This failure is further demonstrated by the fact that in her supplemental production to me, [the EOM FOIA Officer] produced neither of the two emails that I had shared with her in response to her initial 12-page production. Moreover, it seems incredible that the Executive Officer of the Mayor has been unable to produce even a single responsive communication from the year 2012, particularly when it is clear that (1) there was a large amount of work done on the proposed food-truck regulations in 2012; (2) the Mayor's office had taken an active role in that process before the start of 2012; (3) and--as shown by the above-described e-mails produced by other agencies--officials from the Mayor's office clearly had contacts with representatives from groups like RAMW in 2012.

In its response, dated April 22, 2013, EOM reaffirmed its position and contends that it has performed a reasonable and adequate search. In support of its position, EOM states the manner in which the search was conducted. EOM conducted an initial search of the email accounts of all EOM personnel using a combination of the phrase "food truck" and an identifying phrase for each organization listed in the FOIA Request.[1] When the Appellant questioned the adequacy of the production, EOM agreed to conduct a supplemental search.

> For this supplemental search, the requestor provided specific names of District government employees that he believed had documents, not previously produced, that were responsive to the request. . . . the terms of this supplemental search included slightly modified terms from the original request, in an effort to capture additional emails, broadening the search terms of the original request as provided by the requestor.

EOM contacted DDOT to compare the search terms used in the search that DDOT performed for the request which Appellant submitted to it. EOM states that "DDOT did not conduct a search and review in the same manner, or with the same terms, as EOM provided to OCTO." An exhibit submitted by EOM indicates that the DDOT search was performed manually by a DDOT employee.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official

[1] "Restaurant Association of Metropolitan," "Adam Morgan Business Improvement District," "Golden Triangle Business," "Downtown DC Business," "Apartment and Office Building Association," "DC Map," "Penn Quarter Neighborhood Association," and "DC BID Council."

acts of those who represent them as public officials and employees." D.C. Official Code § 2-537(a). In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As stated above, Appellant challenges the adequacy of the search based upon the paucity of search results as compared to records it received from other agencies and which records it deems to be responsive records which should have been located.

An agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

Here, EOM searched only its email records for the requested communications and the selection of this location as the likely source of the requested records is not in dispute. Indeed, this would appear to be the likely location of the requested records. However, as stated above, Appellant questions the adequacy of the search based both upon its expectations and the records produced

by other agencies which Appellant believes that EOM maintains. We believe that the problem is not in the design of the initial search, but in the formulation of the FOIA Request. Appellant provides only the names of the outside organizations to whom or from whom the emails are sought and such names were the sole identifier provided with respect to the organizations. However, in order for a search to locate a responsive email, the name of the organization must appear in the subject line or the body of the email. In sending an email to a representative of an organization or of multiple organizations, an issue may be, and frequently is, discussed without reference to the name or names of such organization. Moreover, unless the sender employs a signature block with an organizational identifier, an email sent by the representative of an organization cannot be located when only the name of an organization is provided. Based on our knowledge of search capabilities, a requester must provide an entire, not even a partial, email address to be searched in order to locate an individual sender or recipient. A FOIA officer cannot be charged with knowledge of the identity of representatives of outside organizations who contact an agency or of their email addresses. It is incumbent upon a requester to provide this information as part of the request. Moreover, in this case, EOM performed a supplemental search with modifications which were agreed upon by Appellant. Having participated in and endorsed the design of the supplemental search, Appellant is now attempting to assign any deficiencies in such search to EOM.

We find that the search was adequate. In considering a similar issue in Freedom of Information Act Appeal 2012-43, we stated:

> As noted above, the test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. The fact that some records were not included in the records produced is not determinative in the absence of other indications of inadequacy. "[T]he FOIA does not require a perfect search, only a reasonable one. *See Meeropol v. Meese*, 252 U.S. App. D.C. 381, 790 F.2d 942, 956 (D.C. Cir. 1986) ("[A] search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request."). *Rein v. United States PTO*, 553 F.3d 353, 362 (4th Cir. 2009). While Appellant points to other records referenced in certain of the emails produced, the failure of a search to uncover these records does not itself warrant a conclusion that the search was not adequate. In *Rein*, the court stated:
>
> > We also do not find persuasive R&HW's argument that the Agencies' searches were inadequate because responsive documents refer to other documents that were not produced. . . . The Agencies' failure to produce certain specific documents does not, of itself, yield the conclusion that the search was inadequate.
>
> *Id*. at 363-364.

We have also examined the 14 records which Appellant received from DCRA and identifies as responsive to the FOIA Request. The FOIA Request sought communications "between" EOM and the representative of a named organization. We interpret "between" as meaning from one to another. Six of the 14 were emails either involved no EOM employee or were sent by another

agency employee to EOM and a representative of a named organization. Therefore, such records are nonresponsive.

Conclusion

Therefore, the decision of EOM is upheld. The Appeal is hereby dismissed.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Mikelle Devillier

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-50

May 6, 2013

Mr. Shawn A. Phillips

Dear Mr. Phillips:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 17, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated March 20, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "all records, and investigation reports, from two disciplinary reports done on me from Wednesday, March 6, 2013." In addition, Appellant sought disciplinary reports alleged to have been prepared by two named individuals in the Surveillance unit. In response, by letter dated April 12, 2013, DOC notified Appellant that, pursuant to a search, "Adjustment Board staff has advised that a copy of the records of the disciplinary proceedings has been provided to you." In addition, DOC stated that "the Surveillance unit has advised that they do not maintain records on you."

On Appeal, Appellant states that he has not been provided with the records as he had been notified. In addition, Appellant states that he is "in need" of the disciplinary reports alleged to have been prepared by two named individuals in the Surveillance unit.

In its response, by email dated May 1, 2013, DOC reaffirms its position. DOC reiterates its statement from the original response that the requested records from the disciplinary proceedings, including disciplinary reports, were sent to Appellant, but states that another copy will be sent to Appellant with the response to the Appeal. DOC also states that no report was written by the Surveillance unit. In order to clarify its response and the administrative record, DOC was invited to supplement the response to address the manner in which the search for records was conducted. DOC stated that it consulted the Chief of the Surveillance unit, who stated that his office does not write reports, and did not write a report on the incidents, but only

provides video reviews of incidents. DOC provided an email of the Chief of the Surveillance unit for *in camera* review.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The first contention of Appellant is that he has not been provided with the records as he had been notified. Although we believe that DOC did send the records to Appellant as it stated in its original response letter, DOC has sent another copy of those records to Appellant with its response to the Appeal. Therefore, we will now consider this issue to be moot.

The remaining issue presented by Appellant is the adequacy of the search for the disciplinary reports alleged to have been prepared by two named individuals in the Surveillance unit.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In testing the adequacy of a search, we have looked to see whether an agency has made reasonable determinations as to the location of records requested and made, or caused to be made, searches for the records. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

In this case, the Chief of the Surveillance unit indicates that the unit does not write reports on incidents, but only provides video reviews of incidents, and that there were no reports on the incidents in question. As the Chief is an official who is familiar with the records of the Surveillance unit, we find that the search was adequate.[1]

Conclusion

Therefore, the decision of DOC is moot in part and upheld in part. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

[1] DOC indicates that there are video reviews of the incidents, but, as there are individuals other than Appellant who are included on the videos, the videos have been withheld on the basis of privacy under D.C. Official Code § 2-534(a)(2). We do not address this contention as Appellant has not raised it as an issue in this Appeal. If Appellant wishes to do so, he may file a separate appeal. We do note that in Freedom of Information Act Appeal 2013-44, where, like here, there was a video with individuals other than the appellant, but which video could not be redacted to protect the identity of such individuals, we did not require that such video be provided to the appellant.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-51

May 20, 2013

Ms. Nona Pucciariello

Dear Ms. Pucciariello:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 30, 2013 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA made on January 14, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request consisted of 16 parts. Two of the parts sought all records related to 911 calls made by Appellant on two separate dates. One part sought all records related to reports by others related to Appellant, her husband, or their real property. The other parts sought communications, mostly emails, between certain named individuals and members of MPD. In response, by email dated April 18, 2013, MPD stated that

> after [a named MPD employee] began processing the emails you requested, it appears that most of the information contained in the e-mails is not releasable to you due to the privacy rights of the individuals. . . . the FOIA Officer . . . advised the information requested is not releasable under FOIA.

On Appeal, Appellant challenges the response of MPD to the FOIA Request, stating that MPD has failed to comply with District law and rules relating to DC FOIA. First, Appellant maintains that, contrary to D.C. Official Code § 2-533 and DCMR § 1-407.2(b), MPD "fails to address the particular exemptions under D.C. Official Code § 2-534 for the denial of for each of the particular information numbers 1 through 16." Second, Appellant maintains that MPD has failed to comply with D.C. Official Code § 2-534(b), which requires an agency to provide non-exempt portions of a record. Third, Appellant cites D.C. Official Code § 5-113.06, which provides that complaint files, among other records, shall be open to inspection.

In response, dated May 20, 2013, MPD reaffirmed its position. MPD maintains that the withheld records are investigatory records compiled for law-enforcement purposes whose disclosure

would constitute a clearly unwarranted invasion of personal privacy under D.C. Official Code § 2-534 (a)(3)(C). MPD states that such withheld records consist of emails between individuals other than Appellant and MPD officials. "These persons have an expectation of privacy with respect to their communications with the department. Release of these emails will not shed light on how the department has carried out its duties."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The principal contention of Appellant is that MPD has not specified the particular exemption from disclosure which it asserts. While MPD did state that the withholding of the records was based on privacy, it did not cite the specific statutory provision associated with the claimed exemption. However, with the filing of its response to the Appeal, MPD has now cited such section, D.C. Official Code § 2-534 (a)(3)(C). Consequently, we will consider the applicability of the exemption.

As we set forth above, 13 of the 16 parts of the FOIA Request sought communications, mostly emails, between certain named individuals and members of MPD. MPD asserts the privacy rights of these individuals as the basis for the claimed exemption. For the reasons stated below, we find that MPD properly withheld these records under D.C Official Code § 2-534(a)(3)(C). [1]

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

Although the administrative record in the Appeal does not indicate the nature of the individuals, that is, whether a victim or witness regarding the circumstances surrounding the communication, there is a sufficient privacy interest in either case. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 780 (1989).

An individual who is a victim of an alleged criminal infraction has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). Likewise, it is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. As in the case of a victim, disclosure may lead to unwanted contact and harassment. *See also Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir.

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unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The nature of the emails does not indicate the substance of the emails. However, as one of the parts of the FOIA Request mentions potential crimes and given the characterization by MPD as a matter involving Exemption (3)(C), the exemption here will be judged by the standard for Exemption (3)(C).

1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest of the individuals in the emails which were withheld.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Here, there is nothing in the administrative record which implicates the conduct of MPD. Therefore, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).
D.C. Official Code § 2-534(b) provides, in pertinent part, that "any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section."

Appellant raises the issue of redaction of non-exempt portions of the withheld records. However, as Appellant has identified the individuals in connection with the requested records, redaction of their names would not protect their privacy interests in any unredacted portions of the records which would be disclosed. *In accord*, Freedom of Information Act Appeal 2013-01.

There are three remaining parts which do not identify individuals other than Appellant or her husband. As stated above, two of the parts sought all records related to 911 calls made by Appellant on two separate dates. One part sought all records related to reports by others related to Appellant, her husband, or their real property. Although it has not been raised by Appellant, we believe that the adequacy of the search is in issue.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

The phrasing of the remaining three parts of the FOIA Request indicates that MPD may have investigated "incidents," either criminal or noncriminal, and it is reasonable to infer that records, other than emails, may have been created as a result of investigations and reports to MPD. However, it appears that MPD only made a search for emails. The April 8, 2013 response to the FOIA Request refers to "the emails you requested" and there is no indication in such response or the response to the Appeal that MPD made a search for records other than emails. Therefore, we direct MPD to make a new search for the records requested in these three parts of the FOIA Request (parts 1, 2, and 6 as numbered therein). MPD shall, subject to the assertion of any applicable exemptions, provide the responsive records to Appellant and shall state the manner in which the search was conducted.

Conclusion

Therefore, the decision of MPD is upheld in part and reversed and remanded in part. MPD shall make a new search for the records requested in parts 1, 2, and 6 of the FOIA Request (as numbered therein). MPD shall, subject to the assertion of any applicable exemptions, provide the responsive records to Appellant and shall state the manner in which the search was conducted.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD pursuant to this order.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-52

June 12, 2013

David A. Fuss, Esq.

Dear Mr. Fuss:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 29, 2013 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA dated March 1, 2013 (the "FOIA Request").

Appellant's FOIA Request sought information regarding the "OTR cap rate study" for the tax year 2014. Appellant identified the Office of Tax and Revenue, an agency under the OCFO, as the division which would possess the records and, in addition, identified two individuals within the office who were likely to possess the records. The FOIA Request was similar to FOIA requests by Appellant which were the subject of Freedom of Information Act Appeal 2013-14 and Freedom of Information Act Appeal 2011-25, in which the appellant was a member of the same law firm as Appellant.

In response, by letter dated April 25, 2012, OCFO identified responsive records to one of the four parts of the FOIA Request, but withheld the records on the basis that it would constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C. Official Code § 2-534(a)(3)(C). As to the other parts of the FOIA Request, OCFO stated that there were no responsive records.

On Appeal, Appellant challenges the denial of the FOIA Request. As in Freedom of Information Act Appeal 2013-14, Appellant argues that D.C. Official Code § 2-531(a)(3)(C) is inapplicable as it applies to investigatory records compiled for law-enforcement purposes and the records requested do not constitute investigatory records compiled for law-enforcement purposes. In addition, Appellant states that OCFO failed to identify the records for which it claims the exemption or to consider the possibility of redactions. Moreover, Appellant notes that "last year OTR released scores of responsive documents under the very same request. The FOIA law has not changed since then."

In response to the Appeal, OCFO contacted Appellant and, pursuant to their discussion, OCFO provided responsive records to Appellant, which production Appellant indicates, by email dated

June 10, 2013, satisfies the FOIA Request. As Appellant has stated that the matter has been settled, the Appeal is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Charles Barbera, Esq.
Angela Washington, Esq.
Laverne Lee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-53

May 22, 2013

Karen Vladeck, Esq.

Dear Ms. Vladeck:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 26, 2013 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated March 7, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "a report of a complaint made against three MPD Officers." The names of the MPD officers were unknown. The FOIA Request stated the name of the complainant, the approximate date of the complaint, a description of the officers, and the circumstances surrounding the complaint. In response, by letter dated April 5, 2013, MPD denied the FOIA Request, stating:

> Without admitting or denying the existence of a report concerning a citizen complaint against three MPD officers, release of such a report would constitute an unwarranted invasion of personal privacy. Therefore, if the requested report existed, it would be exempt from disclosure under D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant states that she is representing a client in an action brought by a named individual plaintiff. Appellant alleges that the plaintiff "admitted that she filed a complaint against the Metropolitan Police Department ("MPD") officers who responded to the scene of the alleged incident underlying the Superior Court case." Appellant also states that she is "seeking any written documentation" regarding the complaint. Appellant argues that the complaint against the MPD officers "does not contain such highly personal or intimate information as contemplated by the exemption" and that the plaintiff "has waived any right to her personal privacy" by filing the case. In addition, Appellant has provided a copy of the complaint filed by the plaintiff in the Superior Court and a portion of a deposition in which the plaintiff testifies about filing the complaint against the MPD officers.

By email, dated May 20, 2013, MPD reconsidered its position and revised its response. MPD states that it interpreted the FOIA Request to be a request for records of an investigation of alleged misconduct by MPD officers, but, on re-examination, it now interprets the FOIA Request to be a request for "a complaint filed by a person concerning the actions of police officers." Based upon its revised interpretation, MPD states that it conducted a search at the Second Police District because the location of the incident is within the boundaries of the Second Police District and the named plaintiff testified that she went to the police district to make a complaint. MPD further states: "The Second District administrative staff searched the paper complaint logs as well as the electronic files of the administrative captain and did not locate any complaints filed by the person named in the FOIA request." Based on the foregoing, MPD states that it is not necessary to address the issue of privacy.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

As set forth above, MPD reconsidered its position and revised its response in this matter. As a result, rather than consideration of the challenge to the withholding of records based upon privacy, the only issue which may be presented for consideration is the adequacy of the search for the requested records. Although Appellant has not had an opportunity to raise--or consider--the adequacy of the search as an issue, in the interests of administrative efficiency, we will address the issue.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2013-27, and Freedom of Information Act Appeal 2013-34. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

In the case of the Appeal, we believe that MPD made a reasonable determination as to location of the requested records and made a search accordingly. MPD determined that any record would be found where the complaint was allegedly filed and searched the relevant electronic and paper-based files at the site.

The results of the search are not surprising. Despite the statement by Appellant that the plaintiff admitted that she filed a complaint, based upon the transcript of the deposition testimony submitted by Appellant, it appears more likely than not that no written complaint was filed.[1] While we read the FOIA Request as being somewhat broader than as interpreted by MPD, as there is no record of the filing of a complaint, it is not reasonable to suspect that there are any other responsive records.

As we noted above, Appellant has not had an opportunity to consider or respond to the revised position of MPD. If Appellant believes that there is law, or there are facts, which have not been taken into account in deciding the Appeal, Appellant may submit a request for reconsideration of this decision. If the request merits reconsideration, we will provide MPD with an opportunity to respond before issuing a revised decision.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is dismissed.

[1] Transcript of Deposition of Named Plaintiff, p. 96, lines1-9.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal 2013-54

May 20, 2013

Ms. Robin Diener

Dear Ms. Diener:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated March 20, 2013 (the "Appeal"). You, on behalf of the Library Renaissance Project ("Appellant"), assert that the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") improperly withheld records in response to your request for information under DC FOIA dated February 13, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following:

> [A]ny documents . . . referred to as the 'Land Disposition Agreement' and/or 'Land Draft Disposition Agreement' or subsequent acronyms 'LDA' and/or 'LDDA' that have been created, edited, and/or delivered to, and/or by [certain named employees] or any other agent in their official capacity as public officials serving in Deputy Mayor's Office of Planning and Economic Development regarding the 'West End Parcels' and/or 'West End deal' . . . regarding the proposed mixed-use residential and retail project located at 1101 24th Street, NW, between the dates of May 1, 2012 and February 13, 2013.

In response, by email dated March 7, 2013, DMPED responded, in pertinent part:

> **Request #1:** Documents related to the West End Parcels redevelopment project Land Disposition Agreement from May 1, 2012 through February 13, 2013.
>
> **Response #1:** DMPED objects to the production of documents responsive to your request on the grounds that these documents contain internal discussions and recommendations of a deliberative nature as well as attorney client communications. These documents are exempt pursuant to D.C. Official Code § 2-534(a)(4). However, you may refer to the D.C. Council's website for information related to the West End Parcels Land Disposition Agreement at dccouncil.us as the D.C. Council approved the Land Disposition Agreement.

By email dated March 8, 2013, Appellant sought clarification of the response to the FOIA Request and posed two questions. By email on the same date, DMPED responded to the two questions as follows:

> **Question 1:** Is the final West End Parcels Land Disposition Agreement available at dccouncil.us, and if so, where exactly can it be found?
>
> **Response 1:** DMPED submitted a substantially complete version of the West End Parcels Land Disposition Agreement ("LDA") to the D.C. Council. This version was published on the Legislative Information Management System (LIMS) on the Council's website and is therefore already available to the public.
>
> **Question 2:** If the final West End Parcels Land Disposition Agreement is not available at dccouncil.us, is it DMPED's position that this document is exempt pursuant to D.C. Official Code § 2-534(a)(4)?
>
> **Response 2:** The documents that DMPED objected to producing pursuant to D.C. Official Code § 2-534(a)(4) did not contain an executed version of the West End Parcels LDA. In fulfilling Ms. Diener's February 13th request, DMPED did not take a position on whether or not the executed West End Parcels LDA was exempt from a FOIA request.

By email also dated March 8, 2013, in response, Appellant stated, in pertinent part: "As you may know, the version of the LDA available on LIMS is captioned 'Council Draft – June 10, 2010/Subject to Further Review and Revisions'. We therefore filed our FOIA request in an effort to obtain a final copy of the LDA."

On Appeal, Appellant challenges the failure of DMPED to furnish the final Land Disposition Agreement.

> The document I seek is the final version of a Land Disposition Agreement ("LDA") as negotiated by DMPED spelling out the terms under which the District will convey the deeds for three public properties in the West End to a private developer. . . . the document I seek is not inter-agency communication nor privileged attorney-client conversation.

In its response, dated May 13, 2013, and transmitted May 16, 2013, DMPED reaffirms its position. DMPED states that, in response to the FOIA Request, it conducted an email search of the accounts of six of the employees named in the FOIA Request. DMPED further states that such search produced 12 records that it considered responsive, but which were exempt from disclosure based upon the deliberative process privilege and the attorney-client privilege pursuant to D.C. Official Code § 2-534(a)(4). "These documents, detailed in the Vaughn index, contained drafts of the LDA as well as excerpts from the final LDA with highlights and deliberations about the interpretations of specific sections of the LDA."

With respect to the final Land Disposition Agreement, DMPED indicated as follows. First, it reiterates that it directed Appellant to the draft Land Disposition Agreement in the committee report which was posted on the website of the Council of the District of Columbia. It states that the Project Manager for the transaction stated "there had been no material or substantial changes made to the LDA between the time that LDA went to Council and the time that the Deputy Mayor executed the LDA," confirming a representation to Appellant that it had made previously by email. Second, it states that in response to the inquiry of Appellant as to whether the final Land Disposition Agreement was subject to D.C. Official Code § 2-534(a)(4), "DMPED's response was that, because a final, executed version of the LDA was not part of the documents reviewed, we had not taken a position on it." Third, DMPED states:

> Ms. Diener did not request a final, executed version of the LDA for the West End Parcels. She requested documents referred to as an LDA within a specified date range. No LDA was created during the timeframe specified in the FOIA request, and therefore DMPED correctly did not take a position on this document.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Appellant's FOIA Request sought, with respect to the West End redevelopment project, the Land Disposition Agreement and all proposed drafts. It is clear that DMPED has interpreted the FOIA Request to apply to all documents related to the West End redevelopment project, a broader construction than required by terms of the FOIA Request. Even with respect to the terms of the FOIA Request, the only issue which Appellant raises in the Appeal is the failure by Appellant to provide the final Land Disposition Agreement and it would appear that DMPED asserts exemptions which apply to documents which are not in issue.

The position of DMPED as communicated to Appellant and reiterated in the response is that the Land Disposition Agreement was not among the records which were located pursuant to the search. However, the fact that the Land Disposition Agreement was not located may be

attributed to the design of the search. DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. In this case, only email accounts of certain employees (with no time limitation as to the search indicated) were searched. However, it is reasonable to expect that responsive records could be located in the other electronic records or the paper-based files of DMPED.

In its response to the Appeal, DMPED states that Appellant "did not request a final, executed version of the LDA" and indicates that the Land Disposition Agreement was not "created" during the date range specified in the FOIA Request. Based upon the communications which are part of the administrative record, it is clear that Appellant requested (by clarification dated March 8, 2013) and is seeking the final Land Disposition Agreement. Nevertheless, it is also clear that the terms of the FOIA Request specified a date range "of May 1, 2012 and February 13, 2013." Neither party states the date that the Land Disposition Agreement was executed. In its absence, we have consulted Zoning Commission Order No. 11-12, which is a matter of public record. The Order, among other things, indicates that the Land Disposition Agreement was executed.[1] As the Order was dated March 26, 2012, we can conclude that the Land Disposition Agreement was executed prior to the date range specified in the FOIA Request and executed Land Disposition Agreement would not have been responsive to the FOIA Request as originally submitted, although it was responsive to clarification which Appellant communicated to DMPED.[2]

When we consider the foregoing, the following is clear. First, there is a final Land Disposition Agreement. Second, DMPED has not asserted that the Land Disposition Agreement is subject to exemption from disclosure and there does not appear to be any basis for such assertion. Third, Appellant is seeking the final Land Disposition Agreement and has communicated the same to DMPED. Accordingly, DMPED shall provide to Appellant the final Land Disposition Agreement.[3]

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[1] "The Executive Branch of the District government, with the consent of the Council, negotiated and entered into a land distribution [sic] agreement under which the developer agreed to construct these two important facilities at no direct cost with the District."

[2] As set forth above, prior to the Appeal, Appellant stated that it was seeking the final Land Disposition Agreement.

[3] The final Land Disposition Agreement undoubtedly exists in both a signed and unsigned form. We believe that the provision of the signed Land Disposition Agreement will provide the relief sought by Appellant.

The administrative record suggests that DMPED may believe that it has satisfied this requirement by referring Appellant to the Land Disposition Agreement posted in the Legislative Information Management System on the website of the Council. However, as Appellant states, the version of the Land Disposition Agreement on the website of the Council is a draft. While the draft may be, as DMPED claims, a "substantially complete version," it is not the final agreement. In Freedom of Information Act Appeal 2011-29, we rejected the contention of DMPED that a record need not be supplied if the information is contained in another record.

Conclusion

Therefore, this matter is remanded to DMPED. DMPED shall provide to Appellant the final Land Disposition Agreement.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ayesha Abbasi, Esq.

