VOL. 61 – NO. 31 FRIDAY, JULY 25, 2014

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council schedules a public oversight hearing on the CSX Virginia Avenue Tunnel Project
- Alcoholic Beverage Regulation Administration schedules a public comment hearing on the Metropolitan Police Department Reimbursable Detail Subsidy Program
- The Office on Contracting and Procurement authorizes advance payments to providers of non-emergency transportation for Medicaid and fee-for-service recipients
- The Office on Latino Affairs announces funding for FY 2015 Latino Community Development Grant and the FY 2015 Latino Community Health Grant
- Department of Health - Community Health Administration amends funding for the Innovations in Ambulatory Services Grant Program

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

ODAI accepts electronic documents for publication using a Web-based portal at www.dcregs.dc.gov. To submit a document, obtain a username and password from your department's ODAI liaison. If you do not know your liaison, email ODAI at dcdocuments@dc.gov to request for your department's ODAI liaison. For guidelines on how to format and submit documents for publication, email ODAI at dcdocuments@dc.gov.

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

Viewing the DC Register

ODAI publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. Copies of the *D.C. Register* are also available for public review at each branch of the District of Columbia Public Library and in each Advisory Neighborhood Commission office. There are no restrictions on the republication of any portion of the *D.C. Register*. News services are encouraged to publish all or part of the *D.C. Register*.

Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

441 4th STREET - SUITE 520 SOUTH - ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

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VICTOR L. REID, ESQ.
ADMINISTRATOR

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

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

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

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COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILLS

B20-884 Bicycle and Motor Vehicle Collision Recovery Amendment Act of 2014

Intro. 07-14-14 by Councilmembers Grosso, Cheh, and Wells and referred to the Committee on Judiciary and Public Safety

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B20-885 Pre-K Student Discipline Amendment Act of 2014

Intro. 07-14-14 by Councilmember Grosso and referred to the Committee on Education

---

B20-886 Paint Stewardship Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred to the Committee on Transportation and the Environment

---

B20-887 Debt Buying Limitation Amendment Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

B20-888 Unemployment Compensation Direct Deposit Amendment Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

BILLS CON'T

B20-889 For-Hire Vehicle Accessibility Amendment Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred sequentially as follows: Section (3) to the Committee on Finance and Revenue and the Committee on Transportation and the Environment then the entire bill to the Committee on Transportation and the Environment

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B20-890 Firefighter Retirement While Under Disciplinary Investigation Amendment Act of 2014

Intro. 07-14-14 by Councilmember Wells and referred to the Committee on Judiciary and Public Safety

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B20-891 Office of Motion Picture and Television Development Director Confirmation Act of 2014

Intro. 07-14-14 by Councilmember Orange and referred to the Committee on Business, Consumer, and Regulatory Affairs

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B20-892 Small and Certified Business Enterprise Development and Assistance Waiver Certification Amendment Act of 2014

Intro. 07-14-14 by Councilmembers Orange and Bonds and referred to the Committee on Business, Consumer, and Regulatory Affairs

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B20-893 D.C. Statehood Now Boulevard Designation Act of 2014

Intro. 07-14-14 by Councilmembers Alexander, Graham, Orange, Bonds, Cheh, and Grosso and referred to the Committee of the Whole

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B20-894 Senior Foster Care Establishment Act of 2014

Intro. 07-14-14 by Councilmembers Alexander, Bonds, and Graham and referred to the Committee on Human Services with comments from the Committee on Health

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B20-895 Rent Control Hardship Petition Amendment Act of 2014

Intro. 07-14-14 by Councilmember Graham and referred to the Committee on Economic Development

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B20-896 Non-Resident Taxicab Operator Modernization Amendment Act of 2014

Intro. 07-14-14 by Councilmembers Graham and Cheh and referred to the Committee on Transportation and the Environment

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BILLS CON'T

B20-897 Plan for Comprehensive Services for Homeless Individuals at 425 2nd Street, N.W., Amendment Act of 2014

Intro. 07-14-14 by Councilmembers Graham, Barry, and Bonds and referred to the Committee on Human Services

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B20-898 Adoption Fee Amendment Act of 2014

Intro. 07-14-14 by Chairman Mendelson and referred to the Committee on Judiciary and Public Safety

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B20-899 Arson Amendment Act of 2014

Intro. 07-14-14 by Chairman Mendelson and Councilmember Wells and referred to the Committee on Judiciary and Public Safety

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B20-901 Marijuana Use Public Information Campaign Act of 2014

Intro. 07-09-14 by Councilmember Wells and referred to the Committee on Health with comments from the Committee on Judiciary and Public Safety

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B20-902 Omnibus Alcoholic Beverage Regulation Amendment Act of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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B20-903 Criminalization of Non-Consensual Pornography Amendment Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred to the Committee on Judiciary and Public Safety

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B20-904 Department of Parks and Recreation Fee-based Use Permit Authority Clarification Act of 2014

Intro. 07-14-14 by Councilmember Cheh and referred to the Committee on Transportation and the Environment

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PROPOSED RESOLUTIONS

PR20-968 Sense of the Council in Support of the 2015 NFL Draft Resolution of 2014

Intro. 07-14-14 by Councilmember Orange and referred to the Committee on Finance and Revenue

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PROPOSED RESOLUTIONS CON'T

PR20-970 Limited Purpose License, Permit and Identification Card Resolution of 2014

Intro. 07-07-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR20-971 District of Columbia Commemorative Works Committee Christopher Magnuson Confirmation Resolution of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-972 District of Columbia Commemorative Works Committee Barbara Deutsch Confirmation Resolution of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

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PR20-973 District of Columbia Health Benefit Exchange Authority Executive Board Khalid Rasuli Pitts Confirmation Resolution of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-974 District of Columbia Health Benefit Exchange Authority Executive Board Kate Sullivan Hare Confirmation Resolution of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-975 Not–For-Profit Hospital Corporation Board of Directors Virgil Clark McDonald Confirmation Resolution of 2014

Intro. 07-09-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-976 Board of Pharmacy Tamara A. McCants Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PROPOSED RESOLUTIONS CON'T

PR20-977 Commission on Re-Entry and Returning Citizen Affairs James R. Lindsay Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-978 Commission on Asian and Pacific Islander Community Development Ms. Surjeet K. Ahluwalia Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-979 District of Columbia Board of Professional Counseling Victoria Sardi-Brown Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-980 Board of Podiatry Stuart B. Sibel Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-981 Board of Funeral Directors Lynn Armstrong Patterson Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-982 Statewide Health Coordinating Council Sandra C. Allen Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-983 Board of Industrial Trades Constantin C. Rodousakis Reappointment Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PROPOSED RESOLUTIONS CON'T

PR20-984 Board of Architecture and Interior Designers Ronnie McGhee Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

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PR20-985 Board of Podiatry Barbara J. Clark Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-986 Board of Occupational Therapy Frank E. Gainer III Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-987 Child Fatality Review Committee Sandra Williams Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-988 Commission on the Arts and Humanities Lavinia Wohlfarth Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Finance and Revenue

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PR20-989 District of Columbia Commission on Human Rights Mai Abdul Rahman Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-990 Board of Respiratory Care Timothy Mahoney Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-991 Board of Physical Therapy Senora Simpson Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PROPOSED RESOLUTIONS CON'T

PR20-992 Commission on African Affairs Ms. Loide Rosa Jorge Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-993 Commission on African Affairs Lafayette Barnes Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-994 Commission on African Affairs Chime Asonye Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-995 District of Columbia Board of Professional Counseling Arthur Blecher Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-996 District of Columbia Board of Professional Counseling Laurie Ferreri Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-997 Commission on Re-Entry and Returning Citizen Affairs James Berry Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR20-998 Commission on Re-Entry and Returning Citizen Affairs Trina Robinson Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PROPOSED RESOLUTIONS CON'T

PR20-999 Commission on Asian and Pacific Islander Community Development Ms. Martha M. Watanabe Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-1000 Commission on Asian and Pacific Islander Community Development Dr. Erick A. Hosaka Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-1001 Commission on Asian and Pacific Islander Community Development Benjamin M. Bahk Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Government Operations

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PR20-1002 Board of Optometry Lisa A. Johnson Confirmation Resolution of 2014

Intro. 07-11-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

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PR20-1003 Board of Optometry David A. Reed Confirmation Resolution of 2014

Intro. 07-11-14 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 OF THE WHOLE
NOTICE OF JOINT PUBLIC OVERSIGHT HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE

on

COUNCILMEMBER MARY CHEH, CHAIRPERSON
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT

ANNOUNCE A JOINT PUBLIC OVERSIGHT HEARING

on

The CSX Virginia Avenue Tunnel Project

on

Tuesday, August 26, 2014
12:00 p.m., Council Chamber, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson and Councilmember Mary Cheh announce the scheduling of a joint public oversight hearing of the Committee of the Whole and Committee on Transportation and the Environment on the CSX Virginia Avenue Tunnel project. The hearing will be held Tuesday, August 26, 2014 at 12:00 p.m. in the Council Chamber of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

On April 30, 2014 the Committee of the Whole held a public hearing on PR 20-601, "Sense of the Council for a Hearing on the CSX Virginia Avenue Tunnel Project Resolution of 2013," which would urge the relevant United States House of Representatives committee to hold a hearing on the CSX Virginia Avenue Tunnel Project, located in Ward 6. This hearing provided a public forum for residents to raise questions and concerns surrounding the project, many of which remain. The Final Environmental Impact Statement for this project was released by the Federal Highway Administration and the District Department of Transportation (DDOT) on June 13, 2014, with an extended comment period to end August 12, 2014. Because there is significant public interest in this project, yet there remain outstanding questions to be answered by DDOT prior to the issuance of permits for the CSX Virginia Avenue Tunnel project, the Committees invite testimony regarding this project.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Jessica Jacobs, Legislative Counsel, at jjacobs@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Friday, August 22, 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 August 22, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, September 9, 2014.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, JULY 30, 2014
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

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

Protest Hearing (Status) **9:30 AM**
Case # 14-PRO-00048; Kat, LLC, t/a Cloud Restaurant and Lounge, 1919 9th Street NW, License #93572, Retailer CT, ANC 1B
Substantial Change (Increase in Occupancy from 50 to 122)

Show Cause Hearing (Status) **9:30 AM**
Case # 14-251-00055; Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, 1909 9th Street NW, License #89019, Retailer CR, ANC 1B
Operating After Board Approved Hours, Interfered with an Investigation

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00090; Mandarin Palace, Inc., t/a Tian Tian Fang, 5540 Connecticut Ave NW, License #12671, Retailer CR, ANC 3G
Failed to Maintain Books and Records

Show Cause Hearing (Status) **9:30 AM**
Case # 14-251-00163, # 14-251-00163(a), Beg Investments, LLC, t/a Twelve Restaurant & Lounge, 1123 H Street NE, License #76366, Retailer CT, ANC 6A
Allowed the Licensed Establishment to be Used for an Unlawful or Disorderly Purpose, Interfered with an Investigation, You permitted the use of a Controlled Substance in your Establishment, Failed to Follow Security Plan

Show Cause Hearing (Status) **9:30 AM**
Case # 14-CMP-00032; LPBS Group, Inc., t/a Neisha Thai, 4445 Wisconsin Ave NW, License #85719, Retailer CR, ANC 3E
Failed to File Quarterly Statements (3rd Quarter 2013)

Board's Calendar
July 30, 2014

Show Cause Hearing **10:00 AM**
Case # 13-AUD-00080; Lamaree, Inc., t/a Aroma Indian Restaurant, 1919 I Street NW, License #1847, Retailer CR, ANC 2B
Failed to File Quarterly Statements (2nd Quarter 2013)

Show Cause Hearing **11:00 AM**
Case # 13-CMP-00104; Mimi & D, LLC, t/a Vita Restaurant and Lounge/Penthouse Nine, 1318 9th Street NW, License #86037, Retailer CT ANC 2F
Violation of Settlement Agreement

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

Protest Hearing **1:30 PM**
Case # 14-PRO-00038; The VIP Room, LLC, t/a The VIP, 6201 3rd Street NW License #94561, Retailer CT, ANC 4b
Application for a New License
This hearing has been continued at the request of the Applicant and by agreement of the Parties. The new hearing date is November 5, 2014 at 4:30 pm.

Protest Hearing **1:30 PM**
Case # 13-PRO-00066; Pure Hospitality, LLC, t/a Bandolero, 3241 M Street NW, License #75631, Retailer CR, ANC 2E
Application to Renew the License
This hearing has been cancelled due to the withdrawl of the Protest. See Board Order No. 2014-295.

Protest Hearing **1:30 PM**
Case # 14-PRO-00007; Madam's Organ, t/a Madam's Organ, 2461 18th Street NW, License #25273, Retailer CT, ANC 1C
Termination of Settlement Agreement

Protest Hearing **4:30 PM**
Case # 14-PRO-00004; RNR, LLC, t/a Rock N Roll Hotel, 1353 H Street NE License #72777, Retailer CT, ANC 6A
Termination of Settlement Agreement

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	July 25, 2014
Petition Date:	September 8, 2014
Roll Call Hearing Date:	September 22, 2014
Protest Hearing Date:	November 12, 2014
License No.:	ABRA-095922
Licensee:	Adams Restaurant Group Inc.
Trade Name:	Claudia's Steakhouse
License Class:	Retailer's Class "C" Restaurant
Address:	1501 K Street, NW, Suite R100
Contact:	Eden Brown Gaines, Esq. 301-885-0069

WARD 2 ANC 2B SMD 2B05

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 November 12, 2014 at 1:30pm.

NATURE OF OPERATION
New full service upper tier restaurant serving Latin infusion cuisine in a steakhouse environment. Entertainment to include live band performances and dancing during evening hours. Seating is for 300 patrons. Sidewalk café seating 45 patrons.

HOURS OF OPERATION FOR INSIDE PREMISES AND SIDEWALK CAFÉ
Sunday through Thursday 10am-2am, Friday and Saturday 10am-3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Thursday 10am-2am, Friday and Saturday 10am-3am

ENTERTAINMENT HOURS FOR INSIDE PREMISES AND SIDEWALK CAFE
Sunday through Thursday 10am-2am, Friday and Saturday 10am-3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	July 25, 2014
Petition Date:	September 8, 2014
Hearing Date:	September 22, 2014
License No.:	ABRA-093542

Licensee:	EZ Group, LLC
Trade Name:	Crème Café & Lounge
License Class:	Retailer's Class "C" Restaurant
Address:	2436 14th Street NW
Phone:	Tegist Ayalew 202-234-1884

WARD 1 ANC 1B SMD 1B05

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.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
The addition of the Entertainment Endorsement. Seats 79 total occupancy load 85

CURRENT HOURS OF OPERATION
Sunday through Thursday 7 am – 2 am Friday and Saturday 7 am -4 am

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

PROPOSED HOURS OF LIVE ENTRTAINMENT OCCURING OR CONTINUING AFTER 6:00PM
Sunday 10 am – 2 am Monday through Thursday 10 pm – 2 am Friday and Saturday 10 am – 3 a

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 25, 2014
Petition Date: September 8, 2014
Hearing Date: September 22, 2014
Protest Date: November 12, 2014

License No.: ABRA-095112
Licensee: Harris Teeter, LLC
Trade Name: Harris Teeter
License Class: Retailer's "B"
Address: 401 M Street, SE
Contact Information: Paul Pascal 202 544-2200

WARD 6 ANC 6A SMD 6D07

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 on November 12, 2014 4:30pm.

NATURE OF OPERATION
New Full Service Grocery.

HOURS OF OPERATON
Sunday through Saturday 7 am – 12 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Saturday 8 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: July 25, 2014
Petition Date: September 8, 2014
Hearing Date: September 22, 2014
Protest Date: November 12, 2014

License No.: ABRA-095958
Licensee: Lukes Lobster VIII, LLC
Trade Name: Luke's Lobster
License Class: Retailer's Class "C" Restaurant
Address: 1211 Potomac Street, NW
Contact Information: Ben Conniff (646) 559-4644

WARD 2 ANC 2E SMD 2E05

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for November 12, 2014 at 1:30pm.

NATURE OF OPERATION
New Restaurant, fast, casual serving lobster, crab and shrimp rolls as well as soup and beverages.

HOURS OF OPERATON
Sunday through Saturday 11 am – 10pm

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Saturday 11 am – 10 pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

7/25/2014

Notice is hereby given that:
License Number: ABRA-089019 **License Class/Type: C Restaurant**
Applicant: Meseret Ali & Yonas Chere
Trade Name: Merkato Ethiopian Restaurant
ANC: 1B

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

1909 9th ST NW, WASHINGTON, DC 20001

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

HEARING WILL BE HELD ON

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

ENDORSEMENTS: Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	6am - 2am	12pm -2am	6pm - 2am
Monday:	6am - 2am	12pm - 2am	6pm - 2am
Tuesday:	6am - 2am	12pm - 2am	6am - 2am
Wednesday:	6am - 2am	12pm - 2am	6am - 2am
Thursday:	6am - 2am	12pm - 2am	6am - 2am
Friday:	6am - 3am	12pm - 3am	6am - 3am
Saturday:	6am - 3am	12pm - 3am	6am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

***Correction**

Posting Date:	June 20, 2014
Petition Date:	August 4, 2014
Hearing Date:	August 18, 2014
License No.:	ABRA-092357
Licensee:	Right Proper, LLC
Trade Name:	Right Proper Brewing Company
License Class:	Retailer's Class "C" Restaurant
Address:	624 T Street NW
Contact:	John B. Snedden 202-244-9706

WARD 1* ANC 1B SMD 1B01

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.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
Add a new *Sidewalk Café with 28 seats. The establishment has 130 seats.

CURRENT HOURS OF OPERATION
Sunday through Saturday 11:30am – 1:00am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Saturday 11:30am -12:00am

PROPOSED HOURS OF OPERATION FOR THE SIDEWALK CAFE
Sunday through Saturday11:30am – 1:00am

PROPOSED HOURS OF SALE/CONSUMPTION FOR THE SIDEWALK CAFE
Sunday through Saturday 11:30am – 12:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARING

11 A.M. – 12 P.M.
WEDNESDAY, AUGUST 13, 2014

The Alcoholic Beverage Control Board (Board) will hold a hearing to receive public comment on its proposed rules to amend Section 718.2 of Title 23 of the D.C. Municipal Regulations, regarding the Metropolitan Police Department (MPD) Reimbursable Detail Subsidy Program. Specifically, the days of the week covered by the program will increase from the current Friday and Saturday nights to seven nights a week. The proposed rules also allow for reimbursable detail coverage for certain special events. The daily hours of coverage will remain 11:30 p.m. to 5 a.m.

HEARING INFORMATION

WHEN: 11 a.m. on Wednesday, August 13, 2014

WHERE: Board Hearing Room, 2000 14th Street, N.W., Suite 400 South, 4th Floor, Washington, D.C. 20009

Individuals and representatives of organizations that want to testify should contact Alcoholic Beverage Regulation Administration (ABRA) General Counsel Martha Jenkins by **Friday, August 8, 2014**:

- Call - (202) 442-4456
- Email - Martha.Jenkins@dc.gov
  (Include full name, title, and organization, if applicable, of the person(s) testifying in the email.)

Testimony may be limited to five (5) minutes in order to permit each person an opportunity to be heard. Witnesses should bring nine (9) copies of their written testimony to the Board.

Members of the public that are unable to testify in person are encouraged to provide written comments, which will be made a part of the Board's official record. Copies of written statements should be submitted to ABRA General Counsel Martha Jenkins no later than **4 p.m. on Friday, August 8, 2014**:

- Mail - 2000 14th Street, N.W., Suite 400 South, Washington, D.C. 20009
- Email - Martha.Jenkins@dc.gov
  (Include full name, title, and organization, if applicable, of the person(s) providing comment.)

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, OCTOBER 7, 2014
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

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

TIME: 9:30 A.M.

WARD SIX

18829 ANC-6B **Application of Satu Haase-Webb and Michael Webb**, pursuant to 11 DCMR § 3104.1, for a special exception to construct a two-story rear addition with cellar to an existing one-family row dwelling under section 223, not meeting the lot occupancy requirements (Section 403), and court requirements (Section 406) in the R-4 district at premises 1334 A Street, S.E. (Square 1036, Lot 74).

WARD THREE

18834 ANC-3E **Application of Mara E. Rudman,** pursuant to 11 DCMR § 3104.1, for a special exception to allow a rear addition and deck to an existing one-family detached dwelling under section 223, not meeting the rear yard side yard (subsection 404), requirements in the R-2 District at premises 4429 Faraday Place, N.W. (Square 1582, Lot 217).

WARD TWO

18828 ANC-2B **Application of Bank of America, N.A.**, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirement under subsection 771.2, to allow an addition to an existing building in order to relocate and enclose existing bank ATMs into a secure 24-hour vestibule in the DC/C-3-C District at 3 Dupont Circle, N.W. (Square 114, Lot 816).

WARD EIGHT

18830 ANC-8C **Application of Bright Beginnings Inc.**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (100 children and 38 teachers and staff) under section 205, in the R-4 District at premises 3418 4th Street, S.E. (Square 5969, Lots 169 through 187).

WARD SIX

THIS APPLICATION WAS POSTPONED FROM THE JULY 29, 2014, PUBLIC HEARING SESSION:

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

WARD THREE

18827 ANC-3C — **Appeal of Dr. Joan Evelyn Kinland,** pursuant to 11 DCMR §§ 3100 and 3101, from a May 16, 2014, decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs to allow child development center and religious or clerical residence use in the R-1-B District at premises 3855 Massachusetts Avenue, N.W. (Square 1816, Lot 824).

PLEASE NOTE:

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

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

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

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

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, VICE CHAIRPERSON, MARNIQUE Y. HEATH, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF LIMITED PUBLIC HEARING

TIME AND PLACE: **Monday-Thursday, September 8-11, 2014, @ 6:00 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06A (Alternative Language to Certain Advertised Text - Title 11, Zoning Regulations – Comprehensive Text Revisions)

THIS CASE IS OF INTEREST TO ALL ANCs

The Office of Planning ("OP"), in a report dated August 30, 2013, petitioned the Zoning Commission for the District of Columbia ("Zoning Commission" or ""Commission") for comprehensive revisions and amendments to the Zoning Regulations (Title 11 DCMR). The Commission setdown the proposed revisions for public hearings at its public meeting held September 9, 2013.

On June 16, 2014, OP submitted alternative language to several sections of the advertised draft text. The proposed alternative language responds to some comments received from the public and the Commission during the November 2013, January 2014, and February 2014 public hearings on Z.C. Case No. 08-06A. The record in the case remains open through September 15, 2014. The proposed alternatives do not respond to all comments raised or submitted during the public input process.

On July 10, 2014, at their public meeting, the Zoning Commission set down portions of the alternative language submitted by OP and asked that some additional alternative language also be advertised. The Commission did not setdown the proposal for regulating outdoor lighting, concluding that more work was needed on the proposal and the issue warranted a separate hearing at a future date. They also did not setdown § 206.8(c) regarding building roof design in the design criteria for Large Format Retail.

The scope of this hearing is limited to the alternative text described below and does not include the original text set down by the Commission on September 9, 20013. The Commission will hold a final hearing on that text on the evening of September 4, 2014, which is limited to testimony by those individuals, organizations, or associations who have not yet testified at a prior public hearing on the text, except that any Advisory Neighborhood Commissioner may also testify. A separate notice of that public hearing has been issued and describes the specific procedures applicable to that proceeding.

ORDER OF APPEARANCE

At the time it set down the original text, the Commission waived §§ 3021.5(g) and (h) of Title 11 DCMR, which establishes that persons or parties in support (§ 3021.5 (g)) appear before persons or parties in opposition (§ 3021.5(h)).

The Commission voted to hear witnesses in the order in which the Office of Zoning was notified of their intent to testify. Therefore, the Commission at each hearing will first hear from those individuals, organizations, or associations who notified the Office of Zoning of their intent to present testimony based upon the date and time that the notice of intent to testify was received by the Office of Zoning. The Commission will then hear from those persons who submitted witness cards on each hearing date in the order those cards were received by the Commission's Secretary. Finally the Commission will hear from persons in the audience who did not submit witness cards.

The Commission requests that the public's testimony focus on the substance of the proposed July 10, 2014 alternative language rather than the exact wording used. After this hearing process is concluded, OP and the Office of the Attorney General will provide a revised text responding to any changes requested by the Commission that will also make any editorial modifications needed to assure clarity and consistency in the text. The public will have an opportunity to comment upon the word choices used during the comment period following the issuance of any notice of proposed rulemaking.

FULL TEXT:

The full and official text of the proposed alternative amendments and of the original text is available for viewing on line at www.dcoz.dc.gov by clicking the following icon that appears on the home page:

Direct access to the proposed text is also available at http://www.dcoz.dc.gov/ZRR/ZRR.shtm.

A copy of the official text on compact disk may be requested from either the Office of Planning at zoningupdate@dc.gov or the Office of Zoning and will be provided at no charge.

Additionally, paper copies have been provided to the District of Columbia Public Library system for distribution to every public library.

Z.C. NOTICE OF LIMITED PUBLIC HEARING
Z.C. CASE NO. 08-06A
PAGE 3

SUMMARY OF ALTERNATIVE AMENDMENTS

A summary of the alternative text is presented in the following table with the proposed Subtitle in the left column and the relevant summary of changes in the right. The alternative amendments are to the advertised draft text setdown by the Zoning Commission on September 9, 2013.

PROPOSED SUBTITLE	ALTERNATIVE AMENDMENTS SUMMARY
ALL SUBTITLES	Zone Names Rename A zones to RA zones and M zones to MU zones; N zones to NC zones, P zones to PDR zones; simplify Downtown zone names; maintain residential zone names; and other changes to reflect reorganization of draft text.
Subtitle B	Definitions; • Add definitions that were omitted; delete unused or unregulated terms; make corrections to some terms. • Include a definition that addresses meaningful building connection.
Subtitle C	Bicycle Parking • Revise spacing standards and aisle width requirements. • Align residential requirement with District Department of Transportation (DDOT) standard that requires bicycle parking at 8 units instead of 10 units as originally setdown. • Reduce requirement so that after the first 50 spaces are provided, additional spaces are required at ½ the ratio. • Increase allowable distance from a primary building entrance for short term bicycle spaces to 120 feet from 50 feet as originally setdown. • Establish a minimum number of 10 bicycle spaces that must be within 50 feet of a primary building entrance and allow the minimum to be shared by multiple smaller tenants with separate entrances.
Subtitle C	Vehicle Parking • Revert to existing standard for private school parking. • Revert to existing standard for religious institution parking. • Allow off-site parking to be within 600 feet of the use or structure that the parking serves instead of 400 feet as originally setdown. Allow off-site parking at a distance greater than 600 feet as a special exception. • Clarify that parking in excess of the requirement is not prohibited. • Remove the Priority Bus Corridor from the areas within which required parking may be reduced by up to 50% as a matter of right as originally advertised. In the Alternative: Retain the Priority Bus Corridor as an area within which required parking may be reduced by up to 50% as a matter of right, as originally setdown on September 9, 2013. • Add the presence of mature trees as a rationale for relief from required parking. • Increase the threshold for requiring mitigation efforts when the parking provided for a project is twice the required amount instead of 1.5 times the required amount as originally; add a minimum threshold of 20 required parking spaces. In the Alternative: retain the threshold for mitigation when provided parking is 1.5 times the required amount as originally setdown on September 9, 2013; add a minimum threshold of 20 required parking spaces. • Remove the requirement for car-share spaces; but if provided allow the first and

	second car-share space to count as 3 required parking spaces each; retain car-share spaces as a mitigation item for excess parking. • Change "mechanized" parking to "automated" parking. • Revise drive aisle widths to correspond to industry standards. • Allow an automobile laundry as an accessory use within a permitted garage. • Require parking in the D-5 zone west of 20th Street NW In the Alternative: retain the parking standards for the D-5 zone west of 20th Street NW as originally setdown on September 9, 2013.
Subtitle C	Green Area Ratio: • Revise calculation for vegetated walls to equal height times width of the wall area to be covered by vegetation instead of the ground coverage area. • Revise credit system to credit new trees based on mature canopy spread.
Subtitle D	Accessory Apartments; • Eliminate the minimum lot size requirement. • Amend the minimum house size to be eligible for an accessory apartment from the originally setdown size of 2,000 sq. ft. GFA for all zones, to 2,000 GSF for current R-1-A and R-1-B zones, and 1,200 sq. ft. for R-2 and R-3 zones. • Require any accessory apartment in an accessory building (i.e. detached) to be permitted as a special exception in all cases. In the Alternative: 1) Retain the matter of right provision for accessory apartments to be located in existing accessory buildings as originally setdown on September 9, 2013. 2) Delete the six person aggregate maximum for the principal and accessory apartment and establish a limit only on the number of residents in the accessory apartment. • Add specific review criteria for accessory apartments in accessory buildings, including review by FEMS and DC Water.
Subtitles D and E	Corners Stores • Clarify that residential use is permitted above a corner store. • Better define "grocery" aspect of corner store provisions. For a matter of right grocery store use, require hat a minimum of 40% of customer-accessible sales and display area be dedicated to the sale of a general line of food products intended for home preparation and consumption; and a minimum of 20% of retail space be dedicated to the sale of perishable goods that include dairy, fresh produce, fresh meats, poultry, fish and frozen foods. • Make beer and wine sales (capped at 15% of gross floor area) a use that may only be approve as a special exception, not a matter of right, in corner grocery store and in non-grocery corner stores. • Clarify that corner store use is not permitted in Squares 1327 or 1350 to 1353.
Subtitles D and E	Camping In Alleys; Allow camping on alley lots only as a special exception and only in Row house zones.
Subtitles D and E	Theater Space Use in Residential Zones; • Allow use of institutional theater or assembly space in residential zones by outside organizations as a special exception. • Allow performing arts theater use in residential zones as a special exception.
Subtitle J	Production, Distribution and Repair; • Allow auto repair only as a special exception and subject to buffer conditions. • Include new language regarding Standards of External Effects.