As we have stated in prior decisions, under DCMR § 1-402.4 and consistent with federal law, a requester must frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome and to enable the agency to determine precisely what records are being requested. As we have also indicated, the rationale of the rule is rule is to prevent agencies from becoming full-time investigators. Indeed, in Freedom of Information Act Appeal 2013-48, we upheld the adequacy of the search where such search was made in accordance with the search terms provided by the appellant. Our decision should not imply that agencies should be expected to process multiple refinements to the same FOIA request based on search results. On the other hand, DCMR § 1-402.6, although in the context of unclear descriptions of the requested records, states that "[e]very reasonable request shall be made by the agency to assist in the identification and location of requested records." In the case of the Appeal, where the nature of the search appears to have been unclear to both parties, the Appellant contacted DMPED one day after it received a response to the FOIA Request and sought but one document which should be readily available. We note that in in Freedom of Information Act Appeal 2013-48, prior to the appeal, the agency made a second search after conferring with the requester.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-57

May 28, 2013

Lauren Onkeles-Klein, Esq.

Dear Ms. Onkeles-Klein:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated May 8, 2013 (the "Appeal"). You, on behalf of the Children's Law Center ("Appellant"), assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your requests for information under DC FOIA dated April 30, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought records relating to the "EasyIEP [computer] program." In particular, Appellant sought:

1. "Each and every screen shot of the EasyIEP program start to finish, as it appears to the DCPS personnel filling it out . . ."

2. "[T]raining and instructional materials related to the EasyIEP program . . ."

3. Records related to the use of the data in "providing services, creating reports and tracking progress for children."

By letter dated June 20, 2012, DCPS provided records in response to the second part of the FOIA Request, but stated that it did not have records responsive to the first and third parts of the FOIA Request.

On Appeal, Appellant challenges the response to the first part of the FOIA Request, that is, failure to provide the screen shots of the EasyIEP program. Appellant states that "it is clear that the EasyIEP program exists, it is an agency record subject to FOIA production, and DCPS professionals use the EasyIEP program to help them determine which specialized education services to provide to members of the public." Appellant emphasizes that the requested records are agency records under DC FOIA.

> To the extent that the DCPS is unclear that the requested screenshots are, indeed, a public record, the statutory language of the District's FOIA clearly provides that '[p]ublic records include information stored in an electronic format.' D. C. Code §§ 2-539, 2-502(18). Indeed, the D. C. Circuit has made it clear that FOIA 'makes no distinction between records maintained in manual and computer storage systems. It is thus clear that computer-stored records, whether stored in the central processing unit, on magnetic tape or some other form, are still 'records' for the purposes of FOIA.' [citation omitted]. . . . Furthermore, any question as to whether a software program such as Easy IEP could be considered an 'agency record' was resolved by *Cleary, Gottlieb, Steen & Hamilton v. HHS*, wherein a software program was found to be an agency record because the program was 'uniquely suited to its underlying database' such that 'the software's design and ability to manipulate the data reflect the [agency's study],' thereby preserving information and perpetuating knowledge.' [citation omitted]. The use of the Easy IEP by the DCPS professionals to determine which information is relevant in deciding how best to provide statutorily required individualized educational services to members of the public fits the description provided by *Cleary*, and thus the requested screenshots are a public record subject to FOIA disclosure.

In its response, by letter dated May 15, 2013, DCPS reaffirms its position. It maintains that "the request should have been filed with the Office of the State Superintendent for Education (OSSE). Although some DCPS employees have access to the EASY IEP™ website, the site itself is controlled, owned, and maintained by OSSE. Therefore, any requests for documents or information regarding the site should be filed with and responded to by OSSE."

By email dated May 21, 2013, DCPS responded to an invitation to supplement the administrative record regarding the EasyIEP computer program and DCPS access and use of the program on the OSSE website. The supplement may be summarized as follows:

1. "EasyIEP is a computer program within the Special Education Data System (SEDS). SEDS is a database organized and managed by the Office of the State Superintendent of Education (OSSE)."

2. The District government does not own the EasyIEP computer program, but OSSE has a license to use the program.

3. OSSE has granted access to DCPS personnel "for the sole purpose of entering, uploading and managing information belonging to special education students." DCPS personnel obtain access to the computer program by use of a "user password."

4. "DCPS personnel do not have the ability to create documents on the website as the database is licensed by OSSE. DCPS can upload evaluations and reports."

DCPS also provided a copy of the records which it provided to Appellant pursuant to the second part of the FOIA Request.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

In its response to the FOIA Request, DCPS stated that there were no responsive records with respect to screen shots of the EasyIEP computer program ("EasyIEP"). In its response to the Appeal, DCPS clarified the reason for the response, viz., that access to EasyIEP is "controlled, owned, and maintained by OSSE." Prior to the examination of any possible exemptions from disclosure, the threshold issue for our consideration is whether the requested records are agency records, i.e., public records under DC FOIA.

As we stated in Freedom of Information Act Appeal 2012-29, "[i]t is fundamental under DC FOIA as well as the federal FOIA that a requester must direct its request for records to the agency which maintains the records." *See also* Freedom of Information Act Appeal 2011-23; *DiPietro v. Exec. Office for United States Attys.*, 357 F. Supp. 2d 177 (D.D.C. 2004)(" No agency is obligated to produce records that it does not maintain. [citation omitted]." *Id*. at 182.) There is no definition of "agency record" under the federal FOIA, *see Forsham v. Harris*, 445 U.S. 169, 178 (1980), but the Supreme Court has looked to definitions of records in other acts, particularly the federal Records Disposal Act, *Id*. at 183, in construing its meaning.[1] The definition of "public record" under D.C. Official Code § 2-502(18) is similar to the definition in the Records Disposal Act.

In *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136 (1989), based on its prior decisions, the Supreme Court set forth two requirements that must be satisfied for records to qualify as "agency records." First, an agency must either create or obtain the materials. Second, the agency must be in control of the requested materials when the FOIA request is made.

[1] In 1996, Congress provided clarification as to its meaning, but not a definition.

The first requirement is that the agency must either create or obtain the materials. Although not stated expressly, it appears to be the position of DCPS that it has not obtained the requested records as the EasyIEP computer program, including the requested screen shots, is in the possession of the Office of the State Superintendent for Education ("OSSE"), not DCPS. However, DCPS states that some DCPS employees have access to the OSSE website and, presumably, the EasyIEP computer program and the screen shots. In *Consumer Fed'n of Am. v. Dep't of Agric.*, 455 F.3d 283 (D.C. Cir. 2006), the issue was whether calendars of employees were personal records or agency records. The Court held that the calendars of five senior officials, which calendars could be accessed electronically, were agency records. In its opinion, the Court stated:

> Allowing others to have routine computer access to a calendar, however, is more like distributing hard copies than it is like permitting occasional glances at a document on a desk. In allowing computer access, the official surrenders personal control over the document and indicates that it will be used by others to plan their own workdays.

Id. at 292 (fn. 16). In this case, the computer program and the screen shots were located on a website maintained by another agency. Nevertheless, it is arguable that, as suggested by the *Consumer Fed'n of Am.* Court, permitting routine computer access is like distributing hard copies and that DCPS access to the website of another District government agency is the legal equivalent of obtaining the record. For the purposes of the Appeal, we will presume that DCPS, by its access, has obtained the requested records.

The second requirement is that the agency must be in control of the requested materials when the FOIA request is made. In assessing this requirement, courts have looked to different factors and

> have identified four factors relevant to a determination of whether an agency exercises sufficient control over a document to render it an 'agency record': '(1) the intent of the document's creator to retain or relinquish control over the records; (2) the ability of the agency to use and dispose of the record as it sees fit; (3) the extent to which agency personnel have read or relied upon the document; and (4) the degree to which the document was integrated into the agency's record system or files.' [citation omitted].

Burka v. United States HHS, 87 F.3d 508, 515 (D.C. Cir. 1996). In *Tax Analysts v. United States DOJ*, 913 F. Supp. 599 (D.D.C. 1996), the court observed that "'control' is not determined solely by possession. Rather, the question is whether, considering all of the circumstances of the case including, of course, physical possession, the records at issue are 'subject to the free disposition of the agency.' *Goland*, 607 F.2d at 347." *Id*. at 603.

The 1996 *Tax Analysts* case (the District Court decision) involved a request to access JURIS, which was an electronic legal system created and maintained by the Department of Justice ("DOJ") and was described as an electronic depository of federal cases, regulations, and digest material. At the time of the request, DOJ had contracted with West Publishing Company to provide 80% of the information in JURIS. As the contract provided significant restrictions on the use of the information, the court found that DOJ lacked control of the data.

> It is those licensing provisions which convinces the Court that DOJ did not 'control' the database to the extent required to make it an 'agency record' under governing law. Under the terms of the contract, the West-provided data could not be (1) used outside the JURIS system; (2) used by anyone other than authorized JURIS users; (3) transferred or assigned; (4) stored, reproduced, transmitted or transferred for consideration; (5) distributed by JURIS users without obtaining a written agreement from the transferee not to further disseminate it; and (6) used in any way once the contract was terminated.
>
> Thus, although DOJ certainly possessed the West-provided data, its right to use, transfer and/or dispose it was greatly restricted, and thus DOJ did not 'control' the data in any common sense reading of that word. Surely, the data was not 'subject to the free disposition' of DOJ. *Goland*, 607 F.2d at 347.

Id. at 607.

In *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136 (1989), the Supreme Court held that DOJ was required to produce copies of opinions in District Court tax cases that it received in the course of litigating tax cases on behalf of the federal government. However, in that case, DOJ had unrestricted control of the decisions which it received as a party litigant from the District Courts.

In *Gilmore v. United States DOE*, 4 F. Supp. 2d 912, 915-916 (N.D. Cal. 1998), the requester sought a copy of CLERVER, video conferencing software that allows people in different geographical locations to simultaneously collaborate on complex technical drawings and schematics using their desktop computers, as well as related documentation for the computer program. The federal government did not own CLERVER, but had a nonexclusive license to use it for government purposes. Noting that the *Tax Analysts v. United States DOJ*, 913 F. Supp. 599 (D.D.C. 1996), "has found that the government does not control a record for FOIA purposes if it does not have unrestricted use of it," *Id*. at 918, the court upheld the denial of the request in its entirety based on the reasoning of the court in that case. "As DOE's right to use CLERVER is similarly restricted, the Court finds that DOE lacks sufficient control over CLERVER to make it an agency record of DOE." *Id*. at 918-919. The *Gilmore* court also found that even if the software was deemed to be an agency record, it would still have been exempt from disclosure based on the exemption for trade secrets and commercial or financial information.

> There can be no doubt that disclosure of CLERVER to Gilmore so that he can distribute CLERVER on the Internet will cause substantial commercial harm . . . If the technology is freely available on the Internet, there is no reason for anyone to license CLERVER from Sandia, and the value of Sandia's copyright effectively will have been reduced to zero.

Id. at 922-923.

In the case of the Appeal, DCPS states that the District government does not own EasyIEP, but that the District government, through OSSE, has a license to use the program. DCPS has not provided any details on the conditions of the license or a description of the function of the program. However, it is clear that EasyIEP is proprietary software and that the rights of its owner, as well as the obligations and liabilities of the District government, may be affected by this decision. Therefore, we take administrative notice of information in the public domain.

EasyIEP is owned by Public Consulting Group, Inc. ("PCG"), which describes itself as "a management consulting firm that primarily serves public sector education, health, human services, and other state, county, and municipal government clients."[2] PCG describes EasyIEP as a "web-based" program which is "an innovative tool for creating and managing Individualized Education Plans (IEPs) and special education information."[3]

The EasyIEP user guide which was provided to Appellant appears to have been prepared by OSSE. As PCG provides EasyIEP for the use of other governments, we consulted the End User Manual prepared by PCG and posted by Broward County, Florida.[4] The End User Manual states the terms of a User License Agreement which is presented, and which must be accepted by each user, upon login. Among its provisions, it states:

> Public Consulting Group, Inc. ("PCG") grants this limited license to the School System and its authorized employees (as assigned user accounts by the School System's Director of Special Education), use of the software (the "Licensed Product") only on the terms and conditions specifically set out in this license agreement.

Among the other provisions, it also states:

> No part of the Licensed Product is to be transferred for use in another computer, printed and distributed, or otherwise copied except for the express purpose of managing and executing the School Systems Individual Education Program (IEP).

The foregoing provisions are typical of licensing provisions used in software. As there appears to be no reason why PCG would change the conditions for OSSE, we presume that these provisions are contained in the license agreement which binds the District government.

In this case, we note that Appellant does not seek the computer program itself, but the screen shots. However, for the purposes of the Appeal, this is not material. The applicable license provisions make it clear that there are significant restrictions placed on the use of EasyIEP by the District government. Indeed, as "[n]o part of the Licensed Product is to be transferred . . . printed and distributed, or otherwise copied except for the express purpose of" the education activities of the District government, the license provisions prohibit the production of the records which Appellant seeks. We find that DCPS does not have control of the requested records as

[2] http://www.publicconsultinggroup.com/about/index.html.
[3] http://www.publicconsultinggroup.com/education/products/easyiep.
[4] http://www.broward.k12.fl.us/studentsupport/ese/PDF/easyiepman.pdf.

required by DC FOIA and, accordingly, such requested records are not public records which are required to be furnished to Appellant.

Appellant argues that *Cleary, Gottlieb, Steen & Hamilton v. Department of Health & Human Servs.*, 844 F. Supp. 770 (D.D.C. 1993), is controlling precedent for the proposition that the requested records are agency records. In *Cleary*, the requester sought, among other records, a computer program created by the agency in conjunction with a study, and its underlying data, which was also sought. While Appellant excerpts phrases from the relevant portion of the opinion, those phrases appear in the following full sentences which are as follows:

> Unlike generic word processing or prefabricated software, Dr. Philen's programs are uniquely suited to its underlying database. As a consequence of this tailoring, the software's design and ability to manipulate the data reflect the Philen Study. These programs preserve information and 'perpetuate knowledge' that are responsive to plaintiff's FOIA request because of their relation to the Philen Study.

Id. at 782. In *Cleary*, the computer program was created by the agency, so that no legal restrictions attached to its use or distribution, and, unlike EasyIEP, it was designed specifically to be used as part of the study which was an agency record. In finding that the computer program was an agency record, the court specifically distinguishes such program from "generic word processing or prefabricated software." *Id*. In the case of the Appeal, EasyIEP is prefabricated software. Thus, *Cleary* supports our conclusion that EasyIEP is not a public record under DC FOIA.

In *Cleary*, notwithstanding the finding that it was found to be an agency record, the computer program was found to be exempt from disclosure based upon the deliberative process privilege. While the exemption from disclosure under D.C. Official Code § 2-534(a)(1) for trade secrets and commercial or financial information obtained from outside the government may apply in the case of the Appeal, in light of our finding that EasyIEP is not a public record, it is not necessary to consider the applicability of this exemption.

Conclusion

Therefore, the decision of DCPS is upheld. The Appeal is dismissed.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.
Eboni Govan, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-59

June 17, 2013

Mr. Molefi C. Nyaka

Dear Mr. Nyaka:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated June 4, 2013 (the "Appeal"). You, on behalf of the Embassy of the Kingdom of Lesotho ("Appellant"), assert that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated March 12, 2013 (the "FOIA Request").

Appellant's FOIA Request sought "a tree inspection report that was done here at 2511 Massachusetts Ave., NW 20008, dated February/March 2013." In response, by letter dated March 15, 2013, DDOT stated:

> Enclosed is one page of public records held by DDOT that is responsive to your FOIA request. This record has been redacted since portions of the documents are exempt from disclosure due to personal information disclosed therein. *D.C. Official Code § 2-534(a)(2) (2012).*

On Appeal, Appellant challenged the response to the FOIA Request, as follows:

> We accordingly request [] the official inspection report of the tree that was carried out on February 20, 2013 at the Embassy of Lesotho as well as classification on the ownership on the tree.
>
> The inspected tree is old and poses a threat to our Chancery (Embassy Building) during blowing strong winds.

After receipt of the Appeal, DDOT contacted Appellant to clarify the basis for the Appeal. As a result, it was determined that Appellant was not challenging the response to the FOIA Request, but was attempting to determine the ownership of the tree located in front of the Embassy. Consequently, by email dated June 12, 2013, Appellant withdrew the Appeal. Based upon the foregoing, the Appeal is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-61

July 1, 2013

Mary Nell Clark, Esq.

Dear Ms. Clark:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated June 18, 2013 (the "Appeal"). You, on behalf of University Legal Services ("Appellant"), assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated November 26, 2012 (the "FOIA Request) by denying, in part, and failing to respond, in part, to the FOIA Request.

Appellant's FOIA Request, in eight parts, sought records relating to compliance by DCPS with the Individuals with Disabilities Education Act and the provision of secondary transition services to DCPS students with Individualized Education Programs. The first two parts of the FOIA Request sought "records or documents containing:

> (1) The data that DCPS collected and provided to OSSE to report on Indicator 13 in the 2009-10, 2010-11, 2011-12, and 2012-13 academic years, broken down to the extent possible by each DCPS high school or educational setting;
>
> (2) The data that DCPS collected and provided to OSSE [to] report on Indicator 14 in the 2009-10, 2010-11, 2011-12, and 2012-13 academic years, broken down to the extent possible by each DCPS high school or educational setting;

DCPS acknowledged the FOIA Request on November 18, 2013. By email dated March 12, 2013, as part of its response to a request by Appellant to determine the status of the FOIA Request, DCPS stated:

> Requests numbered (1) and (2) do not request specific documents. Please review request number[ed] (1) and (2) and name the specific documents you want to receive. FOIA is available to provide documents and not answers to questions.

On May 6, 2013, Appellant stated, in pertinent part: "If you've provided information to OSSE, it must be in some format. We will take the information in whatever format you provided to OSSE." When no further response from DCPS was received, Appellant initiated the Appeal.

On Appeal, in addition to maintaining that the failure of DCPS to provide a final response to the FOIA Request is a deemed denial of the FOIA Request, Appellant maintains that the DCPS

position with respect to the first two parts of the FOIA Request is incorrect. Appellant argues that "FOIA does not apply only to specific physical documents" and, quoting D.C. Official Code § 2-502(18), that public records include documentary materials regardless of physical form or characteristics, including information stored in an electronic format. Moreover, citing judicial authority, Appellant argues that

> courts have held that entire databases and computer files of agency information are subject to disclosure under FOIA. [footnote omitted].
>
> If the information listed by ULS in numbers (1) and (2) of its FOIA request was collected and reported to OSSE--as is required by law--the data must exist in some format, even if only in a database or as raw data in a computer file.

Subsequent to the filing of the Appeal, DCPS and Appellant engaged in further discussion of the matter and, pursuant to such discussion, DCPS furnished to Appellant the records requested in the FOIA Request. As Appellant has stated, by letter dated June 28, 2013, that the matter has been settled, the Appeal is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-64

July 18, 2013

Ms. Felicia Chambers

Dear Ms. Chambers:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated July 1, 2013 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA dated February 12, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought the real estate assessment for a specified real property for the following time periods:

1. June 1978.

2. April 1983.

3. October 1993.

4. June 2010.

In response, by email dated May 31, 2013, OCFO provided the real estate tax assessment for the 1993 and 2010 real estate tax years, but stated that it did not have the real estate tax assessments for the 1978 or 1993 real estate tax years. OCFO stated that it was their understanding that "the information can be obtained from the main branch of the D.C. Public Library's Special Collection 'Washingtoniana Collection'."

On Appeal, Appellant challenges the response of OCFO because Appellant believes that OCFO possesses the information. Appellant states that a named OCFO "tax assessor" (working in the Office of Tax and Revenue, a division of OCFO) told her that the agency "possessed those assessments in microfiche format, but that it would be inconvenient for OTR to retrieve the information."

In response, dated July 17, 2013, OCFO reaffirmed its position. It states the "[Tax Year] 1978 and [Tax Year]1983 assessment data does not exist at OTR and thus cannot be provided." It

further states that, according to its records retention schedule, the relevant portion of which it provided, the "annual assessment and tax rolls need only be retained within the agency for 4 years, and then are to be transferred to the Federal Records Center."

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The factual circumstances present the same issue as we addressed in Freedom of Information Act Appeal 2013-04, in which OCFO, and its constituent division, OTR, was the agency. In that decision, we set forth the basic principles regarding the duty to search as follows:

> D.C. Official Code § 2-532(c) states:
>
> > A public body, upon request reasonably describing any public record, shall within 15 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.
>
> In response to a request under DC FOIA, an agency is required to conduct a search reasonably calculated to produce the relevant documents, *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983), and notify the requester that it will furnish the requested records or deny access to such requested records. The obligation to produce records may be satisfied by providing instructions as to accessing the materials on a website or in a public reading room or equivalent.[1]

[1] It has been held that an agency was not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). *See also Crews v. Commissioner*, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for

In Freedom of Information Act Appeal 2013-04, as in this case, OCFO argued that the retention period for the requested records, there tax years 1985 and 1999, had expired and it did not maintain the records on its premises. In pertinent part, we stated:

> [R]ecords sent to archives remain in the control of the transferring agency. *See* DCMR §§ 1-1500.6, 1-1518. 1. Here, if the requested records are in the archives, the agency FOIA Officer. . . must contact its employees and cause the search to be made.

In the case of the Appeal, as in Freedom of Information Act Appeal 2013-04, records transferred to archives are in control of the transferor agency, OCFO, notwithstanding the fact that such records are stored offsite. The records retention schedule furnished by OCFO states that the "annual assessment and tax rolls after 1960" are to be retained for 96 years after the transfer to the archives.[2] Thus, such records should be available after a search.

Conclusion

Therefore, the decision of OCFO is reversed and remanded. OCFO shall conduct a search for the withheld records and provide such records to Appellant.

If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Robert McKeon, Esq.
Angela Washington, Esq.
Charles Barbera, Esq.

documents that are publicly available either in the agency's reading room or on the Internet).

[2] It should be noted that the District leases storage space at the Federal Records Center for archival purposes.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-66

July 22, 2013

Ms. Jaime Ember

Dear Ms. Ember:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated June 18, 2013 (the "Appeal"). You ("Appellant") assert that the University of the District of Columbia ("UDC") improperly withheld records in response to your request for information under DC FOIA dated May 24, 2013 (the "FOIA Request) by failing to respond to the FOIA Request.

Background

Appellant's FOIA Request sought all records which UDC or its law school maintained relating to her disability, which request included email correspondence with a specified dean of the law school. UDC acknowledged the FOIA Request on June 5, 2013. By email dated June 14, 2013, UDC notified Appellant that it was exercising a 10-day extension of the time to respond to the FOIA Request due to unusual circumstances. By email dated June 28, 2013, "due to the expansive nature of the search required to find documents responsive to [the] request," UDC requested a further extension to complete its search and production. Appellant stated that she would not agree to an extension and initiated the Appeal.

On Appeal, Appellant states that UDC has failed to provide records within "the legal time limit." Appellant further states that the requested records "have already been pulled for a mediation meeting for my disability discrimination complaint" and "[t]he documents that were withheld must be disclosed under the FOIA because I am currently in the process of a disability discrimination investigation with the Department of Education--Office of Civil Rights."

In its response, by email dated July 19, 2013, UDC states:

> The University is using all available resources to respond to the request as quickly as possible. . . . The method by which the University accesses and searches emails is time intensive, taking approximately 4-6 hours for each individual mailbox to download. The University is working diligently to fulfill requests and continues to work with Ms. Ember to clarify and specify the request so that we may be responsive.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that the DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-532(c) provides that an agency shall have 15 business days to respond to a request. D.C. Official Code § 2-532(d) provides for an extension of 10 business days to respond to a request. Notwithstanding the exercise of the extension, and despite the efforts of UDC to complete the production, the records were not produced by the end of extended statutory period and have not been produced by the date of the response to the Appeal.

However, there is little relief that we can currently offer. The most that we can do is to order UDC to complete the review that it has already initiated and provide the responsive records as it has already proffered to do. Thus, we could view the Appeal as moot on this basis. Nevertheless, although the outcome will be the same, we can provide some assurances to Appellant by ordering UDC to complete the review and to provide the responsive records to Appellant.

Conclusion

Therefore, we remand this matter to UDC for disposition in accordance with this decision, without prejudice to challenge the response of UDC when made.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Stacie Mills, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-73/75

September 6, 2013

Mr. Daniel L. Lurker

Dear Mr. Lurker:

This letter responds to your administrative appeals to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 12, 2013 and August 13, 2013, which appeals have been consolidated for the purpose of this decision (collectively, the "Appeal"). You ("Appellant") assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records in response to your requests for information under DC FOIA dated June 3, 2013 (the "First FOIA Request") and July 12, 2013 (the "Second FOIA Request")(collectively, the "FOIA Requests").

Background

Appellant's First FOIA Request sought all records related to his apartment unit and all records "relating to violations involving glass doors" at his apartment complex. In response, by email dated June 5, 2013, DCRA stated that it located two responsive records, which it provided to Appellant as an attachment. When Appellant emailed DCRA requesting a clarification concerning the manner in which the search was conducted, DCRA stated that as the First FOIA Request did not specify a time period, DCRA conducted its search for a three-year period, which is its "default" search period if no time period is specified. On the same date, Appellant submitted the Second FOIA Request, which was same request as the First FOIA Request except that it specified a time period for search, i.e., beginning 1973.

On Appeal, Appellant challenges the response of DCRA as incomplete. As the records provided to Appellant, an inspection report and a notice of violation, bore the same date, Appellant contends that it seems "implausible to me that the agency only took action resulting in the creation of responsive records relating to my apartment on one day." Moreover, Appellant states that as "[t]he agency is has been in existence for many years[,], [i]t is difficult to imagine that my particular apartment was only inspected on one date—February 20, 2013, especially since the building was constructed in the 1950's." Likewise, because his building managers replaced his shower door made of untempered glass with a shower door made of tempered glass in 2012

"(untempered glass is no longer permitted under the D.C. housing code), I had a reasonable belief that other apartment units or common areas may have been cited for violations involving glass." While the first submission states that the search period is "arbitrary" and requests that DCRA be required to "search all records that it maintains[ ] since the agency was created," such request for relief is subsumed by the specific time period stated in the Second FOIA Request. Appellant states that DCRA has not responded to the Second FOIA Request.