Subtitles G, J and K	Large Format Retail; Allow new large format retail establishments with single tenant space of 50,000 gross square feet or greater as a special in Subtitles G, J, and K, and add a cross reference to other applicable requirements such as parking and Green Area Ratio.
Subtitle I	Downtown, • Retain existing upper-story setback provisions that protect the light and air available to residential buildings adjacent to TDR receiving zones. • Clarify the amount of required retail in NoMa is consistent with requirements for other primary streets. • Eliminate the proposed 3-year time limit on the conversion of credits. • Ensure and clarify continued validity of purchased and assigned credits. • Establish minimum parking standards in West End (Subtitle C). In the Alternative: retain the parking standards as originally setdown on September 9, 2013.
Subtitle X	Private Schools Reestablish the current criteria as the proposed criteria for evaluating the impacts of a private school; reestablish the current parking standards and Floor Area Ratio calculation (when applicable) as the proposed standards.
Subtitle Z	Party Status for Contested Zoning Case Allow an individual or group to request an early determination of party status prior to a public hearing and establishes the process for early determination.

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearings on this case will be conducted as a rulemaking in accordance with the provisions of 11 DCMR § 3021. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

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 hearing date. This can be done by mail sent to the address stated below, e-mail to Sharon.Schellin@dc.gov, or by calling (202) 727-0340. As noted, those persons whose intention to testify is received by the Office of Zoning prior to a hearing date will be permitted to testify first and in the order in which their intention was received. For this reason, it is important that all communications indicate the specific hearing date at which testimony will be given.

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include on your submissions Case No. 08-06A and the subtitle for which you are submitting written statements. **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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FUTHER PUBLIC HEARING

TIME AND PLACE: **Thursday, September 4, 2014, @ 6:00 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W. Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 08-06A (Title 11, Zoning Regulations – Comprehensive Text Revisions)

THIS CASE IS OF INTEREST TO ALL ANCs

The Zoning Commission hereby gives notice of its intent to hold a further public hearing on the text of the comprehensive revisions and amendments to the Zoning Regulations (Title 11 DCMR) the Commission set down for public hearings at its public meeting held September 9, 2013. Only those individuals, organizations, or associations who have not yet testified at a prior public hearing on the text may testify ("Eligible Witnesses"), except that any Advisory Neighborhood Commissioner may also testify.

The scope of this hearing does not include the alternative text set down by the Commission on July 10, 2014 and which will be the subject of hearings to be held on the evenings of September 8-11, 2014. A separate notice of those public hearing has been issued and describes the specific procedures applicable to those proceedings.

At the time the Commission agreed to hold a series of hearings, the Commission voted to hear witnesses in the order in which the Office of Zoning was notified of their intent to testify. Therefore, the Commission at this hearing will first hear from those Eligible Witnesses who notified the Office of Zoning of their intent to present testimony based upon the date and time that the notice of intent to testify was received by the Office of Zoning. The Commission will then hear from those Eligible Witnesses who submitted witness cards in the order those cards were received by the Commission's Secretary. Finally the Commission will hear from Eligible Witnesses in the audience who did not submit witness cards. In order to proceed in this manner, the Commission waived the following provision of Title 11 DCMR:

3021.5 The order of procedure at the hearing shall be as follows: …

(g) Persons in support of the application or petition; and

(h) Persons in opposition to the application or petition.

The text of the proposed land use subtitles refers to new zone districts that the Office of Planning proposes to replace the current districts and overlays. The proposed mapping of these new districts is not the subject of these hearings. The Office of Planning will formally propose the

new zones as part of a subsequent map amendment proceeding for which notice and hearing will be provided in accordance with the Zoning Act and Regulations.

Since the time allotted to oral testimony is limited, the Commission encourages witnesses to also submit written testimony. In addition, the Commission asks witnesses not to repeat points made in other testimony, but to indicate at the outset of their testimony agreement with the position taken by [name of witness or organization].

Finally, the Commission requests that the testimony focus on the substance of the proposed subtitles rather than the wording used. After this hearing process is concluded, the Office of Planning and the Office of the Attorney General will provide a revised text responding to any changes requested by the Commission that will also make any editorial modifications needed to assure clarity and consistency in the text. The public will have an opportunity to comment upon the word choices used during the comment period following the issuance of any notice of proposed rulemaking.

FULL TEXT:

The full and official text of the proposed amendments is available for viewing on line at www.dcoz.dc.gov by clicking the following icon that appears on the home page:

Direct access to the proposed text is also available at http://www.dcoz.dc.gov/ZRR/ZRR.shtm.

A copy of the official text on compact disk may be requested from either the Office of Planning at zoningupdate@dc.gov or the Office of Zoning and will be provided at no charge.

Additionally, paper copies have been provided to the District of Columbia Public Library system for distribution to every public library.

Proposed amendments to the Zoning Regulations of the District of Columbia are authorized pursuant to the Zoning Act of June 20, 1938, (52 Stat. 797), as amended, D.C. Official Code § 6-641.01, *et seq.*

The public hearing on this case will be conducted as a rulemaking in accordance with the provisions of 11 DCMR § 3021. Pursuant to that section, the Commission will impose time limits on testimony presented to it at the public hearing.

All Eligible Witnesses wishing to testify at this hearing 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 to Sharon.Schellin@dc.gov, or by calling (202) 727-0340. As noted, those Eligible Witnesses who have submitted an intention to testify prior to a hearing date will be permitted to testify first and in the order in which their intention was received

Written statements, in lieu of personal appearances or oral presentations, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at http://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include on your submissions Case No. 08-06A and the subtitle for which you are submitting written statements. **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.

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF FINAL RULEMAKING

The Chief Procurement Officer ("CPO") of the District of Columbia, pursuant to the authority set forth in Section 1106 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-361.06 (2012 Repl.)) ("Act"), hereby gives notice of the adoption of an amendment to Section 3205 of Chapter 32 (Contract Financing and Funding) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations ("DCMR").

This amendment adds a new paragraph (p) to Subsection 3205.1, which permits the CPO to authorize advance payments to a provider of non-emergency transportation services for the District's Medicaid and Eligible Fee-for-Service recipients.

The CPO gave notice of his intent to adopt these rules on March 31, 2014, and the proposed rules were published in the *D.C. Register* on May 9, 2014, at 61 DCR 4776. No changes have been made to the text of the rules as published. The CPO took final action to adopt these rules on June 11, 2014.

The rulemaking will become effective upon publication in the *D.C. Register.*

Subsection 3205.1 of Chapter 32, CONTRACT FINANCING AND FUNDING, of Title 27, CONTRACTS AND PROCUREMENTS, of the DCMR is amended by adding a new paragraph (p) to read as follows:

(p) Notwithstanding subparagraphs (a) through (g) above, the contracting officer may authorize advance payments to a responsible contractor who is a provider of non-emergency transportation services to the District's Medicaid and Eligible Fee-for-Service recipients. The contractor may be paid a prospective capitation rate for each recipient.

DEPARTMENT OF HEALTH

NOTICE OF SECOND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 2 of the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 7-731(a)(10) and 47-2809.01 *et seq*. (2014 Supp.)); and Mayor's Order 2007-63(#2), dated March 8, 2007, hereby gives notice of the intent to adopt new body art regulations in Title 25 (Food Operations and Community Hygiene Facilities), Subtitle G (Body Art Establishment Regulations) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this proposed rulemaking is to provide regulatory oversight of body art pursuant to the recently enacted Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 7-731(a)(10), and 47-2809.01 *et seq.* (2012 Repl.)). This legislation provides the Department of Health with exclusive regulatory oversight of body art establishments in Title 25, Subtitle G of the District of Columbia Municipal Regulations (DCMR) and will enable the District of Columbia to protect public health and safety in body art procedures.

The rulemaking addresses the public's concern in particular areas of the previous rulemaking published September 6, 2013 at 60 DCR 12675. Specifically, this second proposed rulemaking removes the 24 hour waiting period, customer questionnaire, and denial of services for suspected communicable diseases. The proposed rulemaking also incorporates public suggestions for the use of the following: jewelry made of specific types of metals; hollow needles; FDA-approved medical or vacuum sterilizers; toothpicks as single-use skin markers; and non-hazardous disinfectant on jewelry inserted into healed piercings. The rulemaking also retains the use of red bio-hazardous waste bags. In addition, the proposed rulemaking re-words sections regarding acceptable cleansing techniques and equipment sterilization.

The Director also gives notice of the intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The proposed rules shall not become effective until a Notice of Final Rulemaking is published in the *D.C. Register*.

Subtitle G (Body Art Establishment Regulations) of Title 25 (Food Operations and Community Hygiene Facilities) of the DCMR is added to read as follows:

SUBTITLE G BODY ART ESTABLISHMENT REGULATIONS

CHAPTER 1 TITLE, INTENT, SCOPE

CHAPTER 1 TITLE, INTENT, SCOPE

100 TITLE ─ Body Art Establishment Regulations

100.1 These provisions shall be known as the Body Art Establishment Regulations hereinafter referred to as "these regulations."

101 INTENT ─ SAFETY

101.1 The purpose of these regulations is to protect the public's health by keeping the District's body art industry safe and sanitary.

101.2 These regulations:

(a) Establish minimum standards for the design, construction, operation, and maintenance of body art establishments;

(b) Establish minimum operational standards for sterilization, sanitation, cleaning and safety of the establishment, equipment, supplies, and work surface areas;

(c) Set standards for maintenance and replacement of equipment and supplies;

(d) Set standards for hygienic operations for personnel including vaccinations;

(e) Establish recordkeeping and reporting requirements;

(f) Establish prohibited conduct within body art establishments;

(g) Establish licensing and registration requirement, and associated fee schedules;

(h) Provide for enforcement through inspections, suspension and revocation of licenses and registrations, including the examination, embargo, or condemnation of unsanitary or unsafe jewelry, biohazard sharps containers, disposable and non-disposable equipment, single-use products, wipes, gloves, towels, ointments, inks, dyes, needles, and disinfectants;

(i) Establish fines and penalties; and

(j) Establish definitions for this subtitle.

101.3 In accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2853.76a. (2013 Supp.)), these regulations do not apply to:

(a) A licensed physician or surgeon performing body art services for medical reasons;

(b) A licensed funeral director performing body-piercing or tattooing services as required by that profession;

(c) Laser tattoo removal procedures licensed by the District of Columbia Board of Medicine; or

(d) Skin treatment procedures such as chemical peels or microdermabrasion licensed by the District of Columbia Board of Medicine.

101.4 Certain provisions of these regulations are identified as critical. Critical provisions are those provisions where noncompliance may result in injuries, spread of communicable diseases, or environmental health hazards. A critical item is denoted with an asterisk (*).

101.5 Certain provisions of these regulations are identified as noncritical. Noncritical provisions are those provisions where noncompliance is less likely to spread communicable diseases or create environmental health hazards. A section that is denoted in these regulations without an asterisk (*) after the head note is a noncritical item. However, a critical item may have a provision within it that is designated as a noncritical item with a superscripted letter "**N**" following the provision.

102 COMPLIANCE WITH FEDERAL AND DISTRICT LAWS

102.1 Body art establishments shall meet the following requirements:

(a) 29 C.F.R. Part 1910 (Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances);

(b) 29 C.F.R. § 1910.1030(d) – Bloodborne Pathogen Standard;

(c) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01 (2013 Supp.));

(d) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2853.76c, 47-2853.76d, and 47-2853.76e (2013 Supp.));

(e) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended; and

(f) The District of Columbia's Construction Codes Supplements of 2013, Title 12 of the District of Columbia Municipal Regulations, (61 DCR 3063; March 28, 2014 – Part 2)), which consist of the following International Code Council (ICC):

(1) International Building Code (2012 edition);

(2) International Mechanical Code (2012 edition);

(3) International Plumbing Code (2012 edition);

(4) International Fire Code (2012 edition);

(5) International Existing Building Code (2012 edition); and

(6) The National Fire Protection Association (NFPA 70) National Electrical Code (2014 edition).

102.2 In enforcing the provisions of these regulations, the Department shall regulate certain aspects of a body art establishment's physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings in use before the effective date of these regulations based on the following considerations:

(a) Whether the establishment's physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment, are in good repair or capable of being maintained in a hygienic condition in compliance with these regulations;

(b) The existence of a documented agreement with the licensee that the physical structure; operating systems, equipment, devices, fixtures, supplies, or furnishings used in a body art establishment will be replaced by an agreed upon date; or

(c) Where adequate standards do not exist in these regulations to address industry changes and these regulations do not provide sufficient guidance for consideration of innovations in design, construction and operation of new body art establishments, the Department will impose new standards necessary to protect the health and safety of body art customers.

CHAPTER 2 SUPERVISION AND TRAINING, AND PRE- AND POST-OPERATING PROCEDURES

200 LICENSEES RESPONSIBILITIES – QUALIFICATIONS AND TRAINING*

200.1 Licensees shall ensure that prior to working in their establishments, body artists are licensed in accordance with:

(a) The Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code §§ 47-2853.76b, 76c, 47-2853.7, 47-2853.6d, and 47-2853.76e (2013 Supp.)); and

(b) The Board of Barber and Cosmetology as specified in Chapter 37 of Title 17 of the District of Columbia Municipal Regulations, as amended.

200.2 Licensees shall ensure operators are on duty and on the premises during all hours of operations at each body art establishment.

200.3 Licensees shall ensure body artists are on the premises during all hours of operations at each body art establishments.

200.4 Licensees shall ensure body artists prior to working in a body art establishment provide proof of the following:

(a) Proof that the body artist is eighteen (18) years of age or older. Proof of age shall be satisfied with a valid driver's license, school-issued identification, or other government issued identification containing the date of birth and a photograph of the individual;

(b) Evidence of current hepatitis B vaccination, including applicable boosters, unless the body artist can demonstrate hepatitis B immunity or compliance with current federal OSHA hepatitis B vaccination declination requirements; and

(c) Training in Biohazard issues and handling in accordance with Occupational Safety and Health Administration standards in accordance with 29 C.F.R. – Part 1910 – Occupational Safety and Health Standard, Subpart Z – Toxic and Hazardous Substances, including universal precautions in accordance with 29 C.F.R. § 1910.1030(d) – Bloodborne pathogens.

200.5 Licensees shall ensure that only single-use disposable sharps, pigments, gloves, and cleansing products shall be used in connection with body art procedures in body art establishments in accordance with these regulations.

201 LICENSEES RESPONSIBILITIES ─ DISTRICT-ISSUED IDENTIFICATION CARD REQUIREMENTS

201.1 All operators of body art establishments shall obtain a District-Issued Body Art Establishment Operator Identification Card issued by the Department and renewed every two (2) years.

202 PRE-OPERATING PROCEDURES ─ AGE RESTRICTIONS, SIGNS AND POSTINGS*

202.1 The licensee shall ensure its customers are eighteen (18) years of age in order to be offered or to receive a body art procedure in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2853.76e(b) (2013 Supp.)).

202.2 The licensee shall ensure that before piercing a minor's ears with an ear piercing gun, the minor shall be accompanied by a parent or legal guardian, as specified in Section 202.3(b) and the parent or legal guardian shall have submitted a signed "Parental/Legal Guardian Authorization Form" to the establishment, as specified in Section 206.1(b)(3)(v).

202.3 A licensee shall conspicuously post an "Age Restriction Sign" at or near the reception area with the following text:

(a) INDIVIDUALS LESS THAN 18 YEARS OF AGE ARE PROHIBITED FROM OBTAINING ANY BODY ART PROCEDURE, ***EXCEPT EAR PIERCING PROCEDURES USING A MECHANIZED, PRE-STERILIZED SINGLE-USE STUD AND CLASP EAR PIERCING GUN;***

(b) EAR PIERCING IDENTIFIED IN SECTION "(a)" IS AUTHORIZED ONLY WITH THE WRITTEN CONSENT OF A PARENT OR LEGAL GUARDIAN SUBMITTED TO THE ESTABLISHMENT AND IF THE MINOR IS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN AT THE TIME OF THE EAR PIERCING;

(c) INDIVIDUALS LESS THAN 18 YEARS OF AGE ARE PROHIBITED ON THE PREMISES.

203 PRE-OPERATING PROCEDURES – HEALTH RISK STATEMENTS, CONTENT, AND POSTINGS*

203.1 Operators shall remind each customer to consult their physician regarding any medical condition which could be exacerbated by body art procedures.

203.2 The licensee shall conspicuously post a disclosure sign in the reception area that is legible, clearly visible, not obstructed by any item for viewing by customers. The disclosure sign shall read as follows:

DISCLOSURES
HEALTH RISKS ASSOCIATED WITH RECEIVING A BODY ART PROCEDURE – No. 1

The United States Food and Drug Administration have not approved any pigment color additive for injectable use as tattoo ink.

There may be a risk of carcinogenic decomposition associated with certain pigments when the pigments are subsequently exposed to concentrated ultra-violet light or laser irradiation.

If you believe that you have been injured at this establishment, contact:
The District of Columbia Department of Health
Health Regulation and Licensing Administration
Radiation Protection Division
899 North Capitol Street, N.E., 2nd Floor,
Washington, D.C. 20002-4210
Telephone: (202) 724-8800

203.3 In addition to Section 203, the licensee shall conspicuously post "Health Risks Associated with Receiving a Body Art Procedure Nos. 2, and 3" as specified in Section 203, in the reception area as specified in Subsection 607.4. The sign shall be legible, clearly visible, and not obstructed by any item for viewing by customers.

203.4 The lettering on the warning signs in this section and Section 203 shall be at least five millimeters (5 mm) high for the phrase "Health Risks Associated with Receiving a Body Art Procedure Nos. 1, 2, and 3." All capital letters shall be at least five millimeters (5 mm) high and all lower case letters shall be at least three millimeters (3 mm) high. The sign shall read as follows:

HEALTH RISKS ASSOCIATED WITH RECEIVING A BODY ART PROCEDURE – No. 2

The following medical history may increase health risks associated with receiving a body art procedure:

- Diabetes
- Hemophilia (bleeding)
- Skin disease, skin lesions, or skin sensitivities to soaps or disinfectants
- Allergies or adverse reactions to pigments, dyes, or other sensitivities
- Epilepsy, seizures, fainting or narcolepsy
- Use of medications such as anticoagulants, which thin the blood or interfere with blood clotting
- Any other conditions such as hepatitis or HIV

HEALTH RISKS ASSOCIATED WITH RECEIVING A BODY ART PROCEDURE – No. 3

Tattoos breach the skin, which means that skin infections and other complications are possible. Specific risks include:

Allergic reactions. Tattoo dyes – especially red dye – can cause allergic skin reactions, resulting in an itchy rash at the tattoo site. This may occur even years after you get the tattoo.

Skin infections. Tattoos can lead to local bacterial infections, characterized by redness, swelling, pain, lesions consisting of red papules or diffuse macular rash developing at the tattoo site. Possible skin infections can include:

- Nontuberculous Mycobacteria (NTM) – linked to contaminated tattoo inks
- M. chelonae – one of several disease-causing NTM species, can cause lung disease, joint infection, eye problems and other organ infections

(These infections can be difficult to diagnose and can require treatment lasting 6 months or more.)

Other skin problems. Sometimes bumps called granulomas form around tattoo ink – especially red ink. Tattooing can also lead to raised areas caused by an overgrowth of scar tissue (keloids).

Bloodborne diseases. If the equipment used to create your tattoo is contaminated with infected blood, you can contract various bloodborne diseases, including hepatitis B, hepatitis C, tetanus and HIV – the virus that causes AIDS.

MRI complications. Rarely, tattoos or permanent makeup may cause swelling or burning in the affected areas during magnetic resonance imaging (MRI) exams. In some causes – such as when a person with permanent eyeliner has an MRI of the eye – tattoo pigments may interfere with the quality of the image.

If you believe that you have been injured at this establishment, contact:

The District of Columbia Department of Health
Health Regulation and Licensing Administration
Radiation Protection Division

899 North Capitol Street, N.E., 2nd Floor,
Washington, D.C. 20002-4210
Telephone: (202) 724-8800

204 PRE-OPERATING PROCEDURES – JEWELRY SELECTION, AND EQUIPMENT SETUP*

204.1 Before beginning a body art procedure, the customer and body artist shall select the appropriate size and quality of jewelry for body-piercing together. Appropriate jewelry shall be made of:

(a) ASTM F138, ISO 5832-1, ISO 10993-6, ISO 10993-10 and/or 10993-11, and stainless steel;

(b) Solid 14k through 18k yellow or white gold;

(c) Niobium;

(d) ASTM F136 titanium or ASTM F67 titanium;

(e) Platinum; or

(f) Other materials found to be equally biocompatible.

204.2 All jewelry shall be free of nicks, scratches, or irregular surfaces and is properly sterilized prior to use.

204.3 All equipment and supplies, including but not limited to sterile water, inks, dyes, and pigments, and all packages containing sterile instruments, pre-sterilized, single-use jewelry, and pre- sterilized, single-use disposable items shall be opened in front of the customer.

205 POST-OPERATING PROCEDURES – AFTERCARE INSTRUCTIONS, CONTENT *

205.1 The licensee shall ensure after each body art procedure, the body artist provides the customer with Aftercare Instructions, which include the following information:

(a) The name of the body artist who performed the procedure; and

(b) The name, address, and telephone of the establishment where the procedure was performed.

205.2 Written "Aftercare Instructions" for tattoo procedures shall provide:

(a) Information on the care of the procedure site;

(b) Restrictions on physical activities such as bathing, recreational water activities, gardening, or contact with animals; and duration of the restrictions;

(c) The need to properly cleanse the tattooed area;

(d) Application of antibiotic ointment or cream;

(e) The use of sterile bandages(s) or other sterile dressings(s) when necessary; and

(f) The instructions for the customer to consult a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the application of the tattoo to the body artist and to the Department at (202) 724-8800.

205.3 Written "Aftercare Instructions" for body-piercing procedures shall state:

(a) Proper cleansing techniques for the pierced area;

(b) The need to minimize physical activities as specified in Subsection 205.2(b) for at least six (6) weeks;

(c) Use of sterile bandages(s) or other sterile dressings(s) when necessary;

(d) The name of the body artist, and the name, address, and telephone of the establishment where the procedure was performed; and

(e) The instructions for the customer to consult a health care practitioner at the first sign of infection or an allergic reaction, and to report any diagnosed infection, allergic reaction, or adverse reaction resulting from the body-piercing to the body artist and to the Department at (202) 724-8800.

CHAPTER 3 OPERATING PROCEDURES TO PREVENT CROSS-CONTAMINATION, AND RECORDKEEPING REQUIREMENTS

300 PREVENTING CONTAMINATION – STERILE WATER, INKS, DYES AND PIGMENTS, AND PRE-STERILIZED, SINGLE-USE DISPOSABLE ITEMS

300.1 All body artists shall use only sterile water to mix and dilute inks, dyes, or pigments and shall not use tap water or distilled water.

300.2 All tattoo artists shall use inks, dyes, and pigments that are specifically manufactured for performing body art procedures in accordance with manufacturer's instructions.

300.3 All tattoo artists shall transfer the quantity of dye to be used in the body art procedure from the dye bottle and place it into a single-use paper or plastic cup or cap immediately before a tattoo is applied.

300.4 Single-use cups or caps and their contents shall be discarded immediately upon completion of a tattoo.

300.5 Single-use, disposable items, including but not limited to cups, cotton swabs, corks, rubber bands, and toothpicks shall be maintained in clean condition and dispensed in a manner to prevent contamination to unused pre-sterilized, single-use disposable items.

300.6 Single-use plastic covers shall be used to cover spray bottles or other reusable accessories for multiple customers that are handled by the tattoo artist or body-piercer.

300.7 Only single-use inks, pigment or dye shall be placed into a clean, single-use receptacle, which is discarded immediately upon completion of the tattoo procedure.

300.8 Inks, pigments, soaps, and other products in multiple-use containers shall be dispensed in a manner that prevents contamination of the storage container and the remaining unused portion through the use of a single-use receptacle.

300.9 If a tray is used for inks or pigments, it shall be decontaminated after use on each customer.

301 PREVENTING CONTAMINATION – PRE-STERILIZED, SINGLE- USE DISPOSABLE SHARPS

301.1 All body artists shall use only pre-sterilized, single-use disposables sharps, including but not limited to needles, razors or razor heads on an individual during a single piercing or tattooing, and immediately dispose of the pre-sterilized, single-use disposables sharps into a medical-grade sharps container.

301.2 All body artists shall use hollow needles, and equipment that is specifically manufactured for performing body art procedures in accordance with manufacturer's instructions.

302 PREVENTING CROSS-CONTAMINATION FROM BODY ARTISTS – WORK AREAS, CONSTRUCTION AND DESIGN, AND RESTRICTIONS

302.1 A body artist encountering a biohazard or other health hazards shall report it immediately to the operator.

302.2 All body artists shall use only single-use jewelry on an individual and the single-use jewelry shall not be reused on another customer.

302.3 All body artists shall wear single-use aprons and single-use gloves which shall be disposed of after completing a procedure on a customer.

302.4 All body artists shall use pre-sterilized, single-use disposable equipment. For equipment that is not disposable, such as surgical steel forceps, and sterilizers are required, as specified in Subsections 304.14 and 304.15.

302.5 All body artists shall:

(a) Wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices while on duty;

(b) Wash their hands, wrists and arms to the elbow thoroughly using hot or tempered water with a liquid germicidal soap before and after tattooing or body-piercing and as often as necessary to remove contaminants;

(c) Dry hands thoroughly with single use disposable towel;

(d) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves on both hands when touching, decontaminating, or handling a surface, object, instrument, or jewelry that is soiled or that is potentially soiled with human blood; and

(e) Don new medical-grade latex, vinyl or hypoallergenic single-use disposable gloves while assembling tattooing and body-piercing instruments and during tattooing and body-piercing procedures, as specified in Chapter 3.

302.6 When a body art session is interrupted, or immediately after gloves are torn or perforated, a tattoo artist and body-piercer shall:

(a) Remove and discard the gloves;

(b) Wash and dry their hands as specified in Subsections 302.5(b) and (c); and

(c) Don a new pair of gloves, as specified in Subsection 302.5(d).

302.7 In addition to the procedures identified in Subsections 302.1 through 302.6 all body artists shall use the following universal precautions for all body art procedures:

(a) Don new gloves for routine disinfecting procedures;

(b) Move in such a manner as to avoid re-contamination of work surfaces;

(c) Discard and remove disposable items from work areas after completing a body art procedure on each customer;

(d) Disinfect work surface areas and all equipment that may have been contaminated during the piercing procedure;

(e) Dispose of single-use lap cloths after use on each customer;

(f) Remove and discard gloves and wash hands;

(g) Discard materials in appropriate red biohazard waste bags after use on each customer;

(h) Disinfect all reusable equipment made of non-porous material after each use. Non-spray wipes for surfaces and liquids for soaking jewelry are preferred over spray disinfectants which may disperse pathogens into the air;

(i) Apply iodine, bacitracin and other antiseptics with single-use applicators. Applicators that have touched a customer shall not be used to retrieve antiseptics, iodine, etc. from any containers;

(j) Clean contaminated instruments (such as forceps or pliers) of bacitracin or other antibiotic solutions, blood and other particles with an appropriate soap or disinfectant cleaner and hot water, followed by an ultrasonic cleaner and steam autoclave; and

(k) Use sterilization equipment, as specified in Subsections 304.14 through 304.16, and 311.