In response, by email dated August 28, 2013, DCRA addressed both the First FOIA Request and the Second FOIA Request in the same submission. DCRA indicates that it conducted two separate searches, each in two parts. First, it searched its "Accela Database, where all records documenting inspections activity conducted by DCRA is housed." As a result of the search of the Accela database, it located and furnished two records as indicated above. Second, its Office of Civil Infractions searched its records, "including documentation of post-inspection enforcement activity," but no records were located. The first separate search was for a three-year period ending on the date of the First FOIA Request and the second separate search was for the period beginning in 1973 and ending on the date of the Second FOIA Request.

By email dated September 3, 2013, DCRA responded to an invitation to supplement the administrative record to clarify its prior response, including the manner in which the records are maintained, the manner in which the search was conducted, its Accela database, and its record retention practices. DCRA indicates as follows.

With respect to the units or divisions which maintain each category of the requested records, DCRA states: "All information relative to properties in the District of Columbia can be found within DCRA's Inspection and Compliance Division, Permits Division and DCRA's Enforcement Division . . ." With respect to records of its Inspection and Compliance Division, DCRA indicates that all of its records are maintained in its Accela database. DCRA states, in pertinent part:

> All records relative to property inspection activities, Notices of Violations on a property, Notice of Infractions on a property, photos of the property, inspections records on a property, Stop Work Orders on a Property, fines, liens and any other documentation relating to violations found on a property are uploaded, scanned and maintained in an electronic database referred to as "Accela".
>
> The Accela system tracks all inspection records from the origin of the inspection to the resolution or escalation (if needed) phase. . . .
>
> As a result, inspection records are created electronically and any physical paperwork is saved electronically in the system. Additionally, all systems that preceded the current system have had their contents migrated into the Accela system.

With respect to the other two divisions, DCRA states: "Information relative to permits issued to a property is uploaded into the Accela system by the permits staff, and information on fines, liens and other documentation is uploaded and maintained by DCRA's Enforcement unit."

With respect to the time period for which records are maintained in the Accela database, DCRA states: "The electronic records in Accela do not date back to 1973. The furthest the records go back for the property located at 4501 Connecticut Avenue, NW is October 20, 1999. All records relevant to violations are in Accela." With respect to whether records are maintained in paper form, DCRA states: "All records are maintained in the Accela." With respect to whether there is a retention schedule for paper records, DCRA states, in pertinent part:

> Per the 'Department of Consumer and Regulatory Affairs Building and Land Regulation Administration Records Retention Schedule,' which is the most current retention schedule for the agency, all enforcement and violation notice records are purged after one year (calendar year) and destroyed in-house when three (3) years old.

DCRA confirms that the main search was conducted by searching the Accela database. With respect to the search conducted by the Office of Civil Infractions, DCRA states:

> The Office of Civil Infractions has paper files and electronic files that are searched simultaneously for accuracy. Their records are kept as paper files due to the fact that their records are used in litigation cases and have to be presented in that form. The electronic file is maintained by address and the paper files are kept in house in a storage room and are retrieved as needed. Their files remain active for the life of the case and are not deemed inactive until resolved whether via litigation or fines paid voluntarily by resident.

Discussion

It is the public policy of the District of Columbia (the "District") government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n,* 560 A.2d 517, 521, n.5 (D.C. 1989).

The issue presented by Appellant in the Appeal is the adequacy of the search by DCRA. The legal principles are the same as we set forth in Freedom of Information Act Appeal 2013-17, in which Appellant was the appellant, but we will re-state them for convenience.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

An agency has the burden to establish the adequacy of its search. *See*, e.g., *Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995); Freedom of Information Act Appeal 2012-48. However, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding.

According to the descriptions provided by DCRA, the relevant records to be searched are maintained by the Inspection and Compliance Division and the Office of Civil Infractions.[1] While there are some ambiguities in its descriptions, it appears that all the onsite records of the Inspection and Compliance Division are maintained in the electronic database known as Accela and all of the onsite records of the Office of Civil Infractions are maintained its own electronic recordkeeping system and in paper form. DCRA indicates that it searched the Accela database

[1] While DCRA also refers to its "Enforcement Division" in its supplement, this appears to be the same as the Office of Civil Infractions to which it referred in its original response to the Appeal.

and, although it is not clear that its FOIA Officer verified the same, the Office of Civil Infractions searched both its electronic and paper records.

We believe that DCRA has made a good-faith search for the requested records. However, in the exchange between Appellant and DCRA clarifying the manner in which the search was conducted, on July 11, 2013, the FOIA Officer stated, in pertinent part, that "a search of records was conducted for documentation of Stop Work Orders, Notices of Infraction and Notices of Violations issued to the property." By subsequent email on the same day, the FOIA Officer clarified that the search "was done for the entire building . . ." The FOIA Requests sought all records with respect to the apartment unit, not simply stop work orders, notices of infraction and notices of violations. DCRA indicates that the records in the Accela database would include photos of the property, inspections records on a property, fines, liens and any other documentation relating to violations found on a property and not be limited to stop work orders, notices of infraction and notices of violations. This indicates that the search may have been unnecessarily limited with respect to the apartment unit. By contrast, as to the portion of the request regarding the apartment complex, because Appellant sought records regarding "violations" with respect to glass doors, a search for stop work orders, notices of infraction and notices of violations would have produced the responsive records. In addition, we note that the records provided to Appellant were an inspection report and a notice of violation. The notice of violation indicated that there was a proposed fine for failure to correct the violation. While we are not familiar with documentation which is used by DCRA for such matters, it would seem logical that there would be a subsequent record which indicates a resolution of the violation. It would seem that these records would be maintained by the Office of Civil Infractions, the enforcement division, but there are no such records. Both circumstances suggest that the search may not have been adequate. Accordingly, we are directing DCRA to make two new searches to correct any possible deficiencies in such searches. First, DCRA shall search all records in its Accela database for the apartment unit of Appellant without any limiting terms. Second, DCRA shall search the electronic and paper records of the Office of Civil Infractions for records identifying the apartment unit of Appellant.

Other than certain enforcement records maintained by the Office of Civil Infractions, DCRA states that all of its records are maintained in electronic form, residing in its Accela database, and that it does not have any paper records. In support of its lack of paper records, it states that under "'Department of Consumer and Regulatory Affairs Building and Land Regulation Administration Records Retention Schedule,' which is the most current retention schedule for the agency," it does not retain paper records for more than three years. It states that its earliest record with respect to the apartment complex of Appellant is October, 1999.

The advent of electronic recordkeeping has been fairly recent. It is obvious that in 1973, and likely for many years thereafter, DCRA records were in paper form. The fact that the earliest record with respect to the apartment complex of Appellant is October, 1999 suggests that the DCRA began maintaining its records regarding property inspection and enforcement in electronic form approximately at that time. While DCRA indicates that it does not maintain paper records for more than three years, it maintains that practice pursuant to "the most current retention schedule for the agency." Based on the record maintenance practice of other agencies,

it is likely that some portion of the paper records created prior to that date were sent to its archives which are offsite under a prior records retention schedule and, in the absence of clear evidence on the administrative record to the contrary, we must presume the same. As we stated in Freedom of Information Act Appeal 2013-04, and reaffirmed in Freedom of Information Act Appeal 2013-64:

> [R]ecords sent to archives remain in the control of the transferring agency. *See* DCMR §§ 1-1500.6, 1-1518. 1. Here, if the requested records are in the archives, the agency FOIA Officer. . . must contact its employees and cause the search to be made.

In the case of the Appeal, as in Freedom of Information Act Appeal 2013-04 and Freedom of Information Act Appeal 2013-64, records transferred to archives are in control of the transferor agency, DCRA, notwithstanding the fact that such records are stored offsite. In describing the record maintenance practices of DCRA, we used the phrase "onsite records." It appears here that DCRA only looked to onsite records and did not consider records which may be stored in the archives. Accordingly, we are ordering DCRA to search its archives for the requested records.

In our invitation to DCRA to supplement its response, we requested, for any records maintained in paper form, clarification on the manner in which the records are organized or whether there are indexes or other finding aids for such records. However, the administrative record is still silent as to manner in which the archived records are organized or indexed and it is possible that the organization of the records, the lack of findings aids, or both may make a search unduly burdensome. If, after investigation, DCRA believes that the search would truly be unduly burdensome (not merely inconvenient or more difficult than its usual searches), it may request reconsideration of our decision. Any such request should include detailed reasons why the search would be unduly burdensome under DC FOIA.

As we stated above, Appellant believes that there are additional records which have not been provided. However, Appellant should note that, despite ordering new searches, we are not expressing any opinion as to whether or not there are additional responsive records which have not been provided.

Conclusion

Therefore, the decision of DCRA is remanded for disposition as set forth above. As set forth above:

1. DCRA shall search all records in its Accela database for the apartment unit of Appellant without any limiting terms.

2. DCRA shall search the electronic and paper records of the Office of Civil Infractions for records identifying the apartment unit of Appellant.

3. DCRA shall search its archives for the requested records.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under DC FOIA to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Tania Williams

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-77

September 30, 2013

Jeffrey Light, Esq.

Dear Mr. Light:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 3, 2013 (the "Appeal"). You, on behalf of the D.C. Trans Coalition ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated July 26, 2013 (the "FOIA Request").

Appellant's FOIA Request sought "the 2013 transgender trends report and all records relating to the report." In response, by email dated August 14, 2013, MPD provided "a document entitled 'GLLU Trend Report 2013,' the underlying data, and emails regarding the document." On Appeal, Appellant challenges the response, contending that MPD failed to conduct an adequate search as "[t]he requested document is much lengthier than the one provided (it is bound and approximately one inch thick) and the cover contains MPD's logo and the title '2013 Transgender Trends Report'." In response, by letter emailed September 20, 2013, MPD states that, upon receiving the Appeal, it conducted a new search and is providing to Appellant additional responsive records which have been located. As Appellant has not indicated that the supplemental response has not satisfied the FOIA Request after having been given an opportunity to do so, we will now consider the Appeal to be moot and it is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR

Freedom of Information Act Appeal: 2013-78

September 16, 2013

Howard W. Simcox, Jr., Esq.

Dear Mr. Simcox:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 4, 2013 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated May 8, 2013 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "a copy of the audio and/or event chronology of the 911 call placed by" a specified individual regarding an alleged assault occurring on January 20, 2013. Appellant included a signed authorization by the specified individual for the release of the records. When a final response was not received, Appellant initiated the Appeal. In response, dated September 13, 2013, MPD stated that, by email on the same date, it provided the 911 call to Appellant.

Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

THE NOT-FOR-PROFIT HOSPITAL CORPORATION

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will be held at 9:00 a.m. on Thursday, June 26, 2014. The meeting will be held at 1310 Southern Avenue, SE, Washington, DC 20032, in Conference Room 2/3. Notice of a location or time change will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

AGENDA

I. CALL TO ORDER

II. DETERMINATION OF A QUORUM

III. APPROVAL OF AGENDA

IV. SWEARING-IN OF BOARD MEMBERS

1. Dr. Patrick Swygert
2. Chris Gardiner

V. CONSENT AGENDA

A. READING AND APPROVAL OF MINUTES

1. May 22, 2014 - General Board Meeting

B. EXECUTIVE REPORTS

1. Dr. Cyril Allen, Chief Medical Officer
2. Maribel Torres, VP of Nursing
3. Pamela Lee, VP of Hospital Operations
4. Jackie Johnson, VP of Human Resources
5. John Wilcox, Chief Information Officer
6. Jim Hobbs, VP of Business Development & Physician Recruitment
7. Charletta Washington, VP of Ambulatory & Ancillary Services

VI. NONCONSENT AGENDA

A. CHIEF EXECUTIVE REPORTS

1. Michael Davis, CFO
2. David Small, CEO

B. MEDICAL STAFF REPORT

1. Dr. Gilbert Daniel, Chief of Staff

C. COMMITTEE REPORTS

1. Governance Committee Report
2. Patient Safety & Quality Committee Report
3. Finance Committee Report
4. CEO Search Committee

D. OTHER BUSINESS

1. Old Business
2. New Business

E. ANNOUNCEMENT

1. The next Governing Board Meeting will be held at 9:00am, Thursday, July 24, 2014.

F. ADJOURNMENT

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss contracts, settlements, collective bargaining agreements, personnel, discipline, and investigations of alleged criminal or civil misconduct. D.C. Official Code §§2-575(b)(2)(4A)(5),(9),(10),(14).

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Metropolitan Police Department,	
Petitioner,	PERB Case No. 14-A-03
v.	Opinion No. 1458
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner District of Columbia Metropolitan Police Department ("Petitioner" or "MPD") filed the above-captioned Arbitration Review Request ("Request"), seeking review of Arbitrator Michael Murphy's Arbitration Award ("Award"). Petitioner asserts that the Arbitrator was without authority or exceeded his jurisdiction in granting an Award which reversed Grievant Andre Powell's termination and reinstated him with full back pay. (Request at 6).

Respondent Fraternal Order of Police/Metropolitan Police Department Labor Committee filed an Opposition to the Arbitration Review Request ("Opposition"), denying the Petitioner's allegations and contending that MPD failed to state a ground upon which the Board may modify the Award. (Opposition at 3). The Request and Opposition are now before the Board for disposition.

II. Discussion

A. Award

a. Findings of fact

The Arbitrator found that the material facts in this matter were not in dispute. (Award at 1). The Arbitrator found that in September 2004, the Grievant challenged a speeding ticket received in the DC area by claiming that he had been on official police business at the time he received the ticket and producing an MPD daily activity form to corroborate his claim. *Id.* When it was discovered that the Grievant had lied about being on official police business at the time of the speeding ticket, he was issued a Notice of Intent to Remove. *Id.* The Grievant agreed to a settlement providing for a 45-day suspension without pay in lieu of termination, but this agreement was set aside by the Assistant Chief of Police, and the Grievant was notified that he would be terminated effective February 4, 2005. *Id.*

The termination advanced to arbitration, and on January 9, 2006, an arbitrator ordered the Grievant reinstated with back pay for the reason that MPD had violated the so-called "55-day Rule." (Award at 2). MPD appealed the arbitrator's ruling to PERB, which ruled against MPD on April 20, 2007. (Award at 3; Slip Op. No. 1348).

Prior to the Board's decision, the Grievant was stopped for speeding in Georgia on February 5, 2007. (Award at 3). During the stop, the Grievant mentioned his police background to the Georgia officer in the hopes that he would not be issued a speeding ticket. *Id.* The Grievant was "obviously a bit put out that no break was forthcoming. In so many words he suggested that if the situation were reversed, the least he, as a DC officer, would do is call Georgia to clarify the situation." *Id.* This interaction and the Grievant's Georgia driver's license caused the Georgia officer to check with the MPD, who informed him that the Grievant was not currently an active MPD officer. *Id.* The Grievant was subsequently arrested in Georgia for the crime of impersonating a police officer. *Id.*

Despite the Board's April 20, 2007, ruling upholding the Grievant's reinstatement to MPD, the Grievant was not reinstated until after he filed an enforcement petition in October 2007. (Award at 4). MPD then notified the Grievant that he would be reinstated effective March 3, 2008. *Id.* As a part of the reinstatement process, the Grievant disclosed his Georgia arrest for impersonating a police officer. *Id.* The Grievant was placed on administrative leave with pay while the Georgia arrest was under review. *Id.* On April 1, 2008, the Georgia authorities dismissed their case against the Grievant. *Id.* On June 2, 2008, the Grievant receive a Notice of Proposed Adverse Action from MPD. (Award at 5). The charges in the Notice of Proposed Adverse Action were sustained following an MPD Trial Board hearing, and the Trial Board recommended his removal. *Id.* On October 22, 2008, the Grievant's appeal of the Trial Board's recommendation was denied by the Chief of Police, and the matter proceeded to arbitration. *Id.* Instead of holding a hearing, the Arbitrator reviewed arbitration briefs, the record of the Trial Board hearing, and other exhibits provided by the parties. *Id.*

b. Analysis

The Arbitrator was asked to determine whether the Grievant was terminated for cause, and if not, what the appropriate remedy should be. (Award at 5). The Arbitrator noted that "[c]omponent parts of this question" included: (1) Whether sufficient evidence existed to support the alleged charges; (2) Whether MPD's conduct violated due process; and (3) Whether termination was an appropriate remedy. *Id.* The charges against the Grievant were:

> Charge No. 1: Violation of General Order Series 120, Number 21, part A-7 which provides:
> "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction." This misconduct is further defined as cause in the District Personnel Manual, Chapter 16, § 1603.4.
>
> Specification No. 1:
>
> In that on March 1, 2007, you were arrested for Impersonating an Officer by Newton County, Georgia Sheriff's Office, in violation of Georgia Code 16-10-23.
>
> Charge No. 2: Violation of General Order Series 120.21, Attachment A Part A-25, which reads:
> "Any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."
>
> Specification No. 1:
>
> In that on February 5, 2007, you were stopped by a sworn law enforcement officer of the Newton County, Georgia Sheriff's Office for traffic offenses. At that time you identified yourself as a sworn law enforcement officer.

(Award at 6). The Arbitrator determined that the case resolved around whether substantial evidence existed to sustain either of the two charges against the Grievant, and concluded that MPD had not met its burden of proof on either charge. (Award at 12).

After reviewing the videotape of the Grievant's traffic stop, the Arbitrator noted that the Grievant initially mentioned an affiliation with MPD, then went to state (with some indistinguishable pauses):

> [Grievant]: It's not admin leave...I am not actually...I am waiting to get called back to work.
> Georgia officer: Waiting to get called back to work?
> [Grievant]: I had some problems on that department.

(Award at 13). The Arbitrator noted that the Grievant's "initial response, when asked to identify himself, had been to associate himself with being a DC officer, and this is not surprising. Professional courtesy to fellow police officers is a well-known fact of life. While an officer can always write a ticket, they also have the discretion to give warnings. So before they make up their mind, you are probably inclined to offer any mitigating comments you can muster." *Id.*

Based upon his review of the videotape, the Arbitrator concluded that the Grievant's statements, taken as a whole, were not meant to mislead the Georgia officer into believing that the Grievant had a DC police affiliation that did not exist. (Award at 13). The Arbitrator notes that "[t]o be fair," the Grievant was not called back to work until a year after the Georgia traffic stop, but that the Grievant had "clearly indicated that he was waiting to be called back to work." (Award at 14). Additionally, the status quo at the time of the Georgia traffic stop was a ruling from the January 2006 arbitration that the Grievant should be returned to work. *Id.*

Further, the Arbitrator concluded that the Grievant's Georgia arrest did not meet the circumstances that the "catch-all" language of Charge 1 ("deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction") because his actions were not "conduct one could deem to be a crime by anything remotely approaching a preponderance of the evidence." (Award at 17). Specifically, the Arbitrator stated that "[h]oping to catch a break, by mentioning an affiliation with the DC police, does not come close to constituting criminal behavior in the context of what occurred," because the Grievant "quickly indicated he was not currently working on the DC police force but was waiting to be called back to work following some problems he had encountered," and also because the Grievant handed the Georgia officer a Georgia driver's license, "which would suggest to any reasonable person that he was spending a lot of time in Georgia." *Id.*

Regarding the second charge, that of conduct unbecoming an MPD officer, the Arbitrator relied on his finding in Charge No. 1 that the Grievant had not engaged in criminal conduct, and that the burden then fell to MPD to establish by a preponderance of the evidence that the Grievant's non-criminal conduct "is sufficiently reprehensible so as to tarnish the image of the police force." (Award at 19). The Arbitrator went on to say that he "simply cannot find that mentioning a police affiliation in hopes of perhaps avoiding a speeding ticket is an activity which is so inappropriate, that it rises to the level of conduct unbecoming an officer." *Id.*

The Arbitrator dismissed MPD's reliance on the Trial Board's findings and its argument that the Trial Board's conclusions were based on credibility determinations, which provided substantial evidence to support the charge of conduct unbecoming an officer. *Id.* Stating that "[w]hile reliance on credibility determinations are certainly to be given due deference," the Arbitrator stated that his position in the instant case was unique because the videotape allowed the Arbitrator the ability to make his own credibility determinations regarding the Grievant's

actions and comments during the Georgia traffic stop. (Award at 20). Thus, the Arbitrator stated that his "independent analysis of the traffic stop itself is also an important component of the determinations set forth" in his Award. *Id.* The Arbitrator further contends that arbitrators are not a "rubber stamp" for Trial Board credibility conclusions, and that the Trial Board's credibility findings lack substantial evidence. *Id.* The Arbitrator concluded that "[t]he Georgia authorities did not find any criminal conduct, the [A]rbitrator did not find any evidence of criminal conduct, and the non-criminal conduct of the [G]rievant does not by a preponderance of the evidence establish conduct unbecoming an officer or likely to besmirch the reputation of the force." *Id.*

After overturning the Trial Board's findings, the Arbitrator ordered the Grievant to be reinstated with full back pay and benefits, without any loss of seniority. (Award at 21).

B. MPD's Position on Appeal

MPD asserts that the Award exceeded the Arbitrator's authority because the Arbitrator disregarded the proper appellate standard of review. (Request at 6-7). Specifically, MPD contends that the Arbitrator examined the evidence on a *de novo* basis, improperly weighed the Trial Board's determination of the evidence against his own factual determinations, and erroneously rejected the Trial Board's credibility findings. (Request at 7).

In its Request, MPD includes a more detailed description of the Georgia traffic stop than is provided by the Arbitrator in the Award. MPD states:

> On February 5, 2007, Grievant was stopped by Sergeant Randy Downs in Newton County, Georgia, for speeding. Sergeant Downs approached Grievant, explained the reason for the stop and asked for identification. When questioned whether he lived in Georgia, Grievant replied that he had just bought a house in Georgia, but he was still living in DC. He then explicitly stated "I am a...DC officer...DC officer up there." Sergeant Downs asked for additional information, but Grievant replied that he did not have any. Sergeant Downs inquired where Grievant was employed because he did not believe that Grievant was a DC officer since he had a Georgia driver's license. Grievant stated that he was currently with the DC Police Department, but he was waiting to be called back to work because he had some problems in the department. As Grievant was signing the citation, he retorted "no courtesy down here in Georgia, huh? You come up to police week in DC anytime?" Sergeant Downs responded in the negative and Grievant replied "well, that's probably why." Sergeant Downs then remarked that Grievant did not have any identification that would prove he was a police officer. In response, Grievant argued that he would have attempted to verify Downs' place of employment had he pulled Downs over instead. Sergeant Downs

> reiterated that the citation did not mean Grievant was guilty of speeding and sent him on his way.

(Request at 3-4; internal citations to Trial Board R. omitted).

First, MPD contends that as an appellate tribunal, the Arbitrator was limited to determining whether there was substantial evidence in the record such that a reasonable person would have come to the same conclusion as the Trial Board. (Request at 7). Instead, the Arbitrator reviewed the Trial Board record *de novo* and rejected the Trial Board's decision because, based upon the Arbitrator's own review of the videotape, he believed that the Grievant's explanation regarding his status with MPD was ambiguous. (Request at 7-8).

MPD states that the Trial Board found that the Grievant identified himself as a DC police officer and asked for courtesy, and notes that it was uncontested that the Board did not issue its Decision and Order regarding the Grievant's first termination until more than two months after the traffic stop. (Request at 8; citing Trial Board R. at 35; 373-4). MPD contends that the Grievant's employment status with MPD was still in legal dispute at the time of the traffic stop, and that the Grievant admitted at the Trial Board hearing that he knew he was not employed with MPD at the time of the stop. (Request at 8; citing Trial Board R. at 201, 374). MPD asserts that "[b]ased upon the evidence and Grievant's own admission, the [Trial Board] found that Grievant falsely represented himself as a police officer when he stated 'I am a DC officer,'" and that the Trial Board's decision is thus based on substantial evidence in the record. (Request at 8).

Second, MPD alleges that even if there are alternative interpretations of the Grievant's traffic stop, the "mere fact that there may be substantial evidence to support a contrary conclusion reached by the tribunal does not establish that the tribunal's findings of fact were inadequate or erroneous." (Request at 9). MPD states that the Arbitrator reversed the Trial Board's decision because he disagreed with its conclusion regarding the Grievant's statements to the Georgia officer, "[d]espite conceding that the audio-video tape was less than clear" and that he had to review the tape multiple times to distinguish the conversation . *Id.* MPD asserts that a reviewing court is not entitled to reverse a decision simply because it is convinced it would have weighed the evidence differently had it been sitting as the trier of fact. *Id*; citing *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-4 (1985).

MPD notes that unlike the Arbitrator, the Trial Board gave more weight to the Grievant's initial statement of "I'm a D.C. officer" than his later explanation. (Request at 10). The Trial Board found that:

> The February 5, 2007, traffic stop...captures [Grievant] state to Sergeant Downs that he was a DC police officer. [Grievant] later stated he was on "admin" leave. After asking for some credentials that would identify [Grievant] as a police officer, [Grievant] stated that it was in his other car.