302.8 Work areas in a body art establishment shall be constructed and maintained to ensure customer privacy and shall not be used as a walk-thru to gain access to other rooms or exits.

302.9 All work areas shall be constructed and equipped with floors, chairs, and table tops that are non-porous, smooth and easily cleanable and maintained in a clean and sanitary manner.

302.10 Carpet is not permitted as a floor covering in a work area where tattooing or body piercing is conducted.

302.11 All work areas shall contain a medical-grade sharps container that is conveniently located near the workstations.

302.12 The licensee shall ensure each work area for tattoo or body-piercing procedure provides a body artist with a minimum of forty-five square feet (45 sq. ft.) of floor space.

302.13 Each body art establishment shall have a separate cleaning area for decontamination and sterilization procedures, in which the placement of a sterilizer is at least thirty-six (36) inches away from the placement of the required ultrasonic cleaning unit and any sink.

302.14 All solid surfaces and objects in the procedure area and the decontamination and sterilization area that have come in contact with the customer or the materials used in performing the tattoo or body-piercing, including but not limited to chairs, armrests, tables, countertops, and trays, shall be immediately decontaminated after each use and then disinfected by application of a disinfectant, used according to manufacturer's instructions.

302.15 The surfaces and objects in the procedure area shall be disinfected again if an activity occurred in the area after the area was disinfected.

303 PREVENTING CROSS-CONTAMINATION FROM CUSTOMERS

303.1 In addition to the procedures identified in Chapter 2, body artists shall ensure that any skin or mucosa surface to receive a body art procedure is free of a rash or any visible infection and shall comply with the following procedures in preparing the customer's skin:

(a) Clean the area of the customer's skin subject to the body art with an approved germicidal soap according to the label directions. In the case of:

(1) Oral piercings, the body artist shall provide the individual with antiseptic mouthwash in a single-use cup and shall ensure that the individual utilizes the mouthwash provided; or

(2) Lip, labret, or cheek piercing, the body artist shall follow the procedures identified in this section for skin and oral piercings.

(b) Use single-use disposable razors if shaving is required. The razor or razor's head shall be immediately placed in a medical-grade sharps container after use;

(c) Wash the skin and surrounding area with soap and water, following shaving, and immediately discard the washing pad after use;

(d) Use single-use products only to stop the bleeding or to absorb blood, and discard immediately after use in appropriate red biohazard waste bags, and disposed of in accordance with Subsection 307.2; and

(e) Use sterile gauze or other sterile applicator to dispense and apply petroleum jelly, soaps, and other products in the application of stencils on the area to receive a body art procedure to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded immediately in the appropriate red biohazard waste bags as specified in Subsection 307.2.

304 PREVENTING CONTAMINATION – REUSABLE INSTRUMENTS AND EQUIPMENT, DESIGN, LOCATION, AND MAINTENANCE LOG

304.1 Reusable instruments that are used during body art procedures which may contact blood or other bodily fluids, or which come in direct contact with skin which is not intact, shall be sterilized after each use or disposed of after each use.

304.2 Reusable instruments that are used during tattooing and body-piercing procedures which do not come in contact with broken skin but which may come in contact with mucous membranes and oral tissue shall be sterilized after each use.

304.3 Reusable instruments or reusable items that do not come in contact with non-intact skin or mucosal surfaces shall be washed with a solution of soap and sterile water, using a brush that is small enough to clean the interior surfaces, and decontaminated after each procedure.

304.4 If it is not feasible to sterilize the reusable instruments because it will be damaged during the body art procedure, the reusable instruments, including but not limited to calipers and gauge wheels shall be treated with a germicidal solution prior to use.

304.5 Reusable instruments that come in contact only with intact skin or mucosal surfaces shall either be single-use or washed in sterile water, disinfected, packaged, and sterilized after each procedure.

304.6 Contaminated, reusable instruments shall be placed in a labeled covered container which shall contain a disinfectant solution such as 2.0% alkaline glutaraldehyde or similar disinfectant until it can be cleaned and sterilized.

304.7 All containers holding contaminated reusable instruments and container lids shall be emptied of contaminated solution and cleaned and sanitized daily or more often if needed.

304.8 Any part of a tattooing machine that may be touched by the tattoo artist during the procedure shall be covered with a disposable plastic sheath that is discarded upon

completion of the procedure, and the tattoo machine shall be decontaminated upon completion of the procedure.

304.9 A machine used to insert pigments shall be designed with removable parts between the tip and motor housing, and shall be designed in a manner that will prevent backflow into enclosed parts of the motor housing.

304.10 A hand tool used to insert pigment shall be disposed of in a sharps medical-grade container, with the sharps intact, unless the needle can be mechanically ejected from the hand tool.

304.11 A body art establishment shall:

(a) Place clean instruments to be sterilized first in sealed peel-packs that contain either a sterilizer indicator or internal temperature indicator. The outside of the pack shall be labeled with the name of the instrument, the date sterilized, and the initials of the person operating the sterilizing equipment;

(b) Place clean instruments and sterilized instrument packs in clean, dry, labeled container, or store in a labeled cabinet that is protected from dust and moisture;

(c) Store sterilized instruments in the intact peel-packs or in the sterilization equipment cartridge until time of use; and

(d) Evaluate sterilized instrument packs at the time of storage and before use. If the integrity of the pack is compromised, including but not limited to cases where the pack is torn, punctured, wet, or displaying any evidence of moisture contamination, the pack shall be discarded or reprocessed before use.

304.12 For all reusable instruments that may come in contact with a customer or jewelry, a body art establishment shall use sterilization equipment approved for medical sterilization purposes by the U.S. Food and Drug Administration Equipment as specified in Section 311.

304.13 All reusable instruments shall be bagged, dated and sealed before sterilizing.

304.14 Reusable instruments shall be sterilized in an FDA validated medical steam or vacuum sterilizer in accordance with manufacturer instructions.

304.15 After sterilizing equipment, the equipment shall be stored in a non-porous, dark, dry, cool place, such as a medical credenza.

304.16 Each body art establishment shall be equipped with a working sterilizer and with appropriate cleansing equipment, such as a working ultrasonic cleaner.

304.17 At least one covered, foot operated solid waste receptacle, lined with disposable bags shall be provided in each:

(a) Work area;

(b) At each handwash sink; and

(c) In each toilet room.

305 PREVENTING CONTAMINATION – MARKING INSTRUMENTS AND STENCILS*

305.1 Marking instruments shall be single-use or sanitized by design, such as alcohol based ink pens, and shall be used only on intact skin that has been treated with a germicidal soap.

305.2 Marking instruments that come in contact with mucous membranes or broken skin shall be single-use.

305.3 All stencils and applicators shall be single-use.

305.4 Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied using an aseptic technique and in a manner that prevents contamination of the original container and its content.

305.5 A product applied to the skin prior to tattooing or application of permanent cosmetics, including but not limited to stencils and marking and transfer agents, and pens, shall be single-use and discarded into red biohazard bags at the end of the procedure unless the product can be disinfected for reuse.

305.6 If measuring the body-piercing site is necessary, clean calipers shall be used and the skin marked using a single-use disposable implement, which includes a toothpick and non-toxic ink or a single-use skin marker.

306 PREVENTING CONTAMINATION – PRE-STERILIZED, SINGLE-USE JEWELRY*

306.1 Jewelry inserted into a healed piercing that has not been previously worn or contaminated shall be disinfected in accordance with manufacturer's instructions with a non-hazardous disinfectant approved by the EPA.

306.2 Jewelry placed in newly pierced skin shall be sterilized prior to piercing as specified in Subsection 304.13 or shall be purchased pre-sterilized as specified in Sections 309 310, and 312.

307 PREVENTING CONTAMINATION – BIOHAZARD AND INFECTIOUS WASTE, HANDLING AND DISPOSAL*

307.1 All sharps shall be disposed of in medical-grade sharps containers and disposed of by professional environmental infectious waste disposal companies licensed in the District of Columbia, in accordance with Subsection 508.3.

307.2 All other supplies or materials that are contaminated with blood or other body fluids that are generated during a body art process, including but not limited to cotton balls, cotton tip applicators, corks, toothpicks, tissues, paper towels, gloves, single-use plastic covering, and pigment containers shall be discarded in red biohazard waste bags and disposed of by a professional environmental infectious waste disposal company licensed in the District of Columbia, in accordance with Subsection 508.3.

307.3 Solid waste that is not contaminated shall be placed in easily cleanable, sealed containers and disposed of in accordance with Section 506.

307.4 All solid waste containers shall be kept closed when not in use, and shall comply with Section 506.

308 PREVENTING CONTAMINATION – INFECTION PREVENTION AND EXPOSURE CONTROL PLAN

308.1 The licensee shall ensure that each body art establishment develops, maintains and follows a written Infection Prevention and Exposure Control Plan provided by the licensee or the body artists that identifies the following;

(a) Policies and procedures for staff training on universal precautions for exposure to bloodborne pathogens from blood and other potentially infectious materials;

(b) Policies and procedures for decontaminating and disinfecting environmental surfaces;

(c) Policies and procedures for decontaminating, packaging, sterilizing, and storing reusable instruments;

(d) Policies and procedures for protecting clean instruments and sterile instrument packs from exposure to dust and moisture during storage;

(e) Policies and procedures for setting up and tearing down workstations for all body art procedures performed at the body art establishment;

(f) Policies and procedures to prevent the contamination of instruments or the procedure site during a body art procedure;

(g) Policies and procedures for safe handling and disposal of sharps and bio-hazardous waste; and

(h) Recommendations by the Centers for Disease Control and Prevention to control the spread of infectious disease and treat all human blood and bodily fluids as infectious through universal precautions.

308.2 The licensee shall ensure routine on-site training on the establishment's Infection Prevention and Exposure Control Plan, and shall require additional training when a body artist:

(a) Is exposed to an occupational hazard;

(b) Performs a new procedure or there is a change in a procedure; and

(c) The establishment purchases new equipment.

309 PREVENTING CONTAMINATION – REUSABLE INSTRUMENTS AND STERILIZATION PROCEDURES*

309.1 Reusable instruments shall be cleaned by gloved personnel prior to sterilization using the following methods:

(a) Mechanically, pre-clean the items by using a clean cotton ball or swab moistened with a solution of low-residue detergent and cool water, with care taken to ensure the removal of any pigment or body substances not visible to the eye, thoroughly rinse with warm water and then drain, and clean by soaking in a protein dissolving detergent-enzyme cleaner used according to the manufacturer's instructions; or

(b) Clean the items in an ultrasonic cleaning unit used according to the manufacturer's instructions. A copy of the manufacturers recommended procedures for operation of the ultrasonic cleaning unit shall be available for inspection by an authorized agent of the Department; and

(c) Rinse and dry the items prior to packaging for sterilization.

310 MAINTENANCE RECORDS – STERILIZERS AND COMMERCIAL BIOLOGICAL INDICATOR MONITORING SYSTEM, AND RETENTION*

310.1 All body art establishments shall load, operate, decontaminate, and maintain sterilizers according to manufacturer's instructions, and only equipment manufactured for the sterilization of medical instruments shall be used.

310.2 Sterilization equipment shall be tested using a commercial biological indicator monitoring systems ("monitor") after:

(a) Initial installation;

(b) Major repair;

(c) At least once per month; or

(d) At a minimum in compliance with the manufacturer's recommendation.

310.3 The expiration date of a monitor shall be checked prior to each use.

310.4 Each sterilization load shall be monitored with mechanical indicators for time, temperature, pressure, and at a minimum, Class V Integrators. Each individual sterilization pack shall have an indicator.

310.5 Biological indicator monitoring test results shall be recorded in a log that shall be kept on the premises for 3 years after the date of the results.

310.6 A daily written log of each sterilization cycle shall be maintained on the premises for three (3) years for inspection by the Department and shall include the following information:

(a) The date of the load;

(b) A list of the contents of the load;

(c) The exposure time and temperature;

(d) The results of the Class V Indicator; and

(e) For cycles where the results of the biological indicator monitoring test are positive, how the items were cleaned, and proof of a negative test before reuse.

311 MAINTENANCE RECORDS – STERILIZERS*

311.1 The Department shall require calibration of all sterilization equipment by an independent laboratory that will calibrate the equipment biannual or more frequently if recommended by the manufacturer and records of the calibrations shall be maintained on the premises for inspection by the Department.

311.2 Sterilizers shall be spore tested in accordance with manufacturer's recommendations by trained staffers and records of the spore tests shall be

maintained on the premises for three (3) years after the date of the results for inspection by the Department.

312 RECORDS OF ACQUISITIONS – DISPOSABLES, SINGLE-USE, PRE-STERILIZED INSTRUMENTS, AND RECORD RETENTION*

312.1 A body art establishment that does not provide access to a decontamination and sterilization area that is in compliance with these regulations, or that does not have sterilization equipment as specified in Section 310 shall:

(a) Use only disposable, single-use, pre-sterilized instruments and supplies as specified in Subsection 200.5;

(b) Purchase disposable, single-use, pre-sterilized medical-grade instruments, including but not limited to sharps and medical-grade items, including but not limited to latex, vinyl or hypoallergenic gloves, and cleansing products, from medical suppliers licensed or registered in the District of Columbia; and

(c) Maintain for ninety (90) days:

(i) A record of the purchase and use of all disposable, single-use, pre-sterilized medical-grade instruments and supplies;

(ii) A log of all body art procedures, including the names of the tattoo artist or body-piercer and the customer; and

(iii) The date of the body art procedure.

313 RECORDKEEPING REQUIREMENTS – CONFIDENTIAL, PERSONNEL FILES*

313.1 The licensee shall maintain a procedural manual at the body art establishment which shall be available at all times to operators and the Department during each inspection.

313.2 Each body art establishment's policy and procedures manual shall maintain the following information regarding body artist, as specified in Subsection 200.4:

(a) Full legal name;

(b) Home address and telephone number(s);

(c) Professional licenses and training certifications, if applicable; and

(d) Proof that he or she is eighteen (18) years of age or older with a driver's license or other government issued identification containing the date of birth and a photograph of the individual, or school issued identifications; and

(e) Proof of compliance with pre-employment requirement of current hepatitis B vaccination, including applicable boosters, unless the body artist:

(1) Demonstrates hepatitis B immunity; or

(2) Compliance with current federal OSHA hepatitis B vaccination declination requirements.

314 RECORDKEEPING REQUIREMENTS – REQUIRED DISCLOSURES*

314.1 Each body art establishment offering tattoo procedures shall keep on the premises documentation of the following information, and shall disclose and provide this information to customers upon request:

(a) The actual pigments used in the body art establishment;

(b) The names, addresses, and telephone numbers of the suppliers and manufacturers of pigments used in the body art establishment for the past three (3) years; and

(c) Identification of any recalled pigments used in the establishment for the past three (3) years and the supplier and manufacturer of each pigment.

314.2 A list of emergency contact numbers shall be easily accessible to all personnel and shall include, but is not limited to:

(1) The nearest hospital;

(2) The nearest fire department; and

(3) Emergency 911 service.

314.3 All files identified in this section that are maintained electronically shall be frequently backed up and accessible from multiple locations, if applicable.

314.4 An electronic record shall be retrievable as a printed copy.

315 RECORDKEEPING REQUIREMENTS – RETENTION

315.1 The licensee shall maintain all records at the establishment for at least three (3) years or longer if required by any other applicable District law or regulation. The records shall be readily available for review by the Department upon request.

316 RECORDKEEPING REQUIREMENTS – REPORTS OF INFECTION OR ALLERGIC REACTIONS

316.1 The licensee shall maintain a document called a "Report of Infection or Allergic Reactions" that details infections and allergic reactions reported to the body artist or the body art establishment by a customer.

316.2 The licensee shall submit to the Department a written report of any infections or allergic reactions resulting from a body art procedure within five (5) business days of its occurrence or knowledge thereof.

316.3 The report shall include the following information:

(a) Name, address, and telephone number of the affected customer;

(b) Name, location, telephone number and license number of the establishment where the body art procedure was performed;

(c) The complete legal name of the body artist;

(d) The date the body art procedure was performed;

(e) The specific color or colors of the tattoo or type of jewelry used for the body-piercing, and when available, the manufacturer's catalogue or identification number of each color or type of jewelry used;

(f) The location of the infection and the location on the body where the body art was applied;

(g) The name and address of the health care practitioner, if any; and

(h) Any other information considered relevant to the situation.

316.4 The Department shall use these reports in their efforts to identify the source of the adverse reactions and to take action to prevent its recurrence.

316.5 The licensee shall maintain all reports pertaining to infections and allergic reactions at the establishment for review until the Department authorizes their disposal.

CHAPTER 4 PHYSICAL STRUCTURE, OPERATING SYSTEMS AND DESIGN

400 PHYSICAL STRUCTURE – BUILDING MATERIALS AND WORKMANSHIP

400.1 The licensee of a newly constructed, remodeled or renovated body art establishment shall ensure that the design, construction, building materials, and workmanship complies with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter.

400.2 The licensee of an existing body art establishment shall maintain in good condition the physical integrity of its establishment by repairing or replacing structural or design defects, operating systems, or fixtures in use before the effective date of these regulations in accordance with the District's Construction Codes Supplements of 2013, as specified in Subsection 102.1(f) of this chapter.

400.3 At least thirty (30) days before beginning construction or remodeling of a body art establishment, the licensee shall submit construction plans with all schedules, including but not limited to floor plans, elevations, and electrical schematics, to the Department for review and approval, as specified in Section 605.

401 PHYSICAL STRUCTURE – FLOOR AND WALL JUNCTURES, COVERED, AND ENCLOSED OR SEALED

401.1 Exterior floor and wall junctures shall be covered and closed to no larger than one millimeter (1 mm.) or one thirty-second of an inch (1/32 in.).

401.2 Covering of floor and wall junctures shall be sealed.

402 PHYSICAL STRUCTURE – FLOORS, WALLS, CEILINGS, AND UTILITY LINES

402.1 All procedure areas and instrument cleaning areas shall have floors, walls and ceilings constructed of smooth, nonabsorbent and easily cleanable material. Outer openings shall provide protection against contamination from dust and other contaminants.

402.2 All floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may be used for safety reasons.

402.3 All facilities shall have a waiting area that is separate from the body art procedure area, and from the instrument cleaning, sterilization, and storage areas.

402.4 The floors in the restrooms and locker rooms that are next to showers or toilets, or any other wet areas, shall be constructed of smooth, durable, nonabsorbent, and easily cleanable material.

402.5 Every concrete, tile, ceramic, or vinyl floor installed in bathrooms, restrooms, locker rooms, and toilet rooms, which are next to showers or toilets, shall be covered at the junctures between the floor and the walls.

402.6 All material used to cover the junctures shall be fitted snugly to the floor and the walls so that they are water tight and there are no openings large enough to permit the entrance of vermin.

402.7 The material used in constructing the walls and ceilings must be joined along their edges so as to leave no open spaces or cracks.

402.8 Utility service lines and pipes shall not be unnecessarily exposed.

402.9 Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

402.10 Exposed horizontal utility service lines and pipes shall not be installed on the floor.

403 OPERATING SYSTEMS AND DESIGN – PLUMBING SYSTEM, DESIGN, WATER CAPACITY, QUANTITY, AND AVAILABILITY*

403.1 Each body art establishment's plumbing system shall be designed, constructed, installed, and maintained according to the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations and shall be of sufficient size to:

(a) Meet the water demands of the body art establishment.

(b) Meet the hot water demands throughout the body art establishment.

(c) Properly convey sewage and liquid disposable waste from the premises;

(d) Avoid creating any unsanitary condition or constituting a source of contamination to potable water, or tattoo or body-piercing equipment, instruments; and

(e) Provide sufficient floor drainage to prevent excessive pooling of water or other disposable waste in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

403.2 Each plumbing fixture such as a handwashing facility, toilet, or urinal shall be easily cleanable.[N]

403.3 Each body art establishment shall be equipped with at least one janitorial sink.

403.4 Each body art establishment shall be equipped with effective plumbing and sewage facilities and adequate accommodations.

404 OPERATING SYSTEMS AND DESIGN – HANDWASHING SINKS, WATER TEMPERATURE, AND FLOW

404.1 All handwashing sinks, including those in toilet rooms, shall be equipped to provide water at a temperature of at least one hundred degrees Fahrenheit (100 °F) (thirty-eight degrees Celsius (38 °C)) through a mixing valve, a combination faucet, or tempered water and a single faucet.

404.2 A steam mixing valve shall not be used at a handwashing sink.

404.3 A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

404.4 Any automatic handwashing facility shall be installed in accordance with the manufacturer's instructions.

405 OPERATING SYSTEMS AND DESIGN – TOILETS AND URINALS, NUMBER, CAPACITY, CONVENIENCE AND ACCESSIBILITY, ENCLOSURES, AND PROHIBITION*

405.1 Toilet facilities shall be provided in accordance with the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations and maintained as specified in Section 500.

405.2 The licensee shall, at a minimum:

(a) Maintain the toilet facilities in a sanitary condition that is clean and free of solid waste and litter;

(b) Keep the facilities in good repair at all times; and

(c) Provide self-closing doors.

405.3 All single-stall toilet rooms shall display gender-neutral signs on the door that read "Restroom," or have a universally recognized picture/symbol indicating that persons of any gender may use each restroom, in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2012 Repl.)).

405.4 Body art establishments employing:

(a) Five (5) or fewer employees may provide a single toilet facility with a gender-neutral sign on the door in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2012 Repl.)); or

(b) More than five (5) employees shall have multiple toilet facilities that are either:

(1) Single-stall toilet rooms with a gender-neutral sign on each door as specified in Subsection 3101.2 in accordance with the D.C. Human Rights Act of 1977, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c) (2012 Repl.)); or

(2) Multiple-stall toilet rooms with gender-specific signs on the doors that read "Men" and "Women" or contain gender-specific, universally recognized pictorials of "Men" and "Women".

405.5 When locker rooms are provided, there shall be both a male and female locker room available, unless the establishment is specifically designated for one (1) gender or the other.

405.6 If a body art establishment serves only one (1) gender, a restroom shall be made available for employees of the opposite gender.

405.7 A toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door, except that this requirement does not apply to a toilet room that is located outside a body art establishment.

405.8 Toilet room doors shall be kept closed except during cleaning and maintenance operations.

405.9 Each body art establishment shall maintain toilet facilities for employees, which shall consist of a toilet room or toilet rooms with proper and sufficient water closets and lavatories. Toilet facilities shall be conveniently located and readily accessible to all personnel and customers.

405.10 Toilet facilities shall be deemed conveniently located and accessible to employees during all hours of operation if they are:

(a) Located within the same building as the business they serve; and

(b) Accessible during working hours without going outside the building.

405.11 At no time shall consumers or employees of one (1) gender enter the bathroom, restroom, or locker room of the other gender, except for routine clean-up after all of the consumers are gone or there is a maintenance emergency.

406 OPERATING SYSTEMS AND DESIGN – ELECTRICAL, LIGHTING*

406.1 All rooms of a body art establishment shall have at least one (1) electrical source of light. Lighting luminaries and fixtures may be of incandescent, fluorescent, high density discharge, or light emitting dial (LED) types.

406.2 At least fifty (50) foot-candles of artificial light shall be provided in each procedure area that is positioned at the height of the workstation, and shall be provided in all decontamination and sterilization areas.

406.3 At least twenty (20) foot-candles of light shall be provided in each restroom, locker room, toilet room, or other areas when fully illuminated for cleaning.

406.4 An average illumination value of ten (10) foot-candles of light, but never less than seven and a half (7.5) foot-candles of light, shall be provided in other areas within a body art establishment, including offices, lobbies, retail shops, and waiting areas.

406.5 The above illumination levels shall be attainable at all times while the body art establishment is occupied.

407 OPERATING SYSTEMS AND DESIGN – ELECTRICAL, SMOKE ALARMS

407.1 Each distinct area of a body art establishment separated by a doorway, whether or not a door is currently present, shall be equipped with at least one (1) working smoke alarm which is installed, maintained, and tested according to the International Fire Code (2012 edition), Subtitle H (Fire Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations.

407.2 The smoke alarm shall be free of foreign matter such as tape or paint which could impair its proper function.

408 OPERATING SYSTEMS AND DESIGN – HEATING AND VENTILATION SYSTEMS

408.1 All restrooms, locker rooms, and toilet rooms shall be adequately ventilated so that excessive moisture is removed from the room. Acceptable ventilation includes mechanical exhaust ventilation, a recirculating vent, or screened windows.

408.2 Each system for heating, cooling, or ventilation shall be properly maintained and operational at all times when the rooms are occupied.

408.3 All restrooms, locker rooms, and toilet rooms shall be capable of being maintained at a temperature between sixty-eight degrees Fahrenheit (68 °F) (twenty degrees Celsius (20 °C)) and eighty degrees Fahrenheit (80 °F) (twenty-seven degrees Celsius (27 °C)) while being used by customers.

CHAPTER 5 FACILITY MAINTENANCE

500 FACILITY MAINTENANCE – TOILETS AND URINALS, MAINTENANCE*

500.1 Each body art establishment's plumbing system shall be:

(a) Repaired according to the International Plumbing Code (2012 edition), Subtitle F (Plumbing Code Supplement of 2013) of Title 12 of the District of Columbia Municipal Regulations; and

(b) Maintained in good repair.

500.2 The licensee shall provide a supply of toilet tissue and waste receptacle at each toilet room, and covered waste receptacles for hygienic products in any toilet room used by women.

501 FACILITY MAINTENANCE – HANDWASHING SINKS, CLEANSER AVAILABILITY, HAND DRYING PROVISION, AND HANDWASHING SIGNAGE

501.1 An automatic handwashing facility may be substituted for a handwashing sink in a body art establishment that has at least one (1) handwashing sink.

501.2 An automatic handwashing facility shall be used in accordance with the manufacturer's instructions.

501.3 Each handwashing sink or group of two (2) adjacent sinks shall be provided with hand cleaning liquid or powder.

501.4 Each handwashing sink or group of adjacent sinks shall be provided with:

(a) Individual, disposable towels; or

(b) A heated-air, hand-drying device.

501.5 A sign or poster that notifies employees to wash their hands shall be provided at all handwashing sinks.

502 FACILITY MAINTENANCE – HANDWASHING SINKS, DISPOSABLE TOWELS, AND WASTE RECEPTACLES

502.1 A handwashing sink or group of adjacent sinks that is supplied with disposable towels or suitable drying devices shall be provided with a waste receptacle.

503 FACILITY MAINTENANCE – FLOOR COVERING, RESTRICTIONS, INSTALLATION, CLEANABILITY

503.1 A floor covering such as carpeting or similar material shall not be installed as a floor covering in toilet room areas where handwashing sinks, toilets, or urinals are located; refuse storage rooms; or other areas where the floor is subject to moisture.

503.2 The licensee or manager shall inspect the premises prior to each consumer's use to ensure that the floors are dry.

503.3 Mats and duckboards shall be designed to be removable and easily cleanable.

504 FACILITY MAINTENANCE – FLOORS, PUBLIC AREAS

504.1 The physical facilities shall be maintained in good repair and cleaned as often as necessary to keep them clean.

504.2 Every floor and floor covering shall be kept clean and in good repair, sanitized, or replaced so that it does not become a hazard to health or safety.

504.3 All public areas of a body art establishment, such as the lobbies and merchandising and retail areas shall be maintained in a clean and sanitary manner, free of litter, rubbish, and nuisances.

505 FACILITY MAINTENANCE – CLEANABILITY, SANITIZATION AND MAINTENANCE OF PLUMBING FIXTURES

505.1 Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean and well-maintained.

505.2 All body art establishments shall be equipped with toilet facilities, which include a water closet and handwashing sinks, including hot and cold running water, hand cleaning liquid or powder, and a paper towel dispenser or equivalent hand drying equipment.

505.3 Each room used for tattoo or body piercing shall contain a sink with hot and cold running water, antibacterial soap and single-use towels in dispensers for the exclusive use of the piercers or tattoo artists for washing their hands and preparing their clients for body piercing or tattooing.

505.4 All restrooms shall be kept in sanitary condition and good repair.

506 FACILITY MAINTENANCE – REFUSE, REMOVAL FREQUENCY

506.1 An inside storage room or area, outside storage area or enclosure, and receptacles shall be of sufficient capacity to hold the refuse that accumulate.