> [Grievant] did not take full responsibility for his actions as was evidenced by his testimony before the [Trial Board]. [Grievant] stated during testimony that he told Sergeant Downs that he was not on the Department. However, the video clearly shows [Grievant] identifying himself as a DC police officer. [Grievant] testified before the [Trial Board] that he told Sergeant Downs he was not on the Department. That statement was not captured on the police video.

(Request at 10; citing Trial Board R. at 374). MPD states that while the Arbitrator may have disagreed with the Trial Board regarding the weight of the Grievant's explanations, the Trial Board's decision "cannot be clearly erroneous when it is undisputed that Grievant explicitly stated that he was a police officer." (Request at 10). Further, MPD argues that the Grievant's subsequent comments that his police credentials were in his other car, as well as his statement that he would have attempted to verify the Georgia officer's place of employment had he pulled over the Georgia officer, clearly indicate the Grievant's intent to convey that he was currently an MPD officer at the time of the traffic stop. *Id.*

Finally, MPD contends that the Arbitrator improperly rejected the Trial Board's credibility determinations regarding the Grievant's testimony that he was trying to represent himself as "merely affiliated" with MPD. (Request at 10-11). MPD states that the Trial Board found that the videotape did not capture such a statement, and thus determined that the Grievant was not credible when he testified at the Trial Board hearing regarding his intentions during the traffic stop. (Request at 11). MPD notes that the D.C. Court of Appeals has "long emphasized the importance of credibility evaluations by the individual who sees the witness 'first-hand.'" *Id*; citing *Stevens Chevrolet, Inc. v. Comm'n on Human Rights*, 498 A.2d 546, 549-50 (D.C. 1985). MPD asserts that the Trial Board had the opportunity to hear the Grievant's testimony and cross-examine him during the hearing, and that an appellate tribunal must therefore defer to the Trial Board's determination based upon first-hand observations instead of disregarding those determinations because the Arbitrator was "in the unique position" of being able to review a videotape of the traffic stop. (Request at 11).

C. FOP's Position on Appeal

In its Opposition, FOP first argues that the Arbitrator's review of the Trial Board record was proper, and that the Award complies with the authority granted to him by the language of the parties' collective bargaining agreement ("CBA"). (Opposition at 3-4). FOP states that an arbitrator's contractual authority may be found in Article 19 E, Section 5 Number 4 of the parties' CBA:

> The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration.

(Opposition at 3). FOP also cites Article 12, Section 1, Subpart (b), which states: "Discipline may be imposed only for cause as authorized in D.C. Official Code § 1-616.51." *Id.* Based upon these CBA provisions, FOP argues that the Arbitrator was required to determine whether the Grievant had been disciplined for cause, and that "MPD's real complaint is that it is displeased with the result that was reached by Arbitrator Murphy after he engaged in the just 'cause' analysis." (Opposition at 4). FOP contends that mere disagreement with an arbitrator's ruling is not a basis upon which the Board may set aside an arbitration award. *Id.*

FOP concedes that MPD correctly identified the substantial evidence standard as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Opposition at 4-5). However, FOP states that MPD failed to include that the D.C. Court of Appeals "has held that evidence is not substantial if it is so 'highly questionable in the light of common experience and knowledge' that it [is] unworthy of belief.'" (Opposition at 5; citing *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1160 (1989). FOP asserts that the Arbitrator properly identified the "highly questionable" nature of the Trial Board's guilty findings, and thus his decision to overturn the Trial Board's conclusion was proper[1]. (Opposition at 5). FOP notes that the Arbitrator identified "several highly questionable actions" by the Trial Board, which established that the Trial Board's decision was not supported by substantial evidence, specifically failing to take the Grievant's entire conversation in context, illogically concluding that the Grievant attempted to state he was an active DC police officer when he gave the Georgia officer a Georgia driver's license, and failing to take into account MPD's animus against the Grievant stemming from the previous arbitration decision. (Opposition at 6).

Next, FOP contends that the Arbitrator's application of the record evidence is consistent with law. (Opposition at 6-7). Specifically, FOP states that the essence of MPD's Request is a challenge to the Arbitrator's evaluation of whether substantial evidence existed to sustain the Trial Board's decision, and reiterates that this is not a proper challenge to the Arbitrator's authority. (Opposition at 6). FOP notes that the parties bargained for the Arbitrator's analysis when they negotiated Article 19 of their CBA, and that the Arbitrator's analysis and decision on substantial evidence is exactly what the CBA requires. (Opposition at 7).

FOP discounts MPD's reliance on *Anderson*, arguing that while *Anderson* stands for the proposition that "where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous," in the instant case the existence of the videotape leaves only one permissible view of the evidence. (Opposition at 7-8; citing *Anderson*, 470 U.S. at 575). FOP asserts that due to bias against the Grievant, the Trial Board "ignored and manipulated the evidence in order to terminate him again from the Department," which was "highly improper and clearly erroneous as a matter of law." (Opposition at 8). FOP states that since the Arbitrator's decision "simply addresses these departmental errors," the Award is in accordance with law and should not be disturbed. *Id.*

[1] FOP contends that "[w]hile MPD only claims to file a challenge to the arbitrator's authority, its arguments read as though it is really challenging whether Arbitrator Murphy's decision violates law and public policy." (Opposition at 5, fn. 1). FOP calls this an "inappropriate and improper method in which to challenge an arbitrator's decision," and states that the Request should be dismissed. *Id.*

Finally, FOP argues that the Arbitrator's credibility assessments are proper due to the existence of the Georgia traffic stop videotape. (Opposition at 9-10). FOP asserts that MPD's Request ignores the fact that no credibility determinations are necessary because the videotape "captures exactly what was stated during the traffic stop," and substantial evidence does not support the Trial Board's credibility determinations. (Opposition at 9). FOP contends that the Award draws its essence from the parties' CBA, and that the Board may not substitute its own interpretation of the CBA for that of the Arbitrator. (Opposition at 10).

D. Analysis

a. Whether the Arbitrator was without or exceeded his jurisdiction

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) If "the arbitrator was without, or exceeded his or her jurisdiction"; (2) If "the award on its face is contrary to law and public policy"; or (3) If the award "was procured by fraud, collusion or other similar and unlawful means." D.C. Official Code § 1-605.02(6) (2001).

MPD asserts that the Arbitrator exceeded his jurisdiction by disregarding the proper appellate standard of review. (Request at 6-7). An arbitrator's authority is derived from the parties' CBA, and any applicable statutory and regulatory provisions. *D.C. Dep't of Public Works v. AFSCME, Local 2901*, 35 D.C. Reg. 8186, Slip Op. No. 194, PERB Case No. 87-A-08 (1988). To determine whether an arbitrator has exceeded his or her jurisdiction and was without authority to render an award, the Board considers "whether the Award draws its essence from the collective bargaining agreement." *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 59 D.C. Reg. 3959, Slip Op. No. 925 at p. 7, PERB Case No. 08-A-01 (2010) (quoting *D.C. Public Schools v. AFSCME, District Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987)). The Board follows the U.S. Court of Appeals for the Sixth Circuit's guidance on what it means for an award to "draw its essence" from a collective bargaining agreement:

> Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration? Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award? And in resolving any legal or factual disputes in the case, was the arbitrator 'arguably construing or applying the contract?' So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made 'serious,' 'improvident' or 'silly' errors in resolving the merits of the dispute.

Michigan Family Resources, Inc. v. SEIU Local 517M, 475 F.3d 746, 753 (6th Cir. 2007). As the court noted in *Michigan Family Resources*, "[t]his view of the 'arguably construing' inquiry will no doubt permit only the most egregious awards to be vacated. But it is a view that respects the parties' decision to hire their own judge to resolve their disputes, a view that respects the finality clause in most arbitration agreements...and a view whose imperfections can be remedied

by selecting [different] arbitrators." 475 F.3d at 753-4. The Board has concurred with this view, stating that by submitting a matter to arbitration, "the parties agreed to be bound by the Arbitrator's interpretation of the parties' agreement and related rules/and or regulations, as well as his evidentiary findings and conclusions upon which the decision is based." *University of the District of Columbia v. University of the District of Columbia Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).

In the instant case, the Arbitrator's authority derives from Article 19E, Section 5, Number 4 of the parties' CBA, which states: "The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented and shall confine his decision solely to the precise issue submitted for arbitration." (Opposition Attachment 1). Article 12, Section 1, Subsection (b) states: "Discipline may be imposed only for cause as authorized in D.C. Official Code § 1-616.51." *Id.* The Arbitrator arguably construed the CBA when he examined the record of this case to determine that there was no substantial evidence to sustain the Grievant's termination, and thus the Grievant was not disciplined for cause. (Award at 12, 21). The Board finds nothing in the record to suggest that fraud, a conflict of interest, or dishonesty impacted the Award or the arbitral process. The parties do not dispute that the CBA committed this grievance to arbitration, and that the Arbitrator was mutually selected to resolve the dispute. *See Michigan Family Resources,* 475 F.3d at 754.

Additionally, the Award bears the hallmarks of interpretation: the Arbitrator refers to and analyzes the parties' positions, and at no point appears to do anything other than attempt to reach a good-faith interpretation of the CBA. (Award at 15-20); *See D.C. Child and Family Services Agency v. AFSCME, District Council 20, Local 2401*, 60 D.C. Reg. 15060, Slip Op. No. 1025 at p. 6, PERB Case No. 08-A-07 (2010). The Award is not "so untethered from the [CBA] that it casts doubt on whether he was engaged in interpretation, as opposed to the implementation of his 'own brand of industrial justice.'" *Michigan Family Resources*, 475 F.3d at 754. Instead, MPD's allegations amount to a disagreement with the Arbitrator's conclusion that substantial evidence did not exist to uphold the Grievant's termination, and this does not present a statutory basis for reversing the Award. *See Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. Metropolitan Police Dep't*, 59 D.C. Reg. 9798, Slip Op. No. 1271, PERB Case No. 10-A-20 (2012).

b. Whether the Award is contrary to law and public policy

As FOP points out in its Opposition, "[w]hile MPD only claims to file a challenge to the arbitrator's authority, its arguments read as though it is really challenging whether Arbitrator Murphy's decision violates law and public policy." (Opposition at 5, fn. 1). Indeed, MPD's contentions that the Arbitrator used the wrong standard of review, improperly weighed the Trial Board's determination of the evidence against his own factual determinations, and erroneously rejected the Trial Board's credibility determinations may lend themselves to an argument that the Award "on its face is contrary to law and public policy." (Request at 7); D.C. Official Code § 1-605.02(6) (2001). In order to "effectuate the purposes and provisions of the CMPA," the Board will consider MPD's arguments under this framework as well. Board Rule 501.1.

The Board's review of an arbitration award on the basis of law and public policy is an extremely narrow exception to the rule that reviewing bodies must defer to an arbitrator's ruling. *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 60 D.C. Reg. 9201, Slip Op. No. 1390 at p. 8, PERB Case No. 12-A-07 (2013). "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy." *MPD*, Slip Op. No. 925 (quoting *American Postal Workers Union v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986)). A petitioner must demonstrate that an arbitration award compels the violation of an explicit, well-defined public policy grounded in law or legal precedent. *See United Paperworkers Int'l Union v. Misco*, 484 U.S. 29 (1987). Moreover, the violation must be so significant that the law or public policy "mandates that the Arbitrator arrive at a different result." *Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000). Further, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Id.*

First, MPD asserts that the Arbitrator examined the evidence on a *de novo* basis, instead of limiting himself to "determining whether there was substantial evidence in the record such that a reasonable person would have come to the same conclusion as the [Trial Board]." (Request at 7). In support of this contention, MPD cites to *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985). The Board finds *Stokes* inapplicable to the instant case. In *Stokes*, the D.C. Office of Employee Appeals ("OEA") reinstated an employee who had been terminated by the D.C. Dep't of Corrections. The OEA's decision was appealed to the D.C. Superior Court, who reversed the OEA's decision, and the reversal was upheld by the D.C. Court of Appeals. *Stokes*, 502 A.2d at 1007. In *Stokes*, the D.C. Court of Appeals held that while the CMPA does not define the standards by which the OEA is to review final agency decisions, "it is self-evident from both the statute and its legislative history that the OEA is not to substitute its judgment for that of the agency." 502 A.2d at 1010. As an initial matter, the OEA is a separate and independent agency from the Public Employee Relations Board, with different statutory authority[2]. *See D.C. Office of the Chief Financial Officer v. AFSCME District Council 20, Local 2776*, 60 D.C. Reg. 7218, Slip Op. No. 1386 at p. 4, PERB Case No. 12-A-06 (2013). Further, in *Stokes*, the termination decision was made by the employer and appealed to the OEA; in the instant case, the termination decision was made by the employer and appealed to an arbitrator through the parties' negotiated grievance procedure. *Stokes*, 502 A.2d at 1007; Award at 5. Thus, *Stokes* does not mandate that the Arbitrator arrive at a different result, nor has MPD articulated an explicit, well-defined policy grounded in law and legal precedent requiring the Board to modify or reverse the Award. *See MPD*, Slip Op. no. 633 at p. 2.

On a related note, MPD also contends that during his *de novo* review of the evidence, the Arbitrator improperly reversed the Trial Board's decision because he disagreed with the Trial Board's conclusion regarding the Grievant's statements to the Georgia officer. (Request at 9). FOP calls this argument "nothing more than a mere disagreement with the Arbitrator's decision." (Opposition at 7). While MPD cites to *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564,

[2] For example, the OEA is empowered to review final agency decisions affecting, *inter alia*, performance ratings, adverse actions, and employee grievance. *See* D.C. Official Code §§ 1-606.1, 1-606.3 (2011).

574 (1985) for its proposition that "[w]here there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous," FOP contends that "[g]iven that there is a complete videotape of the affected traffic stop...we are in the unique position to be able to see that there really is only one permissible view of the evidence." (Request at 9; Opposition at 7-8).

Anderson is clearly distinguishable from the instant case, primarily because the Trial Board is not a trial court, and the Arbitrator is not an appellate court. In *Anderson*, the U.S. Supreme Court discussed the general principles governing the exercise of an appellate court's power to overturn findings of a district court under the "clearly erroneous" standard set forth in Federal Rule of Civil Procedure 52(a). 470 U.S. at 573. As the Court noted:

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that if it had been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.

Id. at 573-4 (internal citations omitted). Federal Rule of Civil Procedure 52(a) does not apply to Trial Board or arbitration proceedings under the parties' CBA, which states that "[t]he hearing on the grievance or appeal shall be informal." Article 19E, Section 5, Number 3; Opposition Attachment 1. Further, the parties' CBA specifically states that in cases where a Trial Board hearing has been held and the matter advanced to arbitration through the negotiated grievance procedure, "the appellate tribunal has the authority to review the evidentiary ruling of the Departmental Hearing Panel." Article 12, Section 8; Opposition Attachment 1. MPD has cited no law or public policy supporting its contention that an arbitration hearing is equivalent to a judicial court of appeal. MPD disagrees with the Arbitrator's evidentiary conclusions, and the Board will not modify or amend the Award based upon this disagreement. *See MPD*, Slip Op. no. 633 at p. 2.

Finally, MPD asserts that the Arbitrator improperly rejected the Trial Board's credibility determinations after reviewing the traffic stop videotape. (Request at 11). In support of this contention, MPD cites to *Stevens Chevrolet, Inc. v. Commission on Human Rights*, 498 A.2d 546, 549 (D.C. 1985), in which the D.C. Court of Appeals discussed the importance of credibility determinations made by a first-hand witness to the testimony. (Request at 9-10). However, the fact remains that the Trial Board and arbitration process are part of the negotiated grievance procedure in the parties' CBA, and is not directly comparable to the judicial or administrative adjudication system. MPD's analogy is too tenuous, and MPD has cited no "applicable law or definite public policy that mandates that the Arbitrator arrive at a different result." *MPD*, Slip Op. No. 633 at p. 2.

MPD has failed to demonstrate that the Arbitrator exceeded his authority, or that the Award compels the violation of an explicit, well-defined public policy grounded in law or legal

precedent, which mandates that the Arbitrator arrive at a different result. *See Misco*, 484 U.S. 29; *MPD*, Slip Op. No. 633 at p. 2. Therefore, the Arbitration Review Request is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Arbitration Review Request is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

April 2, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-A-03 was transmitted via File & ServeXpress to the following parties on this the 2nd day of April, 2014.

Mr. Marc L. Wilhite, Esq.
Pressler & Senftle, PC
Three McPherson Square
927 15th St., N.W.
Twelfth Floor
Washington, DC 20005

FILE & SERVEXPRESS

Ms. Andrea Comentale, Esq.
Office of the Attorney General
441 4th St., NW
Ste. 1180 North
Washington, D.C. 20001

FILE & SERVEXPRESS

/s/ Erin E. Wilcox

Erin E. Wilcox, Esq.
Attorney-Advisor

OPTIONS PUBLIC CHARTER SCHOOL

Request for Proposals

Building Repair

SCHOOL OVERVIEW

Options Public Charter School (Options PCS) is an open-enrollment public charter school in Northeast D.C., serving students in grades 6 through 12. Options provides individualized instruction and targeted support to help all students earn the knowledge and skills they need to be successful in college and post-secondary careers.

REQUEST FOR PROPOSALS

Prospective candidates sought to complete interior and exterior repair work of an existing three-story building currently housing Options Public Charter School. Work to be completed before school opens for fall semester. For more information and Bid Documents, please contact Lam Vuong, R2L Architects, via email at lvuong@r2l-architects.com.

PAUL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Paul Public Charter School seeks bids for:

Student lockers: The work comprises supply, delivery and set-up of approximately 245 heavy duty Pennco/Vanguard Lockers. 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, July 7th to the following location:

Paul Public Charter School
ATTN: James McDowell
5800 8th St NW
Washington, DC 20011

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1116, IN THE MATTER OF THE APPLICATIONS FOR APPROVAL OF TRIENNIAL UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS PLAN

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code Sections 34-901 and 34-909 and pursuant to Section 309(a)(1) of the Electric Company Infrastructure Improvement Financing Act of 2013 ("Act") (D.C. Act 20-290, March 3, 2014) that on June 17, 2014, Potomac Electric Power Company ("Pepco") and the District of Columbia Department of Transportation ("DDOT") filed a joint Application requesting (a) authority to implement a project to underground certain electric distribution feeders in the District of Columbia, to commence with the first three years of the undergrounding project (2015-2017), and (b) approval of the Underground Project Charge to be charged by Pepco with respect to the costs it incurs for the underground project. The entire undergrounding project is expected to extend for a period of 7-10 years at a total cost of approximately $1 billion.

Pursuant to the Act, the Underground Project Charge is a non-by-passable distribution surcharge to be collected by Pepco from all customers, except low income customers served under Pepco's Residential Aid Discount Rider, at Pepco's authorized rate of return, for costs associated with the undergrounding project. Pepco has requested that the Underground Project Charge be permitted to become effective January 1, 2015, or on a later date as may be directed by the Commission in accordance with the Act.

The Underground Project Charge represents a total increase of approximately 0.6 cents per day in the first year, 1.6 cents per day in the second year, and 2.8 cents per day in the third year for a typical residential customer who uses 695 kWh per month. Over the three year period, the requested rates are designed to collect $43.5 million in total revenues. This charge represents the revenue requirement for construction and relocation costs including total plant closings and operation and maintenance costs for the initial three years of approximately $223.2 million.

The initial Underground Project Charge rates for 2015 for each Rate Schedule are as follows:

Rate Schedule	January 1, 2015	
Residential - Standard (R)	$0.00024	per kWh
Residential - All Electric (AE)	$0.00024	per kWh
Residential Time-of-Use (RTM)	$0.00070	per kWh
GS Non-Demand (GS ND)	$0.00059	per kWh
Temporary (T)	$0.00059	per kWh
GS Low Voltage (GS LV)	$0.00089	per kWh
GS Primary (GS 3A)	$0.00045	per kWh

GT – Low Voltage (GT LV)	$0.00054	per kWh
GT – Primary (GT 3A)	$0.00031	per kWh
GT - High Voltage (GT 3B)	$0.00004	per kWh
Rapid Transit (RT)	$0.00034	per kWh
Street Lighting (SL)/Traffic Signals (TS)	$0.00012	per kWh
Telecommunications Network (TN)	$0.00027	per kWh

If granted in full, the average monthly effects of the proposed rates in the first year will be:

Rate Schedule*	Average Monthly Usage kWh	Monthly Increase for Standard Offer Service Customers Total Bill** $	%
Residential - Standard (R)	695	$0.17	0.2%
Residential - All Electric (AE)	712	$0.17	0.2%
Residential Aid Discount (RAD)	574	NA	NA
Residential Aid Discount - All Electric (RAD AE)	758	NA	NA
Residential Time-of-Use (RTM)	3,813	$2.67	0.5%
GS Non-Demand (GS ND)	1,236	$0.73	0.4%
GS Low Voltage (GS LV)	9,526	$3.10	0.4%
GS Primary (GS 3A)	23,609	$8.46	0.6%
Temporary (T)	5,259	$20.97	0.6%
GT – Low Voltage (GT LV)	142,761	$77.26	0.5%
GT – Primary (GT 3A)	1,506,974	$468.91	0.4%
GT - High Voltage (GT 3B)	18,226,209	$750.18	0.0%
Rapid Transit (RT)	27,090,884	$9,210.90	0.4%
Street Lighting (SL) *** and Traffic Signals (TS) combined ***	604,133	$536.84	0.6%
Telecommunications Network (TN)	918	$0.82	0.5%
Street Lighting Maintenance (SSL OH and SSL UG) ***		NA	NA

* The effect of the proposed rates on any particular customer is dependent upon the actual usage of the customer. Increases shown are for customers with the average monthly usage.

** Standard Offer Service customers purchase their electricity from Pepco. For those customers who purchase their electricity from competitive suppliers *(i.e.*, suppliers other than Pepco), the dollar amounts and percentages in the Total Bill column are not applicable.

*** The Street Lighting and Traffic Signal increases shown refer to the total class.

The Application includes the triennial Underground Infrastructure Improvement Projects Plan (the "Triennial Plan"). The Triennial Plan identifies 21 electric distribution feeders that Pepco and DDOT propose to underground in the first three years of the project (2015-2017). Included as part of this work are an additional 8 feeders whose services will be transferred to one of the 21 feeders being undergrounded, and 16 feeders which currently share some overhead facilities with feeders that will be undergrounded, and which will be undergrounded along some portion of the shared length at the same time. In total, all or parts of 45 feeders will be undergrounded in the first three years. The feeders proposed for undergrounding are located in Wards 3, 4, 5, 7 and 8. Pepco will underground the mainline and primary lateral portions of the feeders, and will not underground the secondary portion of the feeders.

As part of the process to determine which feeders to underground, Pepco ranked every overhead feeder in the District of Columbia on a number of criteria, including the number and duration of outages and customer minutes of interruption on each feeder for the years 2010-2012 (including storm outage data). Based on this historical feeder performance data, as well as other reliability enhancement work and safety, value of service and community impact, Pepco selected the feeders identified for undergrounding in the Triennial Plan.

As further described in the Triennial Plan, DDOT will undertake the construction and other civil work necessary to place conduit underground. Pepco will install the circuits and other electric distribution system improvements needed to underground the feeders. The Triennial Plan describes the location of the feeders, the civil and electrical improvements to be made to the feeders, and the itemized feeder cost estimates.

The costs proposed to be recovered by Pepco through the Underground Project Charge are only those costs to be incurred by Pepco. The Act requires an additional application to be made for approval of a financing plan pursuant to which the District of Columbia will issue bonds to fund the cost of the work to be performed by DDOT and related costs. Those bonds will be secured by a separate surcharge to be imposed on customer electric bills. The Commission will issue a public notice following its receipt of the financing application, currently expected on or about August 1, 2014.

The Commission will hold a series of public hearings on the proposed Underground Projects Plan beginning with a hearing on **Monday, July 21 at 10:00 a.m.** in the Commission's Hearing room at 1333 H Street, NW, 7th Floor East Tower, Washington, D.C. 20005. This will be followed by community hearings to be held

between July 22 and July 31 to receive comments from residents in the affected communities. Further information regarding the dates, times, and location of the community hearings as well as all other deadlines will be announced in a future public notice later this month.

Any person desiring to intervene in the proceeding shall file a petition to intervene with the Commission no later than **August 20, 2014**. All petitions to intervene shall conform to the requirements of the Commission's Rules of Practice and Procedure as set forth in Chapter 1, Section 106 of Title 15 of the District of Columbia Municipal Regulations (15 DCMR § 106).

Any person desiring to comment on the Application, including the Triennial Plan, may file comments with the Commission no later than **September 15, 2014**.

All written comments and petitions for intervention should be sent to Ms. Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 "H" Street, NW 2nd Floor, West Tower, Washington, D.C. 20005.

The Commission has issued Order No. 17501 in this proceeding establishing an expedited discovery schedule and process. The issues to be considered by the Commission in reviewing the Application are identified in Section 310(b) of the Act.