506.2 Refuse, excluding biohazardous waste, shall be placed in a lined waste receptacle and disposed of at a frequency that does not create a health or sanitation hazard.

506.3 Receptacles and waste handling units shall be designed and constructed with tight-fitting lids, doors, or covers.

506.4 Receptacles and waste handling units shall be durable, cleanable, insect- and rodent-resistant, leakproof, nonabsorbent, and maintained in good repair.

506.5 If used, an outdoor enclosure for refuse shall be constructed of durable and cleanable materials and shall be located so that a public health hazard or nuisance is not created.

506.6 An outdoor storage surface for refuse shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

506.7 Storage areas, enclosures, and receptacles for refuse shall be maintained in good repair.

506.8 Storage areas and enclosures for refuse shall be kept clean and maintained free of unnecessary items, as specified in Section 507.

507 FACILITY MAINTENANCE – UNNECESSARY ITEMS, LITTER, AND CONTROLLING AND REMOVING PESTS

507.1 The grounds surrounding a body art establishment under the control of the licensee shall be kept in a clean and litter-free condition.

507.2 The methods for adequate maintenance of grounds include, but are not limited to, the following:

(a) Properly storing or removing unnecessary equipment that is nonfunctional or no longer used, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place, or harborage for pests;

(b) Maintaining roads and parking lots so that they do not constitute an attractant, breeding place, or harborage for pests; and

(c) Adequately draining areas that may provide an attractant, breeding place, or harborage for pests.

507.3 If a body art establishment's grounds are bordered by grounds not under the operator's control and not maintained in the manner described in Subsections 507.1 and 507.2, care shall be exercised by the licensee through inspection, extermination, or other means to exclude pests, dirt, and filth that may become an attractant, breeding place, or harborage for pests.

507.4 Methods for maintaining a sanitary operation include providing sufficient space for placement and proper storage of equipment, instruments, and supplies.

507.5 The presence of insects, rodents, and other pests shall be controlled to eliminate their presence on the premises by:

(a) Routinely inspecting the premises for evidence of pests [N];

(b) Using methods, if pests are found, such as trapping devices or other means of pest control; and

(c) Eliminating harborage conditions.[N]

507.6 Dead or trapped birds, insects, rodents, and other pests shall be removed from a trap or the traps shall be discarded from the premises at a frequency that prevents accumulation, decomposition, or the attraction of other pests.

508 FACILITY MAINTENANCE – PROFESSIONAL SERVICE CONTRACTS

508.1 The licensee shall maintain a copy of the body art establishment's professional service contract and service schedule, which documents the following information:

(a) Name and address of its D.C. licensed pest exterminator/contractor;

(b) Frequency of extermination services provided under the contract; and

(c) The date on which extermination services were last provided to the establishment.

508.2 The licensee shall maintain a copy of the body art establishment's professional service contract and service schedule, which documents the following information:

(a) Name and address of its District-licensed solid waste contractor;

(b) Frequency of solid waste collection provided under the contract; and

(c) The date on which collection services were last provided to the establishment.

508.3 The licensee shall maintain a copy of the body art establishment's contract and service schedule, which documents the following information:

(a) Name and address of its D.C. licensed environmental Biohazard Waste Disposal Company;

(b) Frequency of pickup services provided under the contract of biohazard waste, including but not limited to sharps, medical-grade gloves, and disposable, single use cleaning products; and

(c) The date on which pickup services were last provided to the establishment.

509 FACILITY MAINTENANCE – PROHIBITING ANIMALS*

509.1 Animals shall not be allowed in the body art procedure areas, decontamination or sterilization areas, or storage areas.

509.2 Fish aquariums or service animals may be allowed in waiting rooms and non-procedural areas.

CHAPTER 6 APPLICATION AND LICENSING REQUIREMENTS

600 LICENSE AND REGISTRATION REQUIREMENTS

600.1 No person shall operate a body art establishment or perform body art procedures in a body art establishment in the District without a valid body art establishment license issued by the Mayor.

600.2 No licensee shall employ or permit a body artist to perform body art procedures in their body art establishment without a valid body artist license issued by the Mayor.

600.3 No person shall operate a body art establishment or perform body art procedures in a body art establishment in the District with an expired or suspended body art establishment license.

600.4 No licensee shall employ or permit a body artist to perform body art procedures in their establishment with an expired or suspended body artist license.

600.5 No person shall open or operate a body art establishment in the District without a valid Certificate of Occupancy;

600.6 No person shall furnish or offer to furnish body art equipment, devices, inks, dyes or pigments, or supplies, in the District without a valid body art service provider registration issued by the DOH.

600.7 No licensee shall use a body art supplier or manufacturer unless such supplier or manufacturer possesses a valid body art supplier or manufacturer registration issued by the DOH as specified in Subsection 600.6.

600.8 No licensee shall purchase disposable, single-use, pre-sterilized instruments and supplies in the District without a valid medical supplier's license or registration issued by the DOH as specified in Subsection 312.1(b).

600.9 No person shall manage a body art establishment in the District without obtaining a District-Issued Body Art Establishment Operator Identification Card issued by the Department as specified in Section 201.

601 APPLICATION PROCEDURE – PERIOD AND FORM OF SUBMISSION, PROCESSING

601.1 An applicant shall submit an application for a license at least thirty (30) calendar days before the date planned for opening a body art establishment or at least thirty (30) calendar days before the expiration date of the current license for an existing body art establishment.

601.2 Licenses shall be valid for a two (2) year period and renewed every two (2) years.

601.3 License fees issued in the middle of a licensing period shall be prorated.

601.4 An applicant shall submit a written application for a body art establishment license on a form provided by the Department.

601.5 A new application shall be filed with the Department within thirty (30) days of any change in ownership or location. A licensee shall also notify the Department at least thirty (30) calendar days before permanently or temporarily discontinuing operations.

601.6 The Department shall not process applications for a change in ownership or location where administrative actions are pending against an existing establishment that has not been resolved.

602 APPLICATION PROCEDURE – CONTENTS OF THE APPLICATION PACKET

602.1 An application for a license to operate a body art establishment shall include the full name(s) or any other name(s), including alias used by the applicant, and the following information:

(a) The present address and telephone number of each applicant:

(1) If the applicant is an individual, the individual's residential address;

(2) If the applicant is a corporation, the names, including aliases and residential addresses of each of the officers and directors of said corporation and each stock holder owning more than ten percent (10%) of the stock of the corporation, and the address of the corporation itself if it is different from the address of the body art

establishment; or the address of the partnership itself if different from the address of the body art establishment;

(3) If the applicant is a partnership, the names, including aliases and residential addresses of each partner, including limited partners, and the body art establishment.

(b) Name and address of registered agent, if applicable;

(c) The address and all telephone numbers of the body art establishment;

(d) A complete set of construction plans including all schedules (for example, floor plans, elevations, and electrical schematics), if applicable.

(e) Proof that the owner applicants and operators are at least the age of majority by a Driver's license, non-Driver's license, or other Government issued identification that displays the applicant or operator's date of birth;

(f) Whether the owner applicants have owned or operated a body art establishment or other business in the District, another city, county or state, and if this business license:

(1) Has ever been suspended or revoked; and

(2) The reason for the suspension or revocation;

(g) A description of any other business to be operated on the same premises or on adjoining premises owned or operated by the owner applicant(s) or manager(s); and

(h) The name and home address (non-business address) of each body artist who is employed or will be employed in the body art establishment.

603 DENIAL OF APPLICATION FOR LICENSE – NOTICE

603.1 If an application for a license or a renewal of a license is denied, the Department shall provide the applicant with written notice that includes:

(a) The specific reasons and legal authority for denial of the license;

(b) The actions, if any, that the applicant must take to qualify for a new license or to renew a license; and

(c) Notice of the applicant's right to a hearing and the process and timeframes for appeal as prescribed in Chapter 9 of these regulations.

604 ISSUANCE OF LICENSE – NEW, CONVERTED OR REMODELED, EXISTING OPERATIONS, AND CHANGE OF OWNERSHIP OR LOCATION

604.1 Each applicant shall submit:

(a) A properly completed application packet provided by the Department;

(b) Copies of policies and procedures as specified in Sections 300 through 309;

(c) Copies of required recordkeeping as specified in Sections 310 through 316 for license renewals;

(d) Proof of payment of the application and license fees; and

(e) Proof of the Department's review and approval of required plans and specifications as specified in Section 605, if applicable.

604.2 If the applicant complies with Sections 600, 601, 602, 604, and 605 and the Department determines through its inspection as specified in Section 606 that the operation is in compliance with these regulations, the Department shall approve:

(a) A new body art establishment;

(b) An existing body art establishment that has changed ownership or location; or

(c) An existing body art establishment's license renewal.

605 ISSUANCE OF LICENSE – REQUIRED PLAN REVIEWS AND APPROVALS

605.1 An applicant or licensee shall submit to the Department for review and approval properly prepared plans and specifications before:

(a) The construction of a body art establishment;

(b) The conversion of an existing structure for use as a body art establishment; or

(c) Major renovation, remodeling, or alteration of an existing body art establishment.

605.2 Plans required by this section shall include specifications showing layout, arrangement, and construction materials, and the location, size, and type of fixed equipment and facilities.

605.3 Plans, specifications, an application form, and the applicable fee shall be submitted at least thirty (30) calendar days before beginning construction, remodeling, or conversion of a body art establishment.

605.4 The Department shall approve the completed plans and specifications if they meet the requirements of these regulations, and the Department shall report its findings to the license applicant or licensee within thirty (30) days of the date the completed plans are received.

605.5 Plans and specifications that are not approved as submitted shall be changed to comply or be deleted from the project.

606 ISSUANCE OF LICENSE – INSPECTIONS - PREOPERATIONAL, CONVERSIONS, AND RENOVATIONS*

606.1 The Department shall conduct one (1) or more preoperational inspections to verify and approve that the body art establishment is constructed and equipped in accordance with plans and modifications approved by the Department as specified in Section 605; has established standard operating procedures as specified in Chapter 3; and is in compliance with these regulations.

607 ISSUANCE OF LICENSE – NOTICE OF OPENING, DISCONTINUANCE OF OPERATION, AND POSTINGS

607.1 A body art establishment shall provide notice to the Department of its intent to operate the establishment at least thirty (30) calendar days before beginning operations.

607.2 A body art establishment shall provide notice to the Department of its intent to shut down permanently or temporarily at least thirty (30) calendar days before discontinuing operations.

607.3 If a body art establishment is closed for more than a thirty (30) day period, the body art establishment's license and certificate of occupancy shall be returned to the Department and the owner shall be required to submit a new application for the issuance of a new license prior to reopening.

607.4 A current inspection report, all valid licenses, a Certificate of Occupancy, including the "Age Restriction Signs" required in Subsection 202.3, and the "Health Risks Associated with Receiving a Body Art Procedure Nos. 1, 2 and 3" required in Subsections 203.2 and 203.3 shall be conspicuously posted in the reception area next to the body art establishment's license.

608 ISSUANCE OF LICENSE – NOT TRANSFERABLE

608.1 A body art establishment license shall not be transferred from one person to another person or from one location to another.

609 ISSUANCE OF LICENSE – DUPLICATES

609.1 A licensee shall submit a request for a duplicate body art establishment license that has been lost, destroyed or mutilated on a form provided by the Department and payment of the required fee.

609.2 Each duplicate license shall have a secured watermark of the word "DUPLICATE" across the face of the license, and shall bear the same number as the license it is replacing.

610 CONDITIONS OF LICENSE RETENTION ─ RESPONSIBILITIES OF THE LICENSEE

610.1 Upon receipt of a license issued by the Department, the licensee, in order to retain the license, shall comply with Subsections 610.2 through 610.9.

610.2 The licensee shall post a current inspection report, and all valid licenses, Certificate of Occupancy, including the "Age Restriction Signs" required in Subsection 202.3, and the "Health Risks Associated with Receiving a Body Art Procedure Nos. 1, 2 and 3" required in Subsections 203.2 and 203.4, shall be conspicuously posted in the reception area next to the body art establishment's license.

610.3 The licensee shall comply with the provisions of these regulations and approved plans as specified in Section 605.

610.4 The licensee shall allow representatives of the Department access to its body art establishment as specified in Section 700.

610.5 The licensee shall immediately discontinue operations and notify the Department if an imminent health hazard exists as specified in Section 706.

610.6 The Department may direct the replacement of existing operating systems, or equipment, devices, fixtures, supplies, or furnishings where existing equipment, devices, fixtures, supplies, or furnishings are not safe to operate, are not in good repair or are not capable of being maintained in a hygienic condition in compliance with these regulations as specified in Subsection 102.2(a).

610.7 The licensee shall replace existing operating systems, or equipment, devices, fixtures, supplies, or furnishings that do not comply with these regulations pursuant to a documented agreement with the Department by an agreed upon date with an operating system, equipment, devices, fixtures, supplies, or furnishings that comply with these regulations as specified in Subsection 102.2(b).

610.8 The licensee shall maintain all records in accordance with these regulations.

CHAPTER 7 INSPECTIONS, REPORTS, VIOLATIONS, CORRECTIONS, AND PROHIBITED CONDUCT AND ACTIVITIES

700 ACCESS AND INSPECTION FREQUENCY – DEPARTMENT RIGHT OF ENTRY, DENIAL - MISDEMEANOR*

700.1 The Department shall determine a body art establishment's compliance with these regulations by conducting on-site:

(a) Preoperational inspections;

(b) Unannounced, routine and follow-up inspections; and

(c) Unannounced, complaint generated inspections;

700.2 After representatives of the Department present official credentials and provide notice of the purpose and intent to conduct an inspection in accordance with these regulations, the applicant or licensee shall allow the Department access to any part, portion, or area of a body art establishment.

700.3 The Department may enter and inspect all aspects of a body art establishment, including but not limited to work areas, locker rooms, bathrooms, employee lounge areas, or other areas of a body art establishment for the following purposes:

(a) To determine if the body art establishment is in compliance with these regulations;

(b) To investigate an emergency affecting the public health if the body art establishment is or may be involved in the matter causing the emergency;

(c) To investigate, examine, and sample or swab equipment, devices, fixtures, supplies, or furnishings; and

(d) To obtain information and examine and copy all records on the premises including but not limited to instruments, equipment, manufacturers, records and maintenance logs, supplies and suppliers, service contracts, or furnishings used in a body art establishment.