The Application is available for viewing on the Commission's website (www.dcpsc.org.) and inspection at the Public Service Commission's Office of the Commission Secretary, 1333 "H" Street, NW, 2nd Floor – West Tower between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Application can be purchased at the Commission at a cost of $0.10 per page, actual reproduction cost. The Application may also be inspected at the following public libraries:

Ward	**Name and Address**
	Martin Luther King Jr. Memorial Library 901 G Street, NW Washington, DC 20001
Ward 1	Mount Pleasant Library 3160 16th Street, NW Washington, DC 20010
Ward 2	Southwest Library 900 Wesley Place, SW Washington, DC 20024

Ward 3	Cleveland Park Library 3310 Connecticut Avenue, NW Washington, DC 20008
Ward 4	Petworth Library 4200 Kansas Avenue, NW Washington, DC 20011
Ward 5	Woodridge Library 1790 Douglas Street, NE Washington, DC 20018
Ward 6	Southeast Library 403 7th Street, SE Washington, DC 20003
Ward 7	Capitol View Library 5001 Central Avenue, SE Washington, DC 20019
Ward 8	Washington-Highlands Library 115 Atlantic Street, SW Washington, DC 20032

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 3

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,[1] of its intent to act upon the proposed Surcharge Update of Washington Gas Light Company (WGL)[2] in not less than thirty (30) days after the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. The Rights-of-Way (ROW) Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. On May 21, 2014, pursuant to D.C. Code § 10-1141.06,[3] WGL filed a Surcharge Update to revise the ROW Reconciliation Factor.[4] In the Surcharge Update, WGL sets forth the process to be used to recover from its customers the D.C. ROW fees paid by WGL to the District of Columbia government in accordance with the following tariff page:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Section 22
3rd Revised Page 56

3. WGL's Surcharge Update shows that the ROW Current Factor is 0.0317 with the ROW Reconciliation Factor of (0.0037) for the prior period, which yields a net factor of 0.0280.[5] In addition, WGL expresses its intent to collect the surcharge beginning with the June 2014

[1] D.C. Code § 2-505 (2001) and D.C. Code § 34-802 (2001).

[2] *GT00-2, In the Matter of Washington Gas Light Company's Rights-of-Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3*, (GT00-2) Rights-of-Way Reconciliation Factor Surcharge Filing of Washington Gas Light Company (Surcharge Update), filed May 21, 2014.

[3] D.C. Code § 10-1141.06 (2001) states that, "Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

[4] *GT00-2*, Surcharge Update at 1.

[5] *Id.* at 2.

billing cycle.[6] The Company has a statutory right to implement its filed surcharges. However, if the Commission discovers any inaccuracies in the calculation of the proposed surcharge, WGL could be subject to reconciliation of the surcharges.

4. This Surcharge Update may be reviewed at the Office of the Commission Secretary, DC Public Service Commission, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday as well as on the Commission's web site at www.dcpsc.org. Copies of the tariff are available upon request, at a per-page reproduction cost.

5. Comments on the Surcharge Update must be made in writing to Brinda Westbrook-Sedgwick, at the above address. All comments must be received within thirty (30) and forty-five (45) days respectively, of the date of publication of this NOPT in the *D.C. Register*. Once the comment period has expired, the Commission will take final action on WGL's Surcharge Update.

[6] *Id.* at 1.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMEND FOR APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after August 1, 2014.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on June 27, 2014. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: August 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 2**

Alfaro	Berta I.	Wells Fargo Bank, NA 2000 L Street, NW	20036
Ali	Shareefa	The Law Offices of Khadijah R. Ali, P.C. 817 L Street, SE	20003
Allen	Natise L.	Commodity Futures Trading Commission 1155 21st Street, NW	20581
Arias	Jordana	University of the District of Columbia David A. Clarke School of Law 4200 Connecticut Avenue, NW, Building 52	20008
Atwell	Rita	Chadbourne & Parke, LLP 1200 New Hampshire Avenue, NW	20036
Banks	Bryant E.	Citibank, NA 750 9th Street, NW	20001
Barger	Mark	Bank of America 2201 C Street, NW	20520
Bridgett	Wanda M.	Ballard Spahr LLP 1909 K Street, NW, 12th Floor	20006
Briscoe	Sharita M.	Self (Dual) 5337 Astor Place, SE	20024
Brown	Thejuanie Reone	Ivan Brown Realty, Inc. 3211 Pennsylvania Avenue, SE	20020
Bujoreanu	Radu	Telecom/Telematique, Inc. 2737 Devonshire Place, NW	20008
Burke	Myra F.	Steptoe & Johnson, LLP 1330 Connecticut Avenue, NW	20036
Cain	Joan V.	Merrill Court Reporting 1325 G Street, NW	20005
Colmenares	Luis R.	Capella Washington, DC 1050 31st Street , NW	20007

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Recommended for appointment as a DC Notaries Public **Page 3**

Daley	Jane	Sidley Austin LLP 1501 K Street, NW	20005
Davis	Sarah	TechnoServe 1120 19th Street, NW, 8th Floor	20036
De Leon	Xiomara	Self 818 Tuckerman Street, NW	20011
D'Haiti	Valencia R.	Department of Justice - Environmental Enforcement Section P.O. Box 7611	20044
Duncan	Monica E.	General Electric Company 1299 Pennsylvania Avenue, NW, Suite 900W	20004
Dunning	M. Katherine	Bonner Kiernan Trebach & Crociata, LLP 1233 20th Street, NW, 8th Floor	20036
Durham	Rori Knight	New Covenant Baptist Church 1301 W Street, SE	20020
Easterling	Doreen	Environmental Law Institute 2000 L Street, NW, Suite 620	20036
Engwenyi	Keshia	Wells Fargo Bank, NA 1800 K Street, NW	20006
Evans	Chyla D.	LED Partners & Associates, LLC 5125 MacArthur Boulevard, NW, Suite 37	20016
Ferguson	Wakettia A.	BB&T 317 Pennsylvania Avenue, SE	20003
Finucane	Madelyn Downing	Lawyer's Committee for Civil Rights Under Law 1401 New York Avenue, NW, Suite 400	20005
Fullmore	Unique Pretrice	BB&T 5200 Wisconsin Avenue, NW	20015

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Furnari	Devon	Fannie Mae 3900 Wisconsin Avenue, NW	20016
Garczynski	Bree	HOK 3223 Grace Street, NW	20007
Gettings	Christine	American University 4400 Massachusetts Avenue, NW	20016
Golden	Harriett L.	Ballard Spahr LLP 1909 K Street, NW, 12th Floor	20006
Grim	Tara Reen	Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC 1615 M Street, NW, Suite 400	20036
Guerin	Matthew A.	Ethical Electric, Inc. 1055 Thomas Jefferson Street, NW, Suite 650	20007
Harper-Simon	Gloria C.	Self 1425 4th Street, SW, Suite A-505	20024
Holliday	Levi L.	Self 6750 Eastern Avenue, NW	20012
Wheatley	Gabrielle	Tahzoo LLC 3128 M Street, NW	20007
Isler	Patricia A.	U.S. Customs and Border Protection, Department of Homeland Sercurity 1300 Pennsylvania Avenue, NW, Suite 4.4B	20229
Jackson	Evonne	American Cleaning Institute 1331 L Street, NW, Suite 650	20005
Jinkins	Angie J.	Lee and Associates, Inc 638 I Street, NW	20001
Jones-Bean	Weldrena	Kaplan Kirsch & Rockwell, LLP 1001 Connecticut Avenue, NW, Suite 800	20036

D.C. Office of the Secretary **Effective: August 1, 2014**
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Kalloo	Mary	Self 1412 Holbrook Street, NE, #3	20002
Kebede	Meheret M.	Premium Title and Escrow 1534 14th Street, NW	20005
Kencanasari	Dinna	Washington Consular Services 1666 Connecticut Avenue, NW, Suite 222	20009
Kennedy	R. Terry	Burson-Marsteller 1110 Vermont Avenue, NW, Suite 1200	20005
Khona	Kishan R.	Levendis Law Group 1776 K Street, NW, Suite 700	20006
Konschak	Kimberly J.	Nelson Mullins Riley & Scarborough LLP 101 Constitution Avenue, NW, 9th Floor	20001
Kramer	Eve S.	Grossberg, Yochelson, Fox & Beyda 2000 L Street, NW, Suite 675	20036
Lee	Gina H.	Davis Wright Tremaine LLP 1919 Pennsylvania Avenue, NW, Suite 800	20006
Lee	Joanne J.	Gowen Group Law Office, PLLC 1325 G Street, NW, Suite 500	20005
Leigh	Lyla M.	Self (Dual) 1501 Spring Place, NW	20010
Lewis	Rasheda	PNC Bank, NA 800 17th Street, NW	20006
Lorber	Jacob Max	TD Bank 4849 Wisconsin Avenue, NW	20016
Mangin	Shalay	Vietnam Veterans Memorial Fund 2600 Viginia Avenue, NW, Suite 104	20037
Marmol	Joseph Carluen	Fidelity Investments 1900 K Street, NW, Suite 110	20006

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Recommended for appointment as a DC Notaries Public **Page 6**

McGinnis	Dwane	Natural Resources Defense Council (NRDC) 1152 15th Street, NW	20005
Miski	Ahmad	US Legalization, Inc. 1330 New Hampshire Avenue, NW, B1	20036
Mitchell	Bridgette	Sisters in Christ & So Much More 725½ 7th Street, SE	20020
Pate	Crystal	Historic Congressional Cemetery 1801 E Street, SE	20003
Phillips	Marilyn	Self 2310 16th Street, SE, Apt. 7	20020
Pickover	Nancy Lynn	Wiener Brodsky Kider PC 1300 19th Street, NW, 5th Floor	20036
Plattner	Daniel J.	SettlementCorp 5301 Wisconsin Avenue, NW, #710	20015
Porter	Kayon L.	Self (Dual) 1000 Independence Avenue, SW	20585
Portillo	Gerardo H.	Branch Banking & Trust 1365 Wisconsin Avenue, NW	20007
Primus	Celina C.	Self 2402 18th Street, NE	20018
Proctor	Cindy J.	SameDay Process 1219 11th Street, NW	20001
Reidy	Daniel F.	Alderson Court Reporting 1155 Connecticut Avenue, NW, Suite 200	20036
Robertson	Kathleen M.	Civil War Preservation Trust 1156 15th Street, NW, Suite 900	20005

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Robertson	Vanessa	Council on Foreign Relations 1777 F Street, NW	20006
Russo	Athena	Chevy Chase Executive Services, Inc. d.b.a. AdvantEdge Business Centers 5335 Wisconsin Avenue, NW, Suite 440	20015
Satterwhite	Darryl	Good Hope Institute 1320 Good Hope Road, SE	20020
Schoeff	Daniel	PNC Bank 601 Pennsylvania Avenue, NW	20004
Sikora-Trapp	Amy E.	Derenberger & Page Reporting, Inc. 1430 S Street, NW	20009
Simmons	Joi N.	Appletree Early Learning Public Charter School 415 Michigan Avenue, NE	20017
Sok	Thavy	Wells Fargo Bank, NA 5701 Connecticut Avenue, NW	20015
Stowell	Rachel A.	The Elder & Disability Law Center 1020 19th Street, NW, Suite 510	20036
Swann	Pamela K.	T and P Construction Services, LLC 3952 Burns Place, SE	20019
Tate, Sr.	Geoffrey E.	Self 761 Quebec Place, NW	20010
Thomas	Tamara L.	Department of Behavioral Health/CPEP 1905 E Street, SE, Building 14	20003
Thompson	Jackie C.	Dykema Gossett PLLC 1300 I Street, NW, Suite 300	20005
Thompson	Matthew A.	HRY Designs, LLC 1401 14th Street, NW	20005

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Tindal	Yvonne A.	Beveridge & Diamond, PC 1350 I Street, NW, Suite 700	20005
Turner-Jones	Vernetta	Self 515 46th Street, SE, Apt. 1	20019
Williams	Amelia V.	Parkinson Construction Company 7826 Eastern Avenue, NW, Suite 502	20012
Williams	Theresa B.	Larry C. Williams & Associates Attorney at Law 7600 Georgia Avenue, NW	20012
Williams-Minor	Cynthia	DC Electric LLC 3421 14th Street, NW, Suite 301	20010
Wise	Linda M.	U.S. Department of Treasury, Internal Revenue Service 1111 Constitution Avenue, NW, Room 3014	20224
Young	Alease H.	Self 5815 8th Street, NE	20011
Young	Karen C.	Planet Depos 1100 Connecticut Avenue, NW	20036

THE DISTRICT OF COLUMBIA COMMISSION ON THE MARTIN LUTHER KING, JR. HOLIDAY

NOTICE OF PUBLIC MEETING

Wednesday, July 2, 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, July 2, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission on the Martin Luther King, Jr. Holiday will be in attendance to discuss program events being planned for 2014 and for January 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.

THE DISTRICT OF COLUMBIA HOME RULE ACT 40TH ANNIVERSARY CELEBRATION AND COMMEMORATION COMMISSION

NOTICE OF 2014 MEETING SCHEDULE

The regularly scheduled meetings of the District of Columbia Home Rule Act 40th Anniversary Celebration and Commemoration Commission are held in open session on every Thursday as listed below. The following are dates and times for the regular meetings to be held in July, August and September 2014.

All meetings are held at the John A. Wilson Building, 1350 Pennsylvania Avenue NW, Washington, DC 20004 in the conference room 427 of the Office of the Secretary of the District of Columbia unless otherwise indicated. Notice of the location of a meeting other than Room 427 of the John A. Wilson Building will be published in the *D.C. Register* and/or posted on the Office of the Secretary's website (www.os.dc.gov). For more information, email secretary@dc.gov.

Thursday, July 3, 2014	11:00am
Thursday, July 10, 2014	11:00 a.m.
Thursday, July 17, 2014	11:00 a.m.
Thursday, July 24, 2014	11:00 a.m.
Thursday, July 30, 2014	11:00 a.m.
Thursday, August 7, 2014	11:00 a.m.
Thursday, August 14, 2014	11:00 a.m.
Thursday, August 21, 2014	11:00 a.m.
Thursday, August 28, 2014	11:00 a.m.
Thursday, September 4, 2014	11:00 a.m.
Thursday, September 11, 2014	11:00 a.m.
Thursday, September 18, 2014	11:00 a.m.
Thursday, September 25, 2014	11:00 a.m.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

DC GOVERNMENT CLEAN TEAM PROGRAM

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** ("the Program") in six service areas (listed below).

Through this grant, DSLBD will fund clean teams, which will: 1) Improve commercial district appearance to help increase foot traffic, and consequently, opportunity for customer sales; 2) Reduce litter, graffiti, and posters which contributes to the perception of an unsafe commercial area; 3) Maintain a healthy tree canopy and landscape that contributes to the perception of a safe and attractive shopping area; 4) Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC's commercial districts.

Eligible applicants are DC-based nonprofit organizations that are incorporated in the District of Columbia and, have demonstrated capacity with: a) providing clean team services or related services to commercial districts or public spaces; b) providing job-training services to its employees; and c) providing social support services to its Clean Team employees.

DSLBD will **award** one grant up to $100,000 for **each** of the following **service areas** (i.e., a total of six grants).

- 12th Street, NE
- Connecticut Avenue, NW
- Georgia Avenue, NW
- Kennedy Street, NW
- Minnesota Avenue, NE
- Ward 1

The **grant performance period** to deliver clean team services is October 1, 2014 through September 30, 2015.

Application Process: Interested applicants must complete an online application (RFA Part 2, see below) and submit it on or before **Monday, August 1, 2014 at 2:00 p.m**. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

The **Request for Application** (RFA) comprises two parts:

1. **RFA Part I: Program Guidelines and Application Instructions** document, which includes: a detailed description of clean team services; service area boundaries; applicant eligibility requirements; and selection criteria. DSLBD will post RFA Part 1 on or before July 7, 2014 at www.dslbd.dc.gov (click on the *Our Programs* tab and then *Solicitations and Opportunities* on the left navigation column).

2. **RFA Part II: Online Application Form** through which an Applicant submits its eligibility information, proposed service delivery plan and budget for each service area of interest. To access the online application form, an organization must complete and submit an online **Expression of Interest** form. DSLBD will post the Expression of Interest form and link to the online application on or before July 7, 2014 at www.dslbd.dc.gov (click on the *Our Programs* tab and then *Solicitations and Opportunities* on the left navigation column).

Selection Criteria for applications will include: a) Applicant Organization's demonstrated capacity to provide clean team or related services, and managing grant funds; b) Proposed service delivery plan for basic and additional clean team services; and c) Proposed budget. Applicants should reference RFA Part 1 for detailed description of selection criteria. DSLBD shall notify applicants of their selection status on or before September 1, 2014.

DSLBD will host a **Pre-Submission Meeting** on Thursday, July 10, 2014 at 10:00 AM at 441 4th Street NW, Washington DC 20001, Room 805S (take elevators to right). Attendees must bring photo identification to enter this building. If additional Pre-Submission Meetings are scheduled, DSLBD will email to organizations that completed an Expression of Interest form (see above) and will post at www.dslbd.dc.gov (click on the *Our Programs* tab and then *Solicitations and Opportunities* on the left navigation column).

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess if an Applicant meets the criteria for eligibility, experience, proposed service delivery plan, budget, and applicant's capacity. Applicants may apply for one or more service areas by submitting a separate application for each service area. DSLBD will determine grant award selection and notify all applicants of their status via email on or before September 1, 2014.

Funding for this award is contingent on continued funding from the grantor. The RFA does not commit the Agency to make an award.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

For more information, contact Camille Nixon at the Department of Small and Local Business Development at (202) 727-3900 or camille.nixon@dc.gov.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE ARRANGEMENT

Electricity Distribution

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—intends to enter into a sole source arrangement with Pepco for electric distribution.

- Thurgood Marshall Academy has a need for distribution of electricity for its third-party generation/transmission suppliers.
- Cost of this service is approximately $0.014/KWH.
- Pepco constitutes the sole source for electricity distribution services.

Contact: For further information regarding this Notice contact **David Schlossman, 202-276-4722, dschlossman@tmapchs.org** no later than **5:00 pm Washington, DC, time on Friday, July 11, 2014**. Further information about Thurgood Marshall Academy—including our nondiscrimination policy—may be found at www.thurgoodmarshallacademy.org.

THURGOOD MARSHALL ACADEMY PUBLIC CHARTER HIGH SCHOOL

REQUEST FOR PROPOSALS

Bulk Purchasing Agreements—Office Supplies; Building Materials; Computer Hardware; Computer Software; and Printing

Thurgood Marshall Academy—a nonprofit, college-preparatory, public charter high school—seeks vendors to provide bulk purchasing agreements, master agreements, or preferred vendor agreements for purchase of any or all of the following:

1) Office supplies (including but not limited to copy paper, general office supplies, and office furniture)
2) Building, maintenance, construction, and/or janitorial supplies
3) Computer Hardware (including but not limited to desktops, laptops, netbooks, tablet or similar devices, printers, peripherals, and miscellaneous IT supplies)
4) Computer Software (including but not limited to network licenses, server applications, online databases or services, and general applications)
5) Printing services

Guidelines—Interested vendors should submit a proposal or agreement including the following:

- The agreement (or a link to the agreement if available only online)
- Representative discounts, pricing, or value added the school will secure via the agreement
- Any special requirements, including but not limited to exclusivity, minimum orders, frequency of orders, limits on the school's right to terminate the agreement without cause, or other factors affecting the value of the bulk purchasing agreement
- Restrictions, such as return policies
- Any fees or costs associated with the agreement
- Taxes, if any (note that Thurgood Marshall Academy is a not-for-profit organization)
- **Ideal agreements will include either no termination date or an option to extend and amend the agreement**
- If agreements require the vendor's signature then the vendor should supply a signed agreement
- Agreement effective dates should be left to the school's discretion
- Proposals should include vendor's contact information
- By submitting a bid vendors agree to the general conditions statement, attached below

The school at its sole discretion may select more than one vendor or choose not to adopt a particular agreement.

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 no later than **5:00 pm Washington, DC time, on Friday, July 11, 2014,** via e-mail to **dschlossman@tmapchs.org**.

A General Conditions Statement regarding Proposals

The following general conditions apply to all RFPs issued by Thurgood Marshall Academy. By submitting any proposal of any kind, vendors agree to these conditions.

Acceptance of a proposal neither commits Thurgood Marshall Academy to award a contract to any vendor, even if all requirements stated in the RFP are met, nor limits the school management's rights to negotiate in Thurgood Marshall Academy's best interests. School management reserves the right to contract with a vendor for reasons other than the lowest price. The pricing, terms, and conditions offered in any vendor's response to any RFP must remain valid for 90 days from the date the proposal is delivered. Expenses incurred in the preparation of proposals in response to any RFP and any follow-up information provided is the vendor's sole responsibility. Except in cases in which the school has published an RFP or related information, any information contained in any RFP or released in relation to any RFP is confidential and may not be disclosed without the express written permission of Thurgood Marshall Academy. All RFPs and all information released by Thurgood Marshall Academy or its agents related to RFPs, whether published publicly or circulated by invitation, constitute the intellectual property of Thurgood Marshall Academy and may not be reproduced without express written permission. Only managers—generally the Executive Director—and Trustees may obligate the school to a contract.

Conflicts of Interest/Interested Party Transactions
Vendor must disclose in proposal any potential conflicts of interest presented by the project as well as any interested party relationships between vendor and the school.

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. Such registration will be a factor—but not necessarily a sole or determining factor—in the school's consideration of bids.

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: Unless otherwise indicated, amendments and extensions of RFPs—if any—will be published exclusively on the Employment page of the school website—www.thurgoodmarshallacademy.org (with e-mail notice to bidders who have already submitted proposals including e-mail addresses).

END OF RFP

WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)

NOTICE OF RESCHEDULED PUBLIC MEETING

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that its meeting scheduled for July 10, 2014, will instead be held July 17, 2014.

The meeting will take place in the Dr. Charlene Drew Jarvis Board Room of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 10 a.m. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority

(202) 249-3012
sean.sands@eventsdc.com

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, July 3, 2014. 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 June 5, 2014 Meeting Minutes**	Board Chairman
4.	**Committee Reports**	Committee Chairperson
5.	**General Manager's Report**	General Manager
6.	**Action Items** Joint-Use Non Joint-Use	Board Chairman
7.	**Other Business**	Board Chairman
8.	**Adjournment**	Board Chairman

OFFICE ON WOMEN'S POLICY AND INITIATIVES

DISTRICT OF COLUMBIA COMMISSION FOR WOMEN

NOTICE OF PUBLIC MEETING

Thursday, July 3, 2014

6:45 PM – 8:45 PM

John A. Wilson Building

1350 Pennsylvania Avenue, NW

Room 301

Washington, DC 20004

The District of Columbia Commission for Women will hold its monthly meeting on Thursday, July 3, 2014 at 6:45 p.m. The meeting will be held at the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 301, Washington, DC 20004. For additional information, please contact Latisha Atkins, Executive Director at (202) 724-7690 or women@dc.gov.

AGENDA

I. Call to Order

II. Introduction of New Commissioner

III. Introduction of New Intern

IV. Updates from Committees and Discussion of Fall Policy Conference Planning

III. Discussion of Dates and Continued Planning of the Listening Sessions

IV. Update on Status of New Commissioner Appointments

V. Questions, Comments and Concerns

VI. Adjournment

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Appeal No. 18615 of 5333 Connecticut Neighborhood Coalition, et al., under 11 DCMR §§ 3100 and 3101, from April 3, 2013 and May 28, 2013, decisions by the Department of Consumer and Regulatory Affairs to issue building permits (FD1200052, SH1200128 and B1208792,) authorizing the construction of an apartment building in the R-5-D District at premises 5333 Connecticut Avenue, N.W. (Square 1873, Lot 128).

HEARING DATE: September 24, 2013
DECISION DATE: October 29, 2013

DECISION AND ORDER

The instant appeal was filed with the Board of Zoning Adjustment (the "Board" or "BZA") on May 31, 2013, by 5333 Connecticut Neighborhood Coalition with 32 individuals who are members of that organization (collectively, "5333 CNC" or "Appellant") and Advisory Neighborhood Commission ("ANC") 3/4 G. The ANC subsequently withdrew from the Appeal on September 13, 2013. The Appellant challenged the administrative decision of the Department of Consumer and Regulatory Affairs ("DCRA") to approve the issuance of Building Permit Nos. B1208792, FD1200052, and SH120012, which authorized construction at premises 5333 Connecticut Avenue, N.W.

The "FD" and "SH" permits were issued on April 3, 2013, and authorized the foundation to grade and sheeting and shoring work, respectively. The "B" permit, which was issued on May 28, 2013, authorized construction of a new 263-unit apartment building. The Appellant claimed that the DCRA approvals involved the following errors: (i) misidentification of the applicable zone district; (ii) failure to measure building height at the correct street and street location; (iii) allowing non-permitted roof structures above the maximum height allowed by the Height Act;[1] and (iv) the exclusion of lower portions of the building from the calculation of FAR.

Based on the evidence of record, including extensive prehearing submissions and testimony received at the public hearing, the Board affirms the DCRA decisions and denies the appeal.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on September 24, 2013. Under 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, ANC 3/4G (the ANC in which the property is located), the property owner, and to DCRA.

Parties

[1] Formally entitled An Act to Regulate the Height of Buildings in the District of Columbia.

The Appellant is 5333 CNC, an unincorporated association of individuals and households formed to advocate against the development proposed for the site. DCRA is the Appellee, as the "person" whose administrative decision is the subject of the instant appeal, under 11 DCMR § 3199.1(a)(2). CMK DEV, LLC, the owner of 5333 Connecticut Avenue, NW ("Property Owner" or "Owner") is automatically a party to the proceeding under 11 DCMR § 3199.1(a)(3). ANC 3/4G, also an automatic party, originally filed as a party to the Appeal and withdrew its appeal by letter to the Board dated September 13, 2013, under a Memorandum of Understanding entered into with the Property Owner. (Exhibit 31.)

The Board received prehearing materials from the Appellant on September 13, 2013, under 11 DCMR § 3112.10. (Exhibits 16-29.) The Property Owner submitted prehearing materials for the Board's consideration on September 19, 2013 (Exhibits 32-50), and DCRA submitted its prehearing statement on September 20, 2013 (Exhibit 51).

Hearing and Closing of the Record

The Board convened a public hearing on September 24, 2013, during which the Appellant, DCRA and the Property Owner presented their respective cases through legal counsel. The Board received testimony on behalf of the Appellant from representatives of Appellant, Elizabeth Lenyk and Richard Graham, and from Don Hawkins, whom the Board qualified as an expert in architecture and in reading maps. Testimony was received on behalf of the Property Owner from Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, whom the Board qualified and recognized as an expert in zoning and planning issues.

The Board deferred its decision on the merits and closed the record, except to receive proposed findings of fact and conclusions of law from all parties by October 22, 2013. The Board scheduled the case for decision on October 29, 2013, at which time it considered the merits and voted to affirm DCRA.

FINDINGS OF FACT

The Property

1. The subject property is at Square 1873, Lot 128, premises address 5333 Connecticut Avenue, N.W. ("Property"). Square 1873 is bounded to the west by Connecticut Avenue, N.W., to the north by Military Road, N.W., to the east by Chevy Chase Parkway, N.W., and to the south by Kanawha Street, N.W.

2. The Property fronts on three streets: Kanawha Street, Connecticut Avenue, and Military Road. Connecticut Avenue is the widest of these streets, with a right of way measuring 130 feet. Kanawha Street has the highest elevation of the three streets.

3. The Property has a land area of approximately 47,370 square feet and increases in grade from north to south with an elevation measuring along Kanawha Street approximately 18 feet higher than along Military Road. (Exhibit 49.)

4. The Property is unimproved.

Zoning of the Property

5. On March 16, 1965, the Zoning Commission rezoned lots 44, 35, 37, 19, 20 and 21 in Square 1873 to R-5-C, extending the R-5-C zone to the eastern lot line of Lot 37 on Military Road and the eastern lot line of Lot 19 on Kanawha Street, NW. (Exhibit 33.)

6. When added to the depth of the zoning line existing at the time, the depth of the R-5-C zoning was approximately 221 feet along Kanawha Street and approximately 290 feet along Military Road.

7. These dimensions are reflected on the Zoning Map issued in 1966. There have been no actions taken by the Zoning Commission since 1965 to change the zoning boundary line in Square 1873. (Exhibit 26.)

8. The 1973 Zoning Map continued to show the 290-foot dimension along Military Road.

9. The 1975 Zoning Map shows the location of the zoning boundary line identical to the 1973 Zoning Map although the 291 foot dimension for the R-5-C zone on Military Road is partly obscured by a dashed line indicating the building restriction line such that the "9" could be read as a "5".

10. The top of the number "9" is similarly obscured in subsequent maps (1983, 1984, 1987, and 1996). The dimension of the zoning boundary line along Kanawha Street is not shown except in the 1966 Zoning Map; however, the location of the line appears to be identical in all subsequent maps.

11. The R-5-C zoning category was reclassified to R-5-D by action of the Zoning Commission through its adoption of Zoning Commission Order No. 721, effective November 13, 1992.

12. The 2003 Zoning Map, produced in a different format from the earlier maps, shows the same boundary line configuration as earlier maps, but with a dimension of 251 feet indicated along Military Road.

13. The Office of Zoning has concluded, and the Board finds, that the 251 foot dimension on this map was in error and resulted from reading the "291" figure in prior maps as "251". (Exhibit 26.)

14. Effective April 13, 2012, the paper official zoning map was replaced with an electronic zoning map drawn and maintained on the Geographic Information System in the Office of Zoning. (11 DCMR § 106.1.)

15. Since April 13, 2012, the electronic zoning map has shown the entire Property zoned R-5-D. (Exhibit 37.)

16. The 2013 summary Zoning Map shows the entire Property zoned R-5-D. (Exhibit 36.)

17. The Office of Zoning may provide zoning certifications under 11 DCMR § 3045.1(a).

18. According to the certification of the Office of Zoning from the official records issued January 15, 2013, on the plat issued by the District of Columbia Surveyor, the Property is zoned R-5-D, with the following street frontages: 203.20 feet along Connecticut Avenue; 221.22 feet along Kanawha Street; and 291.31 feet along Military Road. (Exhibit 38.) The plat also reflects building restriction lines applicable to the Property: 15 feet along the entire Military Road frontage; and 10 feet along the Kanawha Street frontage.

Building Height

Measurement

19. The Height Act and the Zoning Regulations each establish maximum height limits for property. If there is a conflict between the two, the more stringent height limitation applies. (D.C. Official Code § 6-641.11 (2012 Repl.).)

20. The Zoning Regulations establish maximum height by zone district. Subsection 400.1 provides that the maximum height for a building in the R-5-D zone is 90 feet.

21. The Height Act establishes maximum building height based upon the width of the street abutting the property. Subject to certain exceptions not applicable here, the Height Act provides that:

> On a residence street … building shall be erected, altered, or raised in any manner so as to be over 90 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet … .

(D.C. Official Code § 6-601.05 (c).)

22. The Property Owner had the building's maximum height determined from Connecticut Avenue, which has a width of 130 feet. Since deducting 10 feet would still result in a height greater than the 90 foot maximum permitted, the maximum height of the Building for Height Act purposes was 90 feet.

23. As of the date upon which the building permits were issued, the Zoning Regulations provide that for all zone districts height was to be "measured from the level of the curb, opposite the middle of the front of the building."

24. Section 7 of the Height Act provides that if "the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height" (D.C. Official Code § 6-601.07.)

25. The Zoning Administrator determined that the elevation of Kanawha Street permitted the greatest height and therefore used that street frontage to measure height

26. In determining the exact point of measurement along Kanawha Street, the Zoning Administrator followed the long-standing interpretation of the term "the middle of the front of the building" to mean the middle point of the full length of the exterior walls of a building. This location was determined by drawing lines out perpendicular to Kanawha from both ends of the building.

27. Based upon this calculation, the middle of the front of the building on Kanawha Street was determined to be at elevation 316.83.

28. Under the Zoning Regulations, the height of a 90 foot building in the R-5-D zone district is measured to the top of the roof from the point of measurement at street level. However, under §§ 5 and 7 of the Height Act, the height is measured to the top of the roof or parapet, the latter of which is normally slightly above the height of the roof.

29. From the measuring point selected, the Zoning Administrator determined that building's height to the top of the parapet measured 87.83 feet.

Roof Structures

30. The roof of the building will have a roof deck, a pool, protective guard rail, and a penthouse.

31. The roof deck measures 86.5 feet above the measuring point and less than four feet above the parapet wall.

32. The upper most portion guardrail is 90 feet above the height measurement point.

33. The penthouse of the Building contains elevators, mechanical equipment, stairs, and accessory storage space to the rooftop pool and recreation space.

Building Density

34. The R-5-D zone district allows a maximum building density of 3.5 floor area ratio ("FAR"), under (11 DCMR § 402.4.) Residential developments on properties subject to the Inclusionary Zoning provisions of 11 DCMR Chapter 26, including the Property, are

provided bonus density of 20% additional gross floor area as a matter of right. In the R-5-D zone district, the resulting maximum density is 4.2 FAR.

35. FAR is calculated by dividing the gross floor area of the building by the area of the lot. (See 11 DCMR § 199.1 (Definition of "Floor area ratio").) Cellars are excluded from gross floor area, but basements are included. (See 11 DCMR § 199.1 (Definition of "Gross floor area").)

36. The difference between the two is that cellars are less than four feet above the adjacent finished grade, while basements are four feet or more above the adjacent finished grade.

37. Given the site's lot area of 47,370 square feet, the permitted gross floor area is 198,954 square feet (4.2 FAR). As approved in the Permits, the Building's gross floor area measures 198,338 square feet.

38. The lowest habitable level of the Building is located partly above-grade.

39. The Zoning Administrator utilized the long-accepted "perimeter wall method" to determine the floor area on this level appropriately charged to gross floor area ("GFA").

40. The perimeter wall method has been utilized to differentiate cellar space from basement space in buildings throughout the District for decades.

41. An stated in the Memorandum of James J. Fahey dated September 11, 1990 (included within Exhibit 20 as “Exhibit R”), the perimeter wall method involves the following steps:

    A. First measure the total perimeter of the floor,

    B. Then measure that portion of the perimeter of the floor, the ceiling of which is four feet or more above the adjacent finished grade, and what percentage this is of the total perimeter of that floor.

    C. The answer to the above will be the percentage of the floor area chargeable to gross floor area.

42. Applying this methodology to the proposed building, the Zoning Administrator determined that the perimeter of the lowest habitable floor was 982 linear feet with 121.6 feet being above four feet or more above the adjacent finished grade, or 12.38% of the perimeter. This calculates to 2,689 square feet to be counted in gross floor area at this level (12.38% times 21,718 square feet). (Exhibit 48.)

43. Because of this calculation, portions of 17 apartment units were included in the cellar level of the proposed building and not counted towards FAR.

44. A portion of the finished grade on the Military Road side is approximately two feet higher than the existing condition over a distance of approximately 30 feet. Measurements along that point reflected that the ceiling of the lowest floor to be less than four feet above this adjacent finished grade and therefore a cellar not countable against GFA.

45. Along Military Road and in the interior courtyard of the proposed building, plans show an areaway. Similar to a window well, this areaway is a narrow space between the grade and the building to provide additional light to the lowest units.

46. The areaway along Military Road measures approximately four feet wide, with no access from the units, and the areaways within a portion of the courtyard measure five feet wide and are accessible only to each individual unit (Exhibit 48.)

47. Based upon prior administrative practice, the Zoning Administrator identified the top of the grade behind the areaways as being the adjacent finished grade. Measurements reflected that the ceiling of the lowest floor adjacent to this finished grade was less than four feet, and therefore a cellar not countable against GFA.

48. The Zoning Administrator has never considered the bottom of an areaway as the adjacent finished grade.

Events leading to the filing of this Appeal

49. On May 28, 2013, DCRA issued Permit No. B1208792 that authorized the construction of a 263-unit, nine-story apartment building with cellar and below-grade parking on the Property.

50. This appeal was filed three days later.

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized by § 8 of the Zoning Act of 1938 to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2012 Repl.).) (See also 11 DCMR § 3100.2.) The decision or determination is DCRA's issuance of the Permits. The Board also has the authority to hear appeals alleging errors in interpreting the Height Act. *See Appeal No. 17109 of Kalorama Citizens Association* (2005).

Under 11 DCMR § 3119.2, in all appeals and applications, the burden of proof shall rest with the appellant or applicant. In the instant appeal, the Appellant argues that the Zoning Administrator erred by: (1) calculating zoning compliance based entirely upon the requirements of the R-5-D zone, rather than recognizing that a portion of the building was zoned R-1-B, (2) using the wrong street and street measurement point for determining the building height, (3) allowing non-permitted roof

structures, and (4) erroneously excluding portions of the building from being counted as gross floor area.[2] This Order will refer to DCRA as the entity that issued the Permits and the Zoning Administrator as the person whose decision is the subject of the Appellant's complaint.

The Board addresses each of these issues in turn, based upon the record and testimony in this case.

1. The Entire Property is Zoned R-5-D.

The Appellant argued that that only a portion of the Property is legally zoned R-5-D, which permits development of apartment buildings, and that the remainder of the site is zoned R-1-B. As such, the Appellant claimed that the Building as approved by DCRA does not comply with the zoning regulations.

The Board disagrees and concludes that on the dates Permits were issued the entire Property was zoned R-5-D.

The Zoning Commission extended the R-5-C zone district in 1965 to include Lots 44, 35, 37, 19, 20, and 21 in Square 1873 and that effective November 13, 1992, all R-5-C properties were rezoned to R-5-D. However, the Appellant claimed that "sometime between the publishing of the 1973 Official Zoning Map and the 1975 Official Zoning Map, the zone boundary was amended by the Zoning Commission to be limited to 251 feet [from 291 feet] from the line of Connecticut Avenue along Military Road."(Exhibit 16, pg. 27.)

The Appellant proffered no evidence that the Zoning Commission issued any notice of public hearing or any order adopting such a change, which would be a necessary legal prerequisite for such an action. The Zoning Act of 1938, as amended by § 492 of the District's Home Rule Act, required notice of a public hearing before the Zoning Commission could adopt a map amendment. (D.C. Official Code § 6-641.05.) Further, the Zoning Commission was also required to publish a notice of proposed rulemaking for any map amendment under § 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206) codified at D.C. Code Official § 2-505(a). The Board credits the statement made by Office of Zoning Deputy Director Richard Nero in his March 29, 2013 memorandum to Richard Graham on behalf of 5333 CNC that there have been no actions since 1965 by the Zoning Commission to change the location of the zone boundary line in Square 1873. (Exhibit 26.)

Although irrelevant absent a zoning order, the Appellant incorrectly states that the 1975 Zoning Map showed a change in the R-5-C zone's length on Military Road from 291 to 251 feet. The number shown is 291, but the top of the "9" is partly obscured by a dashed line indicating the building restriction line, such that the "9" could be read as a "5". The top of the number "9" is similarly obscured in the zoning maps published in 1983, 1984, 1987, and 1996.

[2] Appellant further asserts that the approved construction involves illegal projections, in violation of the Construction Code (12 DCMR), which claim is not properly before the Board nor addressed herein because those provisions are not contained within the Zoning Regulations.

The 2003 zoning map was produced in a different format that the prior maps. Unfortunately, the mappers made the same error as the Appellant by reading the figure "291" as "251." This error was corrected when the Zoning Map was transitioned from an analog to a digital format. The 2013 summary Zoning Map shows the entire Property zoned R-5-D. (Exhibit 36.) The Office of Zoning confirmed the accuracy of the electronic zoning map through a certificate made on January 15, 2013. (Exhibit 38).

Therefore, the Zoning Administrator did not err in ascertaining the zoning compliance of the project based on the provisions of the Zoning Regulations that pertained to the R-5-D District.

2. Building Height.

A. The measurement of the building's height was correctly taken from Kanawha Street.

The Appellant claims the Building violates the Height Act in that DCRA should have measured its building height from Connecticut Avenue rather than Kanawha Street, which would yield a lower height than was approved in the Permits. The Appellant argues that to determine the maximum height on one street and determine actual height from another is a form of "mixing and matching" not permitted by the Height Act. Both the Zoning Regulations and the Height Act establish maximum height limits for building and structures in the District. The Zoning Regulations establish maximum height by zone district whereas the Height Act limits are based upon the width of a street upon which the building fronts. In this instance, the building fronted three streets and as authorized by the Zoning Regulations, the height of the building was determined by the Connecticut Avenue frontage giving a maximum height of 90 feet.

The Zoning Administrator then had to determine whether the building's height fell within the 90-foot limit. . However, because the Property fronts three streets, Section 7 of the Height Act provides that "height *shall* be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height." (D.C. Official Code § 6-601.07 (emphasis added).) In the present case, given the respective elevations of the three frontages of the Property, Kanawha Street "provides the greater height.

The Appellant's claim that the Zoning Administrator improperly determined the height by "mixing and matching" has no merit. The Zoning Administrator's determination to measure building height from Kanawha Street is consistent with longstanding applications of the Height Act in the District of Columbia, including approvals by the Zoning Commission, the Board, as well as DCRA. (Exhibit 32, pgs 5-7.) Further, these determinations follow direction provided by the District of Columbia Office of the Corporation Counsel (now the Office of the Attorney General) over 60 years ago.

For all these reasons, the Board concludes that DCRA's use of Kanawha Street to determine whether the Building's height would be within the 90 foot limit follows both the clear language of the Height Act and its subsequent interpretation.

B. The Zoning Administrator correctly identified the middle of the front of the building when measuring its height.

With Kanawha Street established as the location from which to measure building height, the Board next turns to the Appellant's argument that the wrong location was chosen along Kanawha Street to serve as the base measurement point.

Section 7 of the Height Act (D.C. Official Code § 6-601.07) provides that "the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building." As of the date upon which the building permits were issued, the Zoning Regulations provided that for all zone districts height was to be "measured from the level of the curb, opposite the middle of the front of the building." The Appellant claims that the location chosen by the Zoning Administrator to measure height was not opposite the middle of the front of the building on Kanawha Street.

In locating the middle of the front of the building the Zoning Administrator followed the longstanding approach of using the full length of the exterior walls that run along a street - drawing lines out perpendicular to the street on which the building fronts from both ends but not beyond the end of the street on either end. The mid-point from those projected lines establishes the location on the top of the curb to begin the measurement vertically.

Despite the Appellant's objections, the Board is persuaded that this longstanding practice "is neither clearly erroneous [n]or inconsistent with the zoning regulations as a whole.' *Wallick v. District* of Columbia Bd. of Zoning Adjustment, 486 A.2d 1183, 1184 (D.C. 1985)." *Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment,* 934 A.2d 393, 402 (D.C. 2007). The interpretation ensures that every building no matter the shape, (for example a building that squarely fronts on the street, or has a portion a few feet back or many feet back, or is designed with an angle back) would always have the same consistent point of height measurement.

The Board concludes DCRA's determination of the building height measurement at elevation 316.83 along Kanawha Street, as shown at Exhibit 39, is an appropriate interpretation of the Height Act and the Zoning Regulations. From this measuring point, the building height to the top of the parapet has been determined by DCRA to measure 87.83 feet and therefore was within the 90 foot maximum allowed by the Height Act and the Zoning Regulations.

C. The Roof Structures are Lawful.

i. <u>The Swimming Pool Deck and Guard Rail.</u>

The Appellant claims that the swimming pool deck and the guard rails exceed the maximum height limits established by the Zoning Regulations and the Height Act. First, neither element exceeds matter of right height. The dimension from the measuring point to the top of the guard rail, which is greater than the top measuring point under either the Zoning Regulations or Height Act, is 90 feet. Second, the deck is less than four feet above the parapet and is therefore

permitted by 11 DCMR § 411.17 and guardrails, such as the one involved here (Exhibit 40), were recognized as an allowed structure by this Board in *Appeal No. 17335 of Kalorama Citizen's Association* (2005).

ii. The Penthouse

The penthouse of the Building contains elevators, mechanical equipment, stairs, and accessory storage space to the rooftop pool and recreation space, all of which are permitted by the Zoning Regulations to exceed the maximum building height. (11 DCMR § 411.1.) At the time the building permits were issued, § 5 of the Height Act, D.C. Official Code § 6-601.05 (2012 Repl.) provided that … penthouses over elevator shafts … may be erected to a greater height than permitted" if approved by the Mayor. The Section also prohibited "human occupancy above the top story of the building upon which such structures are placed." [3]

The Appellant argues that the space accessory to the rooftop pool and recreation space is not among the penthouse types eligible to exceed the limitations of the Height Act, either in the express language of the Act or as interpreted by the Corporation Counsel. The Appellant's arguments are based upon two erroneous premises: (1) that the Corporation Counsel Opinion contained the exclusive list of permitted penthouses and (2) that the penthouse space was intended for human occupancy.

Contrary to the Appellant's contention, Section 5(h) of the Height Act does not limit the height of the proposed rooftop penthouse. That section states that "spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, chimneys, smokestacks and fire sprinkler tanks" may be constructed in excess of the limits of the Height Act provided they are 1) fire proof, 2) not used for human occupancy, and 3) setback from exterior walls (1:1 setback). *See* DC Code §6-601.05(h).

The 1953 Corporation Counsel Opinion (the "1953 Opinion") makes clear that the list set forth in Section 5(h) has never been viewed as an exhaustive list of elements that may exceed the limits of the Height Act. *See* Pre-Hearing Statement of Owner at Exhibit J. Specifically, the 1953 Opinion references stairway penthouses, penthouses for air-conditioning equipment, condensers, water towers, heating equipment and boilers. *Id.* at p. 2. As Owner notes, there are numerous other roof structures that are commonly approved above the Height Act, including pools and their accessory penthouses. *See* Pre-Hearing Statement of Owner at p.11.

The 1953 Opinion explained the intent of Congress in enacting the Height Act:

[3] As of May 16, 2014, the Height Act was amended to make any type of penthouse eligible for a Height waiver and to permit human occupancy within "a penthouse which is erected to a height of one story of 20 feet or less above the level of the roof. *See* Public Law 113-103, An Act To amend the Act entitled "An Act to regulate the height of buildings in the District of Columbia" to clarify the rules of the District of Columbia regarding human occupancy of penthouses above the top story of the building upon which the penthouse is placed.
.

[Congress] was not concerned so much with the use to which such penthouses would be put as with the fireproofing of such penthouses, and it would seem there was no objection on the part of Congress to the construction of fireproof penthouses above the height limit, just so such penthouses were (1) set back from the exterior walls, apparently for reasons of light and ventilation, and (2) were not constructed or used for human occupancy.

[T]he term 'human occupancy' as it is used in such paragraph should be construed to preclude the construction or use of penthouses for residential, office or business purposes[.]

The penthouse is not approved for use for human occupancy. There is no residential, office or business use occurring there. Instead, it is used for elevators, stairs, and as space that is accessory to the rooftop pool and recreation space (such as the pool pump room, restrooms, and storage). These uses are not residential as they are not part of a dwelling unit, but are accessible to all tenants for the purposes of utilizing the rooftop pool and recreation space. As stated above, all of those uses have been allowed by the Zoning Commission in rooftop penthouses per §411.1. Accordingly, the rooftop penthouse meets the intent and requirements of the Height Act and Zoning Regulations.

3. Building Density.

The Appellant's final claim of zoning error regards DCRA's determination to exclude certain portions of the lowest habitable level of the Building from the calculation of building density. The parties agree that the building density maximum for the site is 4.2 FAR. However, the Appellant claims that DCRA erroneously excluded the majority of the lowest habitable level even though certain units fronting Military Road sit above the sidewalk and street level.

Cellars are excluded from gross floor area, but basements are included. (See 11 DCMR § 199.1 (Definition of "Gross floor area").) The Zoning Regulations define the term “cellar” as that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade and “basement” as “that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.” (11 DCMR 199.1.) When, as here, a portion of the building is partly below grade, the Zoning Administrator uses the perimeter wall method to determine which area are located four or more feet above the finished grade and therefore included within the computation of gross floor area.

The Appellant argues that the Zoning Administrator considered areas of the building’s lowest floor to be less than four feet by counting as finished grade: (1) an area along Military Road approximately two feet higher than the existing condition over a distance of approximately 30 feet; and (2) the top of the grade adjacent to areaways along Military Road and in the interior courtyard. On the latter, the Appellant claims that the Zoning Administrator should have measured from the bottom most portion of the areaways.

The Board concludes that the Zoning Administrator properly identified the finished grade at both locations.

In neither location was the grade substantially raised from the natural grade. The Board notes that it is even being lowered in certain areas according to the final building permit plans. (Exhibits 49 and 50.) The Appellant's assertion to the contrary likely results from its failure to use the final building plans showing the building walls adjacent to the finished grade on the Military Road side or at the center court level of the building. (Compare Appellant's Exhibit 4, which is part of record Exhibit No. 17 with Exhibit 49.)

Further, the Board agrees with DCRA that the term "adjacent finished grade" connotes the ability to adjust the grade as compared to keeping "natural" or "previously existing grade." And contrary to the position of the Appellant, the determination of density for new construction involving courtyard construction above a garage requires the use of finished grade irrespective of the material that forms the adjacent finished grade, be it dirt or other landscaping, or paving or hardscaping.

The slightly elevated grade along the 30-foot portion of Military Road and adjacent to the areaways is no greater than has been allowed in countless number of projects approved by DCRA. It was in reaction to the potential abuse of this practice that the Zoning Commission, subsequent to the issuance of these permits, adopted a rule providing that in residence zones "berms or other forms of artificial landscaping shall not be included in measuring building height." Although the Board doubts that the minor increase in grade involved here would run afoul of this rule, the Appellant's construction rights were vested against any change to the Zoning Regulations as of the date the building permit was issued. (11 DCMR § 3202.4.)

Areaways, are a common and efficient method of maximizing light and ventilation to dwelling units located partially below grade in an urban environment routinely approved by DCRA. The proposed areaways measure within the generally accepted five-foot width standard. The Zoning Administrator properly determined that the finished grade adjacent to the areaways was the top of the grade behind each areaway. The Appellant erroneously contends that the finished grade should be considered to be the bottom of each areaway. This has never been the method followed by the Zoning Administrator.

For all these reasons, the Board concludes that the Zoning Administrator did not err in its calculation of the Building's density to exclude certain portions of the Building's lowest level as determined by the perimeter wall method.

DECISION

The Board finds the appeal without merit. The entire property is zoned R-5-D and the interpretations used by the Zoning Administrator to measure height and density and approve the roof structures were based upon long standing administrative practices and precedent. While the Board is not required to honor past administrative precedent clearly erroneous or inconsistent

with the zoning regulations, *Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment supra*, the Zoning Administrator's actions were both reasonable and consistent with the letter and spirit of the regulations.

It is therefore **ORDERED** that the DCRA administrative decisions are **AFFIRMED.**

Vote taken on October 29, 2013.

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle (by absentee vote), and Marcie I. Cohen to Affirm; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 18, 2014

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

Application No. 18778 of KJ Florida Avenue Property, LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for area variances from the loading requirements of § 2201.1 and the compact parking space requirements of § 2115.4, and special exceptions from the Reed-Cooke height requirements of § 1402.1, and the roof structure requirements of §§ 770.6 and 411 to allow the construction of a multi-family residential building in the RC/C-2-B District at 1711 Florida Avenue, N.W. (Square 2562, Lot 95).[1]

HEARING DATE: June 17, 2014
DECISION DATE: June 17, 2014 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

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 the Applicant, Advisory Neighborhood Commission ("ANC") 1C, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 1C, which is automatically a party to this application. ANC 1C submitted a letter in support of the application, with conditions that the Applicant (i) comply with the inclusionary zoning requirements of the Reed-Cooke Overlay regulations, (ii) provide 25% of the cellar area to the inclusionary zoning calculations; and (iii) endeavor to have a Bikeshare station installed adjacent, or in proximity, to the property. (Exhibit 32.) The Office of Planning ("OP") and the District's Department of Transportation ("DDOT") also submitted reports in support of, or with no objection to, the application. (Exhibits 33 and 34.)