700.4 If a person denies the Department access to any part, portion, or area of a body art establishment, the Department shall inform the individual that:

(a) The applicant or licensee is required to allow access to the Department, as specified in Section 700;

(b) Access is a condition of the receipt and retention of a license as specified in Section 610;

(c) If access is denied, an inspection order allowing access may be obtained as specified in Subsection 700.6(c); and

(d) The Department is making a final request for access.

700.5 If the Department presents credentials and provides notice as specified in Subsection 700.2, explains the authority upon which access is requested, and makes a final request for access as specified in Subsection 700.4(d), and the applicant or licensee continues to refuse access, the Department shall provide details of the denial of access on the inspection report.

700.6 If the Department is denied access to a body art establishment for an authorized purpose, after complying with Subsections 700.2 through 700.5, the Department may:

(a) Summarily suspend a license to operate a body art establishment in accordance with Section 808;

(b) Revoke or suspend a license to operate a body art establishment in accordance with Section 813; or

(c) Request that the Office of the Attorney General for the District of Columbia commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court including but not limited to administrative search warrants, to enforce these regulations in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)).

701 REPORT OF FINDINGS — DOCUMENTING INFORMATION AND OBSERVATIONS

701.1 The Department shall document on an inspection report form:

(a) Administrative information about the body art establishment's legal identity, street and mailing addresses, inspection date, and other information such as status of the license and personnel certificates that may be required or other inspectional findings; and

(b) Specific factual observations of violations of these regulations that require correction by the licensee including:

(1) Nonconformance with critical items of these regulations;

(2) Failure of a licensee to correct cited violations, as specified in Section 709 or 711; or

(3) Failure of the licensee to ensure that operators are properly trained and have knowledge of their responsibility as specified in Chapters 2 and 3.

702 REPORT OF FINDINGS – SPECIFYING TIME FRAME FOR CORRECTIONS

702.1 The Department shall specify on the inspection report the time frame for correction of violations as specified in Sections 709 and 711.

703 REPORT OF FINDINGS – ISSUING REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT

703.1 At the conclusion of the inspection, the Department shall provide a copy of the completed inspection report and the notice to correct violations to the licensee and request a signed acknowledgment of receipt. The inspection report shall contain a listing of violations by area in the operation and inspection item with corresponding citations to applicable provisions in these regulations and shall be conspicuously posted in the reception area next to the body art establishment's license.

704 REPORT OF FINDINGS – REFUSAL TO SIGN ACKNOWLEDGMENT

704.1 The Department shall inform a person who declines to sign an acknowledgment of receipt of inspection findings that:

(a) An acknowledgment of receipt is not an agreement with the finding;

(b) Refusal to sign an acknowledgment of receipt will not affect the licensee's obligation to correct the violations noted in the inspection report within the time frames specified; and

(c) A refusal to sign an acknowledgment of receipt will be noted in the inspection report for the body art establishment.

705 REPORT OF FINDINGS – PUBLIC INFORMATION, RECORDS RETENTION

705.1 The Department shall keep and maintain in-office as an active record a copy of each inspection report, complaint, inspector's sample reports, license suspension, and other correspondence regarding a body art establishment within the District for a period of one (1) year, and then as an inactive record for a period of two (2)

additional years. Inactive records shall be destroyed in-house at the end of the two (2)-year inactive period.

705.2 In the case of an audit or investigation, the Department shall keep all records until the audit or investigation has been completed.

705.3 The Department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §§ 2-501, *et seq*. (2012 Repl.)).

706 IMMINENT HEALTH HAZARD – CEASING OPERATIONS AND EMERGENCY REPORTING TO THE DEPARTMENT OF HEALTH*

706.1 The Department shall summarily suspend operations, or a licensee shall immediately discontinue operations and notify the Department, whenever a body art establishment is operating with any of the following conditions:

(a) Extensive fire damage that affects the body art establishment's ability to comply with these regulations;

(b) Serious flood damage that affects the body art establishment's ability to comply with these regulations;

(c) Loss of electrical power to critical systems, including but not limited to lighting, heating, cooling, or ventilation controls for a period of two (2) or more hours;

(d) Without sterile water in violation of Section 300;

(e) No water, or insufficient water capacity, or inadequate water pressure to any part of the body art establishment in violation of Subsection 403.1(a);

(f) No hot water, or an unplanned water outage, or the water supply is cut off in its entirety for a period of one (1) or more hours in violation of Subsections 403.1(b);

(g) Incorrect hot water temperatures that cannot be corrected during the course of the inspection in violation of Subsection 404.1;

(h) A plumbing system supplying potable water that may result in contamination of the potable water;

(i) A sewage backup or sewage that is not disposed of in an approved and sanitary manner;

(j) A cross-connection between the potable water and non-potable water distribution systems, including but not limited to landscape irrigation, air conditioning, heating, or fire suppression system;

(k) A back siphonage event;

(l) Toilet or handwashing facilities that are not properly designed, constructed, installed, or maintained in violation of Subsections 403.1 and 405.1;

(m) Work surfaces, including but not limited to work stations, solid surfaces and objects in the procedure and decontamination areas within a body art establishment that are stained with blood or bodily fluids, or soiled; or infested with vermin; or are in an otherwise unsanitary condition;

(n) Gross insanitary occurrence or condition that may endanger public health including but not limited to an infestation of vermin; or

(o) Without eliminate the presence of insects, rodents, or other pests on the premises in violation of Section 507.

706.2 In addition to the imminent health hazards identified in Subsection 706.1, the Department shall summarily suspend operations if it determines through an inspection, or examination of records or other means as specified in Section 700.1, the existence of any other condition which endangers the public health, safety, or welfare, including but not limited to:

(a) Operating a body art establishment or performing a body art procedure without a license in violation of Subsection 600.1;

(b) Employing a body artist without a valid body artist license issued by the Mayor in violation of Subsection 600.2;

(c) Operating a body art establishment with an expired or suspended license in violation of Subsection 600.3;

(d) Employing a body artist who is performing body art procedures with an expired or suspended body artist license in violation of Subsection 600.4;

(e) Operating a body art establishment without a valid Certificate of Occupancy in violation of Subsection 600.5;

(f) Operating a body art establishment without posting required signage in violation of Subsection 607.4;

(g) Operating a body art establishment without a valid District-Issued body art establishment Operator's Identification Card in violation of Section 201;

(h) Operating a body art establishment without an operator who is on duty and on the premises during all hours of operation in violation of Subsection 200.2;

(i) Operating a body art establishment without a body artist who is on duty and on the premises during all hours of operation in violation of Subsection 200.3;

(j) Using suppliers and manufacturers of pigments that are not registered in the District in violation of Subsection 314.3;

(k) Failing to allow access to DOH representatives during the facility's hours of operation and other reasonable times as determined by the Department; or hindering, obstructing, or in any way interfering with any inspector or authorized Department personnel in the performance of his or her duty in violation of Subsection 700.6(a); or

(l) Operating in violation of any provision specified in Section 708.

707 IMMINENT HEALTH HAZARD – RESUMPTION OF OPERATIONS

707.1 If operations are discontinued as specified in Section 706 or otherwise according to applicable D.C. laws and regulations, the licensee shall obtain approval from the Department before resuming operations.

707.2 The Department shall determine whether a licensee needs to discontinue operations that are unaffected by the imminent health hazard in a body art establishment as determined by the Department or other District agency.

708 PROHIBITED CONDUCT – ADVERTISEMENTS AND ACTIVITIES

708.1 No person shall perform or offer to perform body art procedures, hold him or herself out as a practitioner of, or entitled to, or authorized to, practice body art procedures, assume any title of "body artist", "tattooist", "tattoo artist", "body-piercer", "body-piercing artist", or "body modification artist" and the like, use any words or letters, figures, titles, signs, cards, advertisement, or any other symbols or devices indicating or tending to indicate that the person is authorized to perform such services, or use other letters or titles in connection with that person's name which in any way represents himself or herself as being engaged in the practice of body art, or authorized to do so, unless the person is licensed by and registered with the Mayor to perform body art procedures in the District of Columbia.

708.2 No person shall perform any body art procedure on anyone under the age of eighteen (18) years of age, except ear piercing using a mechanized, pre-sterilized,

single-use stud and clasp ear piercing gun. Such ear piercing shall not occur unless a parent or legal guardian has provided his or her written consent.

708.3 Body artists shall not use an ear piercing system on any part of a customer's body other than the lobe of the ear.

708.4 No person shall perform body art procedures if the person is unable to exercise reasonable care and safety or is otherwise impaired by reason of illness, while under the influence of alcohol, or while using any controlled substance or narcotic drug as defined in 21 U.S.C. § 802(6) or (17), respectively, or other drug in excess of therapeutic amounts or without valid medical indication, or any combination thereof.

708.5 No one shall be tattooed or pierced at any location in the establishment other than in a designated work area.

708.6 No customer shall be allowed to perform their own tattoo, piercing or insertions anywhere on the premises.

708.7 No food, drink, tobacco product, or personal effects shall be allowed in the procedure area.

708.8 Body artists shall not eat, drink, or smoke while performing a procedure. If a customer requests to eat, drink, or smoke, the procedure shall be stopped and the procedure site shall be protected from possible contamination while the customer leaves the procedure area to eat, drink, or smoke.

708.9 Branding shall not be done with another customer in the procedure area. During the procedure, the body artist and the customer shall wear appropriate protective face filter masks.

708.10 Body art procedures shall not be performed on animals in a body art establishment.

709 CRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION*

709.1 A licensee shall, at the time of inspection, correct a critical violation no later than five (5) business days after the inspection.

709.2 The Department may consider the nature of the potential hazard involved and the complexity of the corrective action needed and agree to specify a longer timeframe, not to exceed five (5) business days after the inspection, for the licensee to correct a critical violation of these regulations.

709.3 Failure to correct violations in accordance with this section may subject a licensee to a condemnation order pursuant to Section 802, summary suspension of a license

pursuant to Section 808, revocation or suspension of a license pursuant to Section 813, or administrative remedies pursuant to Sections 1000 and 1001.

710 CRITICAL VIOLATION – VERIFICATION AND DOCUMENTATION OF CORRECTION

710.1 After receiving notification that the licensee has corrected a critical violation, the Department shall verify correction of the violation, document the information on an inspection report, and enter the report in the Department's records.

711 NONCRITICAL VIOLATIONS – TIME FRAME FOR CORRECTION

711.1 The licensee shall correct noncritical violations no later than fourteen (14) business days after the inspection.

711.2 Failure to correct violations in accordance with this section may result in the revocation or suspension of a license pursuant to Section 813, or administrative remedies pursuant to Sections 1000 and 1001.

712 REQUEST FOR REINSPECTION

712.1 If a license is summarily suspended pursuant to Section 808 or suspended or revoked pursuant to Section 813 because of violations of these regulations, the licensee shall submit a written request for reinspection and pay the required reinspection fee.

712.2 Upon receipt of a request for reinspection, the Department shall conduct the reinspection of a body art establishment within three (3) business days of receipt of the request.

712.3 A body art establishment shall not resume operations or remove from public view any signage, license, Certificate of Occupancy, or current inspection result as specified in Subsection 607.4, or any enforcement order as specified in Subsection 707.1 until the Department has reinspected the body art establishment and certified that it is in compliance with these regulations.

CHAPTER 8 ADMINISTRATIVE ENFORCEMENT ACTIONS AND ORDERS

800 ADMINISTRATIVE – CONDITIONS WARRANTING REMEDIES

800.1 The Department may seek an administrative or judicial remedy to achieve compliance with the provisions of these regulations if a licensee, person operating a body art establishment, or employee:

(a) Fails to have a valid licenses and registrations as specified in Section 600;

(b) Fails to pay the required fee as specified in Subsection 604.1(e);

(c) Violates any term or condition of a license as specified in Section 610;

(d) Fails to allow the Department access to a body art establishment as specified in Subsection 700.6;

(e) Fails to comply with directives of the Department including time frames for corrective actions specified in inspection reports as specified in Subsections 709.1 and 711.1;

(f) Fails to comply with a condemnation order as specified in this chapter;

(g) Fails to comply with a summary suspension order by the Department as specified in this chapter;

(h) Fails to comply with an order issued as a result of an administrative hearing;

(i) Makes any material false statement in the application for licensure;

(j) Falsifies or alters records required to be kept by these regulations; or

(k) Seeks to operate with conditions revealed by the application or any report, records, inspection, or other means which would warrant the Department refusal to grant a new license.

800.2 The Department may simultaneously use one or more of the remedies listed in this chapter to address a violation of these regulations.

801 ADMINISTRATIVE – EXAMINING, SAMPLING, AND TESTING OF EQUIPMENT, WATER, INKS, DYES, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

801.1 The Department may examine, collect samples, and test equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings without cost and test as necessary to determine compliance with these regulations.

802 ADMINISTRATIVE – CONDEMNATION ORDER, JUSTIFYING CONDITIONS AND REMOVAL OF EQUIPMENT, WATER, INKS, DYES, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

802.1 A duly authorized agent of the Department may condemn and forbid the sale of, or cause to be removed and destroyed, any equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings found in a body art establishment the use of which does not comply with these regulations, or that is being used in violation of these regulations, or that because of dirt, filth, extraneous matter, corrosion, open seams, or chipped or cracked surfaces is unfit for use.

803 ADMINISTRATIVE – CONDEMNATION ORDER, CONTENTS

803.1 The condemnation order shall:

(a) State that the equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the order may not be used, sold, moved from the body art establishment, or destroyed without a written release of the order from the Department;

(b) State the specific reasons for placing the equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings under the condemnation order with reference to the applicable provisions of these regulations and the hazard or adverse effect created by the observed condition;

(c) Completely identify the equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings subject to the condemnation order by the common name, the label or manufacturer's information, description of the item, the quantity, the Department's tag or identification information, and location;

(d) State that the licensee has the right to a hearing and may request a hearing by submitting a timely request as specified in Section 904, but that the request does not stay the Department’s imposition of the condemnation order;

(e) State that the Department may order the destruction, replacement or removal of equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if a timely request for a hearing is not received; and

(f) Provide the name and address of the Department representative to whom a request for a hearing may be made.

804 ADMINISTRATIVE – CONDEMNATION ORDER, OFFICIAL TAGGING OR MARKING OF EQUIPMENT, WATER