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 loading requirements of § 2101.1 and the compact parking space requirements of § 2115.4; and for a special exception under § 3104.1 from the strict application of the roof structure requirements of § 770.6, and the height requirements of the Reed-Cooke Overlay under §§ 1402.1 and 1403.1. 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.

[1] The application was amended to include the additional variance relief from the compact parking space requirements of § 2115.4.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances under §§ 2201.1 and 2115.4, 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. The Board also concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 770.6, 1402.1 and 1403.1, and 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. The Applicant agreed to the conditions requested by the ANC; however, the Board concludes that only the condition pertaining to additional IZ square footage offers the requisite specificity to be enforceable. As for the first requested condition, the Board concludes that the Applicant is required to comply with the IZ requirements of the Reed-Cooke Overlay anyway, rendering the condition unnecessary. As for the third condition pertaining to a Bikeshare station, the Board concludes that it is not specific enough to be enforceable. The Board notes that the Applicant did not request any relief from the number of required parking spaces or any other zoning provision that would create a nexus with the ANC's proposed condition to explore installation of a Bikeshare station. Consequently, the ANC's proposed Bikeshare condition is not germane to this application.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE REVISED APPROVED PLANS AT EXHIBIT 31B AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall devote 25% of the gross floor area in the cellar to the inclusionary zoning floor area ratio calculations.

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.

VOTE: **4-0-1** (Lloyd L. Jordan, Robert E. Miller, S. Kathryn Allen, and Marnique Y. Heath to approve; Jeffrey L. Hinkle not present, not 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: June 18, 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. 18781 of Mana Bilingual Child Development, LLC, pursuant to 11 DCMR § 3104.1, for a special exception under section 205 to continue the operation of an existing child development center (12 children and 4 teachers), last approved by BZA Order No. 17975, dated March 16, 2010, and to continue the existing special exception under section 2116.6 allowing two required parking spaces to be located off-site, in the R-1-B District at premises 6524 8th Street, N.W. (Square 2973, Lot 81).[1]

HEARING DATE: June 17, 2014
DECISION DATE: June 17, 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") 4B, and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. ANC 4B submitted a letter in support of the initial application to expand the child development center ("CDC") use. The Office of Planning ("OP") through its report and testimony at the hearing also recommended approval of the original relief requested. Since the Applicant withdrew the request for relief actually reviewed by the ANC and OP (*see* footnote 1), their recommendations were not relevant to the relief ultimately considered by the Board.

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 amended application pursuant to § 3104.1, for a special exception under section 205 to continue the existing CDC (12 children and 4 staff) and a special exception under sub-section 2116.6 allowing for two off-site parking spaces to serve the property.

[1] The caption has been amended to reflect the relief granted under the amended application. Initially, the Applicant sought to expand the child development center (CDC) use, requesting Board approval to increase the maximum number of children from 12 to 36, and the maximum number of staff from 4 to 9. Although not styled as such, the initial application would have been treated as a request to modify BZA Order No. 17975, pursuant to section 3129.7. However, at the end of the public hearing, the Applicant withdrew its request for the expansion of the CDC, and amended its application to request permission to continue the existing operations beyond the expiration of its current term.

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Based upon the record before the Board, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 205 and 2116.6, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief to continue the status quo, with conditions, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

No requests for party status in opposition were submitted. Accordingly, a decision by the Board to grant the amended application would not be adverse to any party. Therefore pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, as amended be **GRANTED, SUBJECT to the following CONDITIONS:**

1. The application is approved until March 26, 2020 (*i.e.* five years after the expiration of the approval granted in BZA Order No. 17975).

2. Two off-site parking spaces shall be provided: at 6520 8th Street, N.W. and 6512 8th Street, N.W.

3. The Applicant is to provide on-site landscaping and maintain the property in a neat and orderly condition.

VOTE: **4-0-1** (Lloyd J. Jordan, Robert E. Miller, S. Kathryn Allen, and Marnique Y. Heath to Approve; Jeffery L. Hinkle being necessarily absent.)

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: June 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 § 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.

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-10
Z.C. Case No. 13-10
ZP Georgia, LLC
(Consolidated Planned Unit Development & Zoning Map Amendment @ Square 2892, Lots 102, 103, 104, 105, 879, and 910)
June 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 13, 2014, to consider applications from ZP Georgia, LLC (the "Applicant"), for the consolidated review and approval of a planned unit development ("PUD") and a related zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 from the GA/C-2-A District to the GA/C-2-B Zone District. The Commission considered the applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On October 17, 2013, the Applicant filed applications with the Commission for the consolidated review and approval of a PUD and related zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 (the "Subject Property") from the GA/C-2-A Zone District to the GA/C-2-B Zone District. The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District.

2. The Subject Property has a land area of approximately 16,756 square feet and is located on the west side of Georgia Avenue between Lamont Street, N.W. to the north and Kenyon Street, N.W. to the south. The Property has approximately 116.67 linear feet of frontage on Georgia Avenue, N.W. and backs onto a public alley at the rear of the site. Square 2892 is bounded by Lamont Street to the north, Georgia Avenue to the east, Kenyon Street to the south, and Sherman Avenue to the west, all located in the northwest quadrant of Washington, D.C. The Subject Property is within walking distance of the Georgia Avenue Metrorail Station, which is located north of the site. The Subject Property is currently improved with surface parking and a number of low-rise commercial buildings that the Applicant proposes to raze in connection with redevelopment of the site.

3. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum density of 5.95 floor area ratio ("FAR"), which is less than the maximum permitted 6.0 FAR under the C-2-B PUD requirements. The project will include approximately 96,000 square feet of residential uses, comprised of 105 units (plus or minus 10%), and approximately 3,816 square feet

of retail uses. A total of eight percent of the residential gross floor area devoted to residential use will be dedicated as affordable. The building will have a maximum height of approximately 87 feet, and will have a minimum of 36 off-street parking spaces.

4. At its public meeting held on December 9, 2013, the Commission voted to schedule a public hearing on the application.

5. On December 23, 2013, the Applicant submitted a Prehearing Statement. (Exhibit ["Ex."] 15.) The Prehearing Statement included revised plans showing additional details regarding the project's design and materials (Ex. 15A1-6), additional information regarding the project's proposed public benefits and amenities, additional information regarding the pavers proposed within public space, and the additional materials required pursuant to § 3013 of the Zoning Regulations.

6. On February 11, 2014, the Applicant submitted a Supplemental Prehearing Statement. (Ex. 23.) This submission included an updated set of architectural plans and elevations prepared by Hickok Cole Architects, dated February 7, 2014 (the "Approved Plans"), and a Traffic Impact Study prepared by Gorove/Slade Associates, Inc., dated January 17, 2014, which was submitted to the District Department of Transportation ("DDOT"). (Ex. 23B.)

7. On February 20, 2014, the Office of Zoning rescheduled the public hearing date from Monday, March 3, 2014, to Thursday, March 13, 2014, due to the Mayor's "State of the City" address. (Ex. 27.)

8. On February 20, 2014, Mr. Romeo Morgan filed a Party Status Request to participate at the hearing in opposition to the applications. (Ex. 24.) In its Party Status Request materials, Mr. Morgan ("Party in Opposition") stated that that he is the owner of two of the four properties that directly abut the Subject Property to the south, and that those properties have an implied easement over the Subject Property for rear egress.[1]

9. After proper notice, the Commission held a public hearing on the application on March 13, 2014.

10. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 1A, the ANC within which the Subject Property is located, and the Party in Opposition.

[1] The Commission notes that only one of the four properties that directly abut the Subject Property to the south appears to be owned by the Party in Opposition. According to the D.C. Office of Tax and Revenue's records, Lot 804 is owned by Mr. David Gullick, Lot 805 is owned by Mr. Guy E. Streat, Lot 806 is owned by the District of Columbia, and Lot 909 is owned by Mr. Anthony R. Williams (also known as Romeo Morgan).

11. At the hearing, the Applicant submitted a brief response to the issues raised by the Party in Opposition, a copy of a report prepared by Mr. Steven E. Sher, the hearing PowerPoint presentation, and a materials board. (Ex.35-38.)

12. The following principal witnesses testified on behalf of the Applicant at the public hearing: Steven Zuckerman, on behalf of the Applicant; Jeffrey Lockwood, on behalf of Hickok Cole Architects, as an expert in residential and retail design; Erwin N. Andres, on behalf of Gorove/Slade Associates, Inc., as an expert in transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, on behalf of Holland & Knight LLP, as an expert in land use and zoning. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Lockwood, Mr. Andres, and Mr. Sher were qualified by the Commission as experts in their respective fields.

13. The Office of Planning ("OP") testified in support of the project at the public hearing. DDOT testified in support of the project at the public hearing.

14. ANC 1A submitted a resolution in support of the application. (Ex. 16.) ANC 1A's resolution indicated that at a duly noticed public meeting on January 8, 2014, at which notice was properly given and a quorum was present, ANC 1A voted 8-1-1 to support the application. ANC 1A indicated that it believes the project will have a significant positive impact on the development of the community, particularly given the Applicant's commitment to providing public benefits and amenities to the Georgia Avenue Corridor, by providing new neighborhood-serving retail, new housing options including affordable housing, and the creation of jobs and an increased tax base. ANC 1A also noted that the Applicant's proposal constitutes a major benefit, and that the project will also help to implement a number of the recommendations of the *Georgia Avenue-Petworth Metro Station & Corridor Plan.* ANC 1A also stated that it strongly supports the Applicant's plan to pay the Capitol Hill Business Improvement District/Ready, Willing & Working to provide beautification and clean-up services entirely within the ANC 1A09 boundaries, which will include trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others. ANC 1A also stated that it strongly supports the Applicant's proposal to pay Cultural Tourism D.C. for the installation of eight plaques within the communities served by Georgia Avenue to expand the African American Heritage Trail. Overall, ANC 1A indicated that it believes the amenities proposed for the project are important for the community and are generally appropriate to the degree of development incentives requested by the Applicant, especially since the project will not have any adverse effects on the neighborhood.

15. At the hearing, the Party in Opposition submitted written and oral testimony in opposition to the application. The Party in Opposition alleged that he owns two properties abutting the Subject Property to the south: 3200 Georgia Avenue, N.W. (Morgan's Seafood restaurant) and 707 Kenyon Street, N.W. (a residential apartment building). The Party in

Opposition stated that his family has owned and operated Morgan's Seafood for 80 years and that an easement exists over the Subject Property to provide rear egress from the properties located at 705-709 Kenyon Street, N.W. and 3200 Georgia Avenue, N.W.

16. Two witnesses testified at the hearing in opposition to the application, both of whom are tenants of the Party in Opposition and reside at the 707 Kenyon Street, N.W. Property.

17. One witness testified at the hearing neither in support nor in opposition to the application. The witness stated that he was in support of development on this section of Georgia Avenue, N.W., but that he was concerned about eliminating egress from the properties abutting the Subject Property.

18. On March 31, 2014, the Applicant submitted a Post-Hearing Submission. (Ex. 43.) The Post-Hearing Submission included: 1) revised Approved Plans addressing the Commission's comment to provide two roof structures instead of four as originally proposed; 2) a statement addressing the impact on development of the Subject Property if a five-foot easement is established on the southern-most edge of the Subject Property; 3) a memo describing why an implied easement does not exist on the Subject Property; and 4) a summary of the outcomes from the Applicant's post-hearing meeting with the Party in Opposition.

19. On March 31, 2014, the Party in Opposition submitted a Post-Hearing Submission which stated that: 1) the proposed development on the Subject Property will create fire and public safety hazards and may violate fire safety regulations; and 2) that the Party in Opposition's history of use of the "alleyway" on the Subject Property constituted either an easement by prescription and/or necessity, or a public easement. (Ex. 44.)

20. At its public meeting held on April 15, 2014, the Commission considered whether to take proposed action. In its deliberations, the Commission noted that the Applicant was claiming compliance with the Inclusionary Zoning ("IZ") set aside requirements as a public benefit. Subsection 2403.9 (f) provides in part that:

> [A]ffordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning. In determining whether this standard has been met, the Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set-aside for "low-income households" as defined in § 2601.1.

21. For the purposes of this Order, any reference to low-income household or moderate income house shall have the same meaning as is given those terms in the definitions set forth in § 2601.1, which are as follows:

> Low-income household - a household of one or more individuals with a total annual income adjusted for household size equal to less than fifty percent (50%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the [Inclusionary Zoning] Act.
>
> Moderate-income household - a household of one or more individuals with a total annual income adjusted for household size equal to between fifty-one percent (51%) and eighty percent (80%) of the Metropolitan Statistical Area median as certified by the Mayor pursuant to the Act.

22. Although the Applicant demonstrated that the amount of affordable housing being provided under the proposed C-2-B rezoning would exceed what would have been required under the existing C-2-A zoning, it did not identify the amount of low-income housing that would have been required under C-2-A zoning that would not be required in the C-2-B Zone District.

23. The Commission therefore requested that the Applicant provide this information and undertake the balancing analysis required by § 2403.9 (f).

24. The Commission then took proposed action to approve the applications and the plans that were submitted to the record.

25. On April 18, 2014, the Applicant provided its list of PUD proffers and draft conditions required pursuant to 11 DCMR § 2403.19. (Ex. 48.) In response to the Commission's request to provide the necessary information for it to determine whether IZ compliance was a public benefit, the Applicant amended its proffer of public benefits of the PUD to provide that it would set aside the same amount of gross floor area for low-income households as would be required under C-2-A zoning. Since there will be a net gain of affordable units and no loss of low-income units, the information requested was no longer needed and the test for IZ compliance being a public benefit was met as to the extent of the net gain achieved.

26. On May 6, 2014, the Applicant provided its final list of proffers and draft conditions. (Ex. 49.)

27. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC's Executive Director, by delegated action dated April 24, 2014, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital. (Ex. 50.)

28. The Commission took final action to approve the application on June 9, 2014.

The PUD Project

29. The Subject Property is situated in Ward 1 and consists of Lots 102, 103, 104, 105, 879, and 910 in Square 2892. The Subject Property's current zoning designation of GA/C-2-A means that it is in the C-2-A Zone District as well as the Georgia Avenue Commercial Overlay District. The Subject Property has a land area of approximately 16,756 square feet and is located on the west side of Georgia Avenue between Lamont Street, N.W. to the north and Kenyon Street, N.W. to the south.

30. The Applicant proposes to build a mixed-use development composed of retail and residential uses. The project will have a maximum density of 5.95 FAR, which is less than the maximum permitted 6.0 FAR under the C-2-B PUD requirements. The project will include approximately 96,000 square feet of residential uses, comprised of 105 units (plus or minus 10%), and approximately 3,816 square feet of retail uses. A minimum of eight percent of total residential gross floor area will be dedicated as affordable housing as required by the IZ Regulations. Based upon the expected size and mix of the units in the project, eight percent will result in approximately 7,680 square feet and nine IZ units. The affordable units will be divided such that 2,625 square feet of the affordable units shall be affordable to households earning up to 50% of the area medium income ("AMI") and 5,055 square feet of the affordable units shall be affordable to households earning up to 80% of the AMI. The building will have a maximum building height of approximately 87 feet, and will have 36 on-site parking spaces.

Development Under Existing Zoning

31. The Subject Property is currently zoned GA/C-2-A. The Applicant is seeking to rezone the Subject Property to GA/C-2-B in connection with this Application. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District outside of the central core. (11 DCMR § 720.2.) The C-2-A Zone District includes the following development requirements:

- The maximum permitted matter-of-right height in the C-2-A Zone District is 50 feet with no limit on the number of stories; (11 DCMR § 770.1.)

- The maximum density in the C-2-A Zone District is 2.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses; (11 DCMR § 771.2.)

- The maximum percentage of lot occupancy for a building or portion of building devoted to residential use is 60%; (11 DCMR § 772.1.)

- A minimum rear yard depth of 15 feet; (11 DCMR § 774.1.)

- If provided, a side yard at least two inches wide per foot of building height, but not less than six feet; (11 DCMR § 775.5.)

- If provided for a building or portion of building devoted to residential uses, at any elevation in the court, the width of court must be a minimum of four inches per foot of height, measured from the lowest level of the court to that elevation, but not less than 15 feet. (11 DCMR § 776.3.) In the case of a closed court for a building or portion of a building devoted to residential uses, the minimum area must be at least twice the square of the width of court based upon the height of court, but not less than 350 square feet; (11 DCMR § 776.4.)

- For an apartment house, one off-street parking space for each two dwelling units; (11 DCMR § 2101.1.)

- For an apartment house with 50 or more units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep; and (11 DCMR § 2201.1.)

- A development that is subject to the Inclusionary Zoning regulations and which is of steel and concrete frame construction, must set aside the greater of eight percent of the gross floor area devoted to residential use or 50% of the bonus density utilized for inclusionary units (11 DCMR § 2603.2.), with 50% of the inclusionary units set aside for eligible low-income households and 50% of the inclusionary units set aside for moderate-income households. (11 DCMR § 2603.3.)

32. The Subject Property is also located in the Georgia Avenue Commercial ("GA") Overlay District, which applies to certain properties zoned C-2-A and/or C-3-A along both sides of Georgia Avenue. (11 DCMR § 1327.1.) The GA Overlay includes a number of design requirements in § 1328 of the Zoning Regulations, including the following:

- Buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way;

- Buildings on corner lots must be constructed to all property lines abutting public streets;

- In the GA/C-2-A Zone District, 70% lot occupancy is permitted for mixed use buildings that include residential use;

- On-grade parking structures with frontage on Georgia Avenue, N.W. must provide not less than 65% of the ground level frontage as commercial space;

- Each building on a lot that fronts on Georgia Avenue, N.W. must devote not less than 50% of the surface area of the street wall at the ground level to entrances to commercial uses or to the building's main lobby, and to display windows having clear or clear/low emissivity glass. Decorative or architectural accents do not count toward the 50% requirement;

- Security grilles over windows or doors shall have no less than 70% transparency;

- Each commercial use with frontage on Georgia Avenue, N.W. must have an individual public entrance directly accessible from the public sidewalk;

- Buildings must be designed so as not to preclude an entrance every 40 feet on average for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground-floor uses and the main lobby;

- The ground-floor level of each building or building addition must have a uniform minimum clear floor-to-ceiling height of 14 feet;

- Buildings that have a minimum clear floor-to-ceiling height of 14 feet on the ground floor level are permitted an additional five feet of building height over that permitted as a matter-of-right in the underlying zone; and

- Off-street surface parking is permitted in rear yards only.

33. The GA Overlay also prohibits certain uses, such as drive-through and automobile-related uses (11 DCMR § 1329), includes special exception provisions for certain uses (11 DCMR § 1330), and includes PUD provisions (11 DCMR § 1331).

34. The Commission finds that the proposed PUD meets the applicable requirements of the GA Overlay, as set forth in the report and testimony of the Applicant's land use and zoning expert and the report of the Office of Planning, except for the requirement that buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way.

35. Subsection 1330.1(b) of the Zoning Regulations requires special exception approval by the Board of Zoning Adjustment for the construction of any new building on a lot consisting of 12,000 square feet or more. The Subject Property consists of 16,756 square feet. However, § 2405.7 of the Zoning Regulations gives the Commission authority to approve any special exception as a part of a PUD application, which the Commission approves as part of approving this application.

Development Under Proposed GA/C-2-B Requirements

36. The Applicant proposes to rezone the Subject Property to GA/C-2-B in connection with this application. The C-2-B Zone District is designed to serve commercial and residential functions similar to the C-2-A Zone District, but with high-density residential and mixed-uses. (11 DCMR § 720.6.) The C-2-B Zone Districts are compact and located on arterial streets, in uptown centers, and at rapid transit stops. (11 DCMR § 720.7.) Buildings may be entirely residential or a mixture of residential and commercial uses in the C-2-B Zone District. (11 DCMR § 720.8.)

37. The C-2-B Zone District includes the following development requirements:

- A maximum matter-of-right height of 65 feet with no limit on the number of stories (11 DCMR § 770.1), and a maximum height of 90 feet under the PUD requirements (11 DCMR § 2405.1);

- A maximum matter-of-right density of 3.5 FAR, all of which may be devoted to residential use, but not more than 1.5 of which may be devoted to non-residential uses (11 DCMR § 771.2), and a maximum density of 6.0 FAR, all of which may be devoted to residential use, but not more than 2.0 of which may be devoted to nonresidential uses under the PUD requirements (11 DCMR § 2405.2);

- For a building devoted to residential use, a minimum lot occupancy of 80% (11 DCMR § 772.1);

- A minimum rear yard depth of 15 feet (11 DCMR § 774.1) and, if provided, a side yard at least two inches wide per foot of building height, but not less than six feet (11 DCMR § 775.5);

- If provided for a residential use, a minimum court width of four inches per foot of height, but not less than 15 feet (11 DCMR § 776.3) and in the case of a closed court, a minimum area of at least twice the square of the width of court, but not less than 350 square feet (11 DCMR § 776.4);

- For a retail establishment in excess of 3,000 square feet, one off-street parking space for each additional 750 square feet of gross floor area (11 DCMR § 2101.1);

- For an apartment house, one off-street parking space for each three dwelling units (11 DCMR § 2101.1);

- For a retail establishment with 5,000 to 20,000 square feet of gross floor area, one loading berth at 30 feet deep and one loading platform at 100 square feet (no service/delivery loading space is required) (11 DCMR § 2201.1);

- For an apartment house or multiple dwelling with 50 or more dwelling units, one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery loading space at 20 feet deep (11 DCMR § 2201.1); and

- A development that is subject to the Inclusionary Zoning regulations must devote the greater of eight percent of the gross floor area devoted to residential use, or 50% of the bonus density utilized for inclusionary units for moderate income households (11 DCMR § 2603.2 and 2603.3).

Development Incentives and Flexibility

38. The Applicant requested the following areas of flexibility from the Zoning Regulations:

a. ***Flexibility From Rear Yard Requirements.*** Pursuant to § 774.1 of the Zoning Regulations, buildings in the C-2-B Zone District are required to provide a rear yard with a minimum depth of 15 feet. However, due to the Subject Property's irregular shape, the asymmetrical rear lot line, and the existence of a bio-retention basin to be located at the rear of the building, the project does not include a rear setback across the full width of the Subject Property. The Commission finds that although the project does not include a full rear setback, the rear of the Subject Property abuts a public alley, so there will be open space between the rear of the proposed building and the properties to the west of the Subject Property. The Commission further finds that given the design of the building, the residential units will have adequate access to light and air. The Commission also notes that even though the project does not include a full rear setback, the total square footage of open space on the site exceeds the square footage that would exist if the Applicant provided a compliant rear yard. Therefore, the Commission finds that flexibility is appropriate in this case;

b. ***Flexibility From The Off-Street Loading Requirements.*** The Applicant requests relief from the off-street loading requirements. Pursuant to § 2201.1 of the Zoning Regulations, the Applicant is required to provide: one loading berth at 55 feet deep, one loading platform at 200 square feet, and one service/delivery space at 20 feet deep. However, due to the anticipated needs of the residential and retail uses, the Applicant is seeking flexibility to provide one loading berth at 30 feet deep and one loading platform at 200 square feet to be shared by the retail and residential uses. The Commission finds that the Applicant's requested flexibility is consistent with the Comprehensive Plan's recommendations to consolidate loading areas within new developments, provide shared loading spaces in mixed-

use buildings, and minimize curb cuts on streets to the greatest extent possible. In addition, the Commission finds that given the nature and size of the residential units, it is unlikely that the building will be served by 55-foot tractor-trailer trucks, and that the loading areas are primarily to be used by the residents only when they move in or out of the building. The Commission further finds that the retail users will typically use the loading facilities during times that cause the least amount of conflict with the loading needs of the residents. Therefore, the Commission finds that the proposed shared loading facilities will be able to accommodate both the residential and retail uses, and thus approves the requested loading flexibility;

c. ***Flexibility from Compact Parking Space Location Requirements.*** Subsection 2115.4 of the Zoning Regulations requires compact spaces to be placed in groups of at least five contiguous spaces with access from the same aisle. However, the Applicant proposes to provide two compact parking spaces grouped together at the rear of the building, separate from the 34 parking spaces located in the below-grade garage. Therefore, flexibility is required from § 2115.4. The Commission finds that the parking layout has been designed to operate efficiently and to provide adequate access and circulation for the site. However, due to the goal of meeting the parking requirements, combined with the lack of sufficient space to provide standard sized parking spaces at the rear of the building, the Applicant cannot group the two surface compact spaces with the other compact spaces in the garage. The Commission further finds that approval of this requested flexibility will not have any adverse impacts since the Applicant will be meeting the parking requirements, and the garage has been designed to operate efficiently;

d. ***Flexibility From Roof Structure Requirements.*** The Applicant requests flexibility from the roof structure requirements of the Zoning Regulations because there will be multiple roof structures (§ 411.3 and § 770.6(a)); the structures cannot be setback from all exterior walls a distance equal to their height above the roof (§§ 411.2 and 770.6(b)); and the enclosing walls of the roof structures are not of an equal height (§ 411.4). The Commission finds that each roof structure is a necessary feature and the structures have to be separated due to the building code requirement to provide separate means of egress for buildings, as well as the desire to break up massing on the roof. The Commission finds that the location and number of roof structures is driven by the layout and design of the residential units within the building, as well as the location of the core features such as the elevator. In addition, the Applicant is providing the greatest setbacks possible given the size of the roof and the interior configuration of the proposed building. Setback relief is only requested for the internal corners of the building, since the roof structures meet all of the setbacks requirements from the street and alley elevations. Thus, the requested roof structure design will not adversely impact the light and air of adjacent buildings. Therefore, the Commission finds that the

intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings will not be adversely affected by granting this flexibility;

e. ***Flexibility from Georgia Avenue Overlay.*** The Applicant requests flexibility from § 1328.2 of the Georgia Avenue Overlay's design requirements. Pursuant to § 1328.2, buildings must be designed and built so that not less than 75% of the street wall at the street level is constructed to the property line abutting the street right-of-way. In this case, only 57% of the street wall at the street level is being constructed to the property line abutting Georgia Avenue, N.W. The Commission finds that the slight deviation from § 1328.2 is caused by the Property's irregular shape and asymmetrical front (eastern) lot line, which extends five feet, six inches farther east toward Georgia Avenue on the southern portion of the Subject Property than on the northern portion. The Commission also finds that the proposed street wall creates enhanced pedestrian access and amenities and allows for additional space between the building and sidewalk amenities, which include street trees, planting beds, bicycle racks, and pedestrian-oriented lighting. The Commission also notes that flexibility from § 1328.2 will provide an enhanced experience for residents and visitors of the building and pedestrians on Georgia Avenue; and

f. ***Additional Areas of Flexibility.*** The Applicant also requests flexibility in the following areas:

(i) To be able to provide a range in the number of residential units of plus or minus 10% from the 105 depicted on the plans;

(ii) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;

(iii) To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the minimum level required by the Zoning Regulations;

(iv) To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 60 points under the LEED 2009 for New Construction and Major Renovations rating standards;

(v) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make

minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit; and

(vi) If the retail area is leased by a restaurant user, flexibility to vary the location and design of the ground floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

Public Benefits and Amenities

39. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

a. *Urban Design, Architecture, Landscaping and Open Space*. The project implements a number of urban design and architectural best practices, and will assist in the further development of Georgia Avenue, N.W. into a major mixed-use corridor with higher-density residential uses and high-quality community oriented retail uses. Moreover, given the width of the Georgia Avenue right-of-way, taller buildings holding a uniform street wall will create a well proportioned street section with a better sense of enclosure and place. This new street section, in combination with the mix of uses and streetscape improvements employed, will support the ultimate revitalization of this portion of Georgia Avenue into another great Washington, D.C. mixed-use, multi-modal main street;

b. *First Source Employment Agreement.* The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services. Execution and implementation of this agreement will help to expand employment opportunities for residents of the District in connection with construction of the project;

c. *Housing and Affordable Housing.* The proposed PUD will contain approximately 96,000 square feet of gross floor area dedicated to residential use. The Applicant is therefore significantly under-building the amount of commercial use permitted on the site. Thus, the Applicant's proposal to provide additional housing is consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Mayor's housing initiative, all of which provide that the single greatest benefit to the area, and the city as a whole, is the creation of new housing opportunities;

In addition, eight percent of the residential gross floor area will be set aside as IZ units, which is the minimum amount required pursuant to § 2603.2. As noted, the PUD regulations at §2403.9 (f) provide in part that:

> [A]ffordable housing provided in compliance with § 2603 shall not be considered a public benefit except to the extent it exceeds what would have been required through matter of right development under existing zoning. In determining whether this standard has been met, the Commission shall balance any net gain in gross floor area against any loss of gross floor area that would have been set aside for "low-income households" as defined in § 2601.1.

Under the existing C-2-A zoning the Applicant would be required to set aside 5,249 square feet of gross floor area for affordable units. Under the proposed C-2-B rezoning, minimum compliance with the set-aside requirement would require the Applicant to reserve 7,680 square feet. The resulting 2,431 additional square feet can therefore be potentially recognized as a public benefit. However, under C-2-A zoning, the Applicant would have to set-aside 50% of the affordable units for low-income households, with the first inclusionary unit and each additional odd number unit to be set aside for low-income households. Thus, assuming an even number of equally sized units, at least 2,625 square feet of gross floor area would have been reserved for low-income households under C-2-A zoning, whereas all 7,680 square feet is ordinarily to be reserved for moderate-income households under C-2-B. However, the Commission need not balance any loss of gross floor area for low-income households because the Applicant has agreed to reserve the identical 2,625 square feet of gross floor area for low-income households as would have been required under C-2-A. This not only allows the 2,431 additional square feet for IZ units to be recognized as a public benefit, but the voluntary set aside for low-income households may also be viewed a distinct public benefit of this PUD;

d. *Transportation Demand Management.* The Applicant will implement the following Transportation Demand Management ("TDM") measures for the project, which go beyond the measures necessary to mitigate any adverse impacts generated by the project:

(i) Identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates;

(ii) Provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bicycle room within the building that can house up to 35 bicycles, and 10 additional secure spaces in the garage;

(iii) Unbundle parking costs from the cost of lease or purchase;

(iv) Post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;

(v) Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites;

(vi) Install a TransitScreen in the lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. The TDM Leader will make printed materials related to local transportation alternatives available to residents and employees upon request and at move-in for new tenants; and

(vii) For a period of five years, offer a membership fee at initial lease and/or sale of units in a car sharing and/or Capital Bikeshare program for each residential unit;

e. *Environmental Benefits.* The proposed development will help to ensure the environmental, economic, and social sustainability of its residents through the implementation of sustainable design features. A number of strategies will be implemented to enhance the inherently sustainable nature of the site's location and to promote a healthy, desirable, and comfortable lifestyle that will fully benefit the project's residents while minimizing impacts on the environment. The proposed development will provide a number of environmental benefits, including street tree planting and maintenance, landscaping, energy efficient and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices. Although the Applicant is not seeking LEED-certification for the building, the project will meet a LEED-gold equivalent rating and will be designed to meet rigorous energy and environmental design standards using the LEED 2009 for New Construction and Major Renovations rating system as a guide and performance metric; and

f. *Uses of Special Value to the Neighborhood.* As part of the PUD process, the Applicant worked with ANC 1A and other community groups to develop an appropriate off-site amenity that has special value to the neighborhood and would be a community investment that will last for the life of the PUD project. As a result of this process, the Applicant agreed to pay the Capitol Hill Business Improvement District/Ready, Willing & Working to provide beautification and clean-up services within the ANC 1A09 boundaries, including trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others. The Applicant also agreed to pay Cultural Tourism D.C. for the installation of eight plaques in ANC 1A at various points along the African American Heritage Trail to highlight the

significance of African Americans in Washington, D.C. throughout the city's history.

Compliance with Guiding Principles of the Comprehensive Plan Amendment Act of 2006 (D.C. Law 16-300, effective March 8, 2007)

40. The District of Columbia Comprehensive Plan Future Land Use Map designates the Subject Property in the Mixed-Use, Medium-Density Residential and Moderate-Density Commercial land use category. The Medium-Density Residential designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low- and moderate-density housing may exist within these areas. The Medium-Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone Districts are generally consistent with the Medium-Density designation, although other zones may apply in some locations. The Moderate-Density Commercial designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.

41. The District of Columbia Comprehensive Plan Generalized Policy Map designates the Subject Property in a Main Street Mixed Use Corridor area. Main Street Mixed Use Corridors are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.

42. The Commission finds that the Applicant's proposal to rezone the property from the GA/C-2-A Zone District to the GA/C-2-B Zone District to construct a mixed-use development on the Subject Property is consistent with the Comprehensive Plan designation of the Subject Property. The Applicant proposes to construct 5.73 FAR of residential use on the Subject Property, which is consistent with the amount of residential density permitted in medium-density zones. Moreover, the proposed C-2-B zoning classification is specifically identified as a moderate-density commercial zone district. In

addition, one of the primary purposes of the C-2-B Zone District is to provide commercial and residential functions within a single building, which is also consistent with the stated principle of the mixed-use designation of the Subject Property. The Subject Property is also located along a transportation corridor and is in close proximity to a Metrorail station. Given the District's stated policy of channeling new residential and retail growth into areas near transit stations and along bus routes, the Commission finds that the proposed project and map amendment are consistent with the Comprehensive Plan's designation of the Subject Property. In addition, the Commission further finds that the proposed project and rezoning application are consistent with the Generalized Policy Map's designation of the Subject Property since the project includes both residential and retail uses that will help to further economic and housing opportunities and serve neighborhood needs.

43. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:

a. *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§§ 2.3, 217.4.) The Comprehensive Plan also states that redevelopment and infill opportunities along corridors are important parts of reinvigorating and enhancing neighborhoods. (§§ 2.3, 217.6.) The proposed PUD is fully consistent with each of these goals. Redeveloping the Subject Property into a vibrant mixed-use development will further the revitalization of the neighborhood;

b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the Plan's elements. (§§ 2.3, 218.8.) The proposed PUD furthers this goal since, as part of the PUD process, the Applicant worked with ANC 1A and other groups to ensure that the development will provide a positive impact to the immediate neighborhood; and

c. *Building Green and Healthy Communities.* One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§§ 2.3, 221.3.) As discussed in more detail above, the building will include a number of sustainable design features.

44. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as set forth in the report and testimony of the Applicant's land use and zoning expert and the OP report.

Office of Planning Report

45. By a report dated November 27, 2013, OP stated that it supports the application and that the proposed PUD is not inconsistent with the Comprehensive Plan. Therefore, OP recommended that the Commission schedule a public hearing on the application. (Ex. 11.)

46. On February 21, 2014, OP submitted a report recommending approval of the application, subject to the conditions that: 1) the landscape plan is revised to accurately reflect the number of existing and proposed street trees; and 2) the Applicant request additional flexibility from § 411 of the Zoning Regulations to permit roof structures of more than one height. (Ex. 26.) At the public hearing and in the Applicant's PowerPoint presentation submitted on March 13, 2014, the Applicant updated the landscape plan to accurately reflect the number of existing and proposed trees and requested additional flexibility from § 411 to permit roof structures of more than one height. (Ex. 37.) Therefore, the Commission finds that the Applicant has addressed the comments outlined in OP's report.

47. In its report, OP stated that it supports the proposal for the new mixed-use building that will provide space for residential and commercial uses. OP also reported that the proposed PUD includes a number of public benefits and project amenities as described in this Order. OP found that the proposal is not inconsistent with the Comprehensive Plan Future Land Use and Generalized Policy maps, and that the project furthers many important policies included in the Comprehensive Plan, the Georgia Avenue – Petworth Metro Station Area and Corridor Plan, and the Great Streets Framework Plan - 7th Street - Georgia Avenue.

48. OP noted that it received comments from DC Water and FEMS, indicating that they had no objection to the application, and from DHCD and MPD indicating that they had no comments. (Ex. 44.) OP also noted that the Urban Forestry Administration requested the Applicant to coordinate with them concerning the preservation and the planting of new street trees. Finally, OP noted a comment from DDOT recommending that the Applicant consider vertical bike parking to increase capacity.

DDOT Report

49. DDOT submitted a report, dated February 21, 2014, indicating that DDOT conditionally supports the project. (Ex. 25.) DDOT indicated that in order to achieve the proposed high non-auto mode split, the TDM plan should be strengthened to include offering an annual

Capital Bikeshare or car share membership to each condominium or apartment unit for a period of five years, and to provide more long-term bicycle spaces. At the public hearing, the Applicant agreed to offer, for a period of five years, membership to Capital Bikeshare or a car share program to each condominium or apartment unit, and a total of 45 bicycle parking spaces, with 35 spaces in a secure bicycle room on the ground floor and 10 secure spaces in the garage. (Ex. 37.) Therefore, the Commission finds that the Applicant has addressed the comments outlined in DDOT's report.

Contested Issues/Party in Opposition

50. The Party in Opposition raised concerns at the public hearing and in his post-hearing submission. The Party in Opposition also submitted a statement to the Commission (Ex. 40.) The Party in Opposition indicated that he was primarily concerned with two matters: 1) the Applicant's proposal to construct the proposed building to the Subject Property's southern property line, which would create fire and public safety hazards, and 2) the existence of an alleged unrecorded easement over the southern portion of the Subject Property by virtue of the Party in Opposition using the alleged easement for approximately 80 years.

51. The Commission has carefully reviewed the arguments raised by the Party in Opposition, made both in writing and orally at the public hearing, and made in his post-hearing letter dated March 31, 2014 (Ex. 44), and makes the following findings.

52. **Fire and Public Safety Concerns**. At the public hearing and in its post-hearing submission, the Party in Opposition asserted that the Applicant's proposal to construct the proposed building up to the Subject Property's southern property line will create fire hazards, public safety concerns, and may violate fire safety regulations. The Party in Opposition indicated that the proposed building would block rear egress from his properties at 3200 Georgia Avenue, N.W. and 707 Kenyon Street, N.W.[2] Specifically, without providing any building code citations, the Party in Opposition stated: 1) in other jurisdictions, the proposed building would have to be set back from its southern property line to ensure minimal rear entry access to adjacent properties; 2) the Applicant failed to comply with fire safety rules and regulations, which affect the development's design and structure, and 3) the project as proposed does not have unqualified approval from the D.C. FEMS Fire Prevention Division. (Ex. 44.)

53. The Commission finds that the District does not require setbacks from side lot lines (side yards) for buildings in commercial districts, and that the Applicant may build to the Subject Property's southern property line as a matter-of-right (see theoretical plat, Ex. 35C). The Commission also finds that, as indicated on the plats in Exhibit 35D and Exhibit 46E, there are many instances in the District of Columbia where side lot lines

[2] The Commission notes that the D.C. Office of Tax and Revenue's records indicate that Mr. Guy E. Streat is the owner of 707 Kenyon Street, N.W.

abut rear lot lines and where buildings were built in the condition about which the Party in Opposition complains.

54. The Commission finds that the issues raised by Mr. Morgan are governed by the International Building Code ("IBC") and the D.C. Construction Code Supplement (12 DCMR).[3] The Commission has stated in a number of cases that construction issues are beyond the Commission's jurisdiction (*see, e.g.* Zoning Commission Order No. 12-02, October 21, 2013). Final determination of code compliance is determined during the permitting process by the Department of Consumer and Regulatory Affairs ("DCRA") and the D.C. Code Official, not by the Commission.

55. The Commission finds that the letter dated February 26, 2014, from D.C. FEMS was submitted to the D.C. Surveyor's Office in response to an alley closing application submitted by the Applicant for a small, unimproved portion of an existing public alley in Square 2892. (Ex. 44.) The Commission finds that the letter clearly states that the D.C. FEMS had "no objection" to the alley closing so long as the project complies with § 503 of the fire code. The Commission finds that the project has been designed to comply with all code requirements, including the requirements of § 503. Further, the Commission finds that evidence of record submitted by the Applicant indicates that the project has been designed to comply with all applicable standards.

56. **Existence of an Easement Across the Subject Property**. At the public hearing and in its post-hearing submission, the Party in Opposition asserted that his use of the southern portion of the Subject Property for approximately 80 years constituted either an easement by prescription and/or necessity or a public easement.

57. The Commission finds that it is not the proper forum to adjudicate the Party in Opposition's claim to an easement across the Subject Property. The Commission's jurisdiction is defined by statute and regulation. *See* D.C. Code § 6-641.01; 11 DCMR §§ 3000 *et seq.* Regarding the scope of authority for regulatory agencies like the Commission, the Court of Appeals has stated repeatedly that it is "reluctant to read into a statute powers for a regulatory agency which are not fairly implied from the statutory language, since the agency is statutorily created." *See Spring Valley Wesley Heights Citizen Ass'n v. District of Columbia Bd. of Zoning Adjustmen*t, 644 A.2d 434, 436 (D.C. 1994) (*citing Chesapeake & Potomac Tel. Co. v. Public Service Comm'n of District of Columbia*, 378 A.2d 1085, 1089 (D.C. 1977)). The Commission's authority is thus limited to and controlled by its statute and governing regulations, and neither of those documents permits the Commission to resolve a dispute as to title to real property in the District. Moreover, this Commission has ruled in a number of cases that it does not have jurisdiction over issues governed by other forums or standards beyond the Zoning Regulations. *See, generally* D.C. Code § 6-641.01; *see also, e.g.* Z.C. Order No. 05-42,

[3] The D.C. Construction Codes Supplement includes, among others, the D.C. Building Code (12 DCMR-A), and the D.C. Fire Code (12 DCMR-H).

Jan. 14, 2008 (no jurisdiction over a request for regulatory reviews, permits, and applications from Applicant); Z.C. Order No. 638, November 13, 1989 (no jurisdiction over temporary closing of alleys or damage to neighboring properties); Z.C. Order No. 01-09C, February 11, 2002 (no authority to appoint, establish, or monitor an arbitration board); Z.C. Order No. 02-43, February 24, 2003 (no authority to require DDOT's compliance). In these cases, the Commission has acknowledged the limits of its authority and has not acted on issues outside of its jurisdiction.

58. The Commission finds that because easements are not governed by the Zoning Regulations, the Commission does not have authority to decide the issue of whether an easement exists over the Subject Property.

Post-Hearing Submission

59. On March 31, 2014, the Applicant submitted a post-hearing submission. (Ex.43.) The post-hearing submission included: 1) revised Approved Plans addressing the Commission's comment to provide two roof structures instead of four as originally proposed; 2) a statement addressing the impact on development of the Subject Property if a five foot easement was established on the southern-most edge of the Subject Property; 3) a memo describing why an implied easement does not exist on the Subject Property; and 4) a summary of the outcomes from the Applicant's post-hearing meeting with the Party Opponent.

60. The Commission finds that the redesign of the roof structures achieved the simplification sought by the Commission. The Commission also finds that if the Applicant sets the proposed building back five feet from the southern property line, the Applicant would encounter practical difficulties with respect to the construction and layout of the building. The Commission further finds that it does not have the authority to resolve the dispute regarding the existence of an easement on the Subject Property. Finally, the Commission finds that the Applicant has made good faith efforts to respond effectively to the concerns expressed by the Party in Opposition.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment, and as part of this Order, the Commission is hereby approving the construction of any new building on a lot consisting of 12,000 square feet or more in the GA Overlay District.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD, as approved by the Commission, complies with the applicable height, bulk and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project's benefits and amenities are reasonable tradeoffs for the requested development flexibility.

8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Subject Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under § 13(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1021; D.C. Official Code § 1-309.10(d) (2001)) to give great weight to the affected ANC's recommendation. In this case, ANC 1A voted 8-1-1 to support the project and recommended that the Commission approve the applications. (Ex. 16.)

10. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to

give great weight to OP's recommendations. For the reasons stated above, the Commission concurs with OP's recommendation for approval and has given the OP recommendation the great weight it is entitled.

11. The application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December l3, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 *et seq.* (2007 Repl.)

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the applications for the consolidated review and approval of a planned unit development ("PUD") for Lots 102, 103, 104, 105, 879, and 910 in Square 2892 and a zoning map amendment to rezone Lots 102, 103, 104, 105, 879, and 910 in Square 2892 from the GA/C-2-A Zone District to the GA/C-2-B Zone District subject to the following guidelines, conditions, and standards:

A. PROJECT DEVELOPMENT

1. The project shall be developed in accordance with the Architectural Plans & Elevations, dated February 7, 2014 (Exhibit 23B), as modified by the Roof Plans, dated March 20, 2014 (Exhibit 43A), and as modified by the guidelines, conditions, and standards of this Order.

2. In accordance with the Plans, the PUD shall be a mixed-used project consisting of approximately 99,816 square feet of gross floor area, with 96,000 square feet of gross floor area devoted to residential use and 3,816 square feet of gross floor area devoted to retail use.

3. The maximum height of the building shall be 87 feet.

4. The project shall include a minimum of 36 off-street parking spaces.

5. The Applicant is granted flexibility from the rear yard requirements (§ 774.1), loading requirements (§ 2201.1), compact parking space location requirements (§ 2115.4), roof structure requirements (§§ 411 and 770), and the Georgia Avenue Overlay requirements (§ 1328.2) consistent with the Approved Plans and as discussed in the Development Incentives and Flexibility section of this Order.

6. The Applicant shall also have flexibility with the design of the PUD in the following areas:

a. To be able to provide a range in the number of residential units of plus or minus 10% from the 105 depicted on the plans;

b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;

c. To vary the number, location, and arrangement of parking spaces, and the number of parking garage levels, provided that the total number of parking spaces is not reduced below the minimum level required by the Zoning Regulations;

d. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 60 points (LEED-Gold equivalent) under the LEED 2009 for New Construction and Major Renovations rating standards;

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

f. If the retail area is leased by a restaurant user, flexibility to vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any restaurant use.

B. PUBLIC BENEFITS

1. LEED Qualification: The mixed-use building shall be designed to include no fewer than the minimum number of points necessary to be the equivalent of a Gold designation, as shown on the theoretical LEED score sheet submitted with the Plans dated February 7, 2014. The Applicant shall put forth its best efforts to design the PUD so that it may satisfy such LEED standards, but the Applicant shall not be required to register or to obtain the certification from the United States Green Building Council.

2. **Prior to the issuance of a certificate of occupancy for the building**, the Applicant shall submit to DCRA a fully executed First Source Employment Agreement with the Department of Employment Services.

3. **During the life of the project**, and as required by Chapter 26 of Title 11, a minimum of eight percent of total residential gross floor area shall be set aside as Inclusionary Zoning Units and shall be subject to all requirements pertaining to such units as set forth in that Chapter, the Inclusionary Zoning Implementation Amendment Act of 2006, and 14 DCMR Chapter 22. Based upon the expected size and mix of the units in the project, eight percent will result in approximately 7,680 square feet and nine IZ units. Notwithstanding 11 DCMR § 2603.4, at least 2,625 square feet of the Inclusionary Zoning Units shall be set aside for "low-income households" and the remaining required square footage shall be set aside for "moderate income households" as those terms are defined at 11 DCMR § 2601.1 and repeated in finding of fact number 21.

4. **Prior to the issuance of a certificate of occupancy** for the building, the Applicant shall submit to the Department of Consumer and Regulatory Affairs evidence that the Applicant has: (1) paid the Capitol Hill BID or a similar organization that processes the same services, for the performance of neighborhood cleaning and beautification services along Georgia Avenue and within SMD 1A09, which will include trash removal, graffiti and posted bill removal, weeding and mulching of public space tree boxes, and street cleaning and sweeping, among others; (2) paid Cultural Tourism DC for the development and installation of eight plaques entirely located within ANC1A at various points along the African American Heritage Trail to highlight the significance of African Americans in Washington, D.C. throughout the city's history; and (3) a letter or other form of confirmation from the Capitol Hill Business Improvement District/Ready, Willing & Working indicating that the neighborhood beautification services have been done or are in the process of being done; and (4) a letter or other form of confirmation from Cultural Tourism D.C. indicating that the plaques have been installed or in are the process of being installed.

C. TRANSPORTATION MEASURES

1. **During the life of the project,** the Applicant shall implement the following Transportation Demand Management ("TDM") measures:

   a. Identify a TDM Leader (for planning, construction, and operations) and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates;

b. Provide an adequate amount of short- and long-term bicycle parking spaces, including a secure bike room within the building that can house up to 35 bicycles and 10 additional secure spaces in the garage;

c. Unbundle parking costs from the cost of lease or purchase;

d. Post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;

e. Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites; and

f. Install a TransitScreen in the lobby to keep residents and visitors informed on all available transportation choices and provide real-time transportation updates. In addition, the Applicant shall require the TDM Leader to make printed materials related to local transportation alternatives available to residents and employees upon request and at move-in for new tenants.

2. For the first five years of the project, the Applicant shall offer to pay the membership fee in a car sharing or Capital Bikeshare program for each residential unit. The offer of payment shall be made at the lease or sale of each unit.

D. MISCELLANEOUS

1. No building permit shall be issued for this project and the PUD-related map amendment shall not become effective until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to the construction and use of the Subject Property in accordance with this Order or any amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.

2. The PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

3. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 *et seq.* (act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender

> identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On April 15, 2014, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the applications at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G, May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

On June 9, 2014, upon the motion of Commissioner Miller, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting, by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, Michael G. Turnbull to adopt; Marcie I. Cohen, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D. C. Register;* that is on June 27, 2014.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FILING

Z.C. Case No. 14-09
(QC 369, LLC – Consolidated PUD and Related Map Amendment
@ Square 369, Various Lots)
June 19, 2014

THIS CASE IS OF INTEREST TO ANC 2F

On June 18, 2014, the Office of Zoning received an application from QC 369, LLC (the "Applicant") for approval of a consolidated PUD and related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 40, 65-67, 801-805, 838, 839, 842, 848, 859, 878, and 881 in Square 369 in Northwest Washington, D.C. (Ward 2), which is located at the intersection of 9th and L Streets, N.W. The Applicant proposes a PUD-related map amendment to rezone the property, for the purposes of this project, from the split-zone DD/C-2-A and DD/C-2-C to the split-zone DD/C-2-A and DD/C-3-C.

The Applicant proposes to demolish two existing historic buildings on L Street, as well as to remove the rear portions of six historic buildings along 9th Street, in order to construct a new 12-story residential building, a Marriott Hotel (incorporating both a Residence Inn and a Courtyard Marriott), and retail and service uses in two phases. The 568,921-square-foot-building will be 110 feet in height and have 233 parking spaces.

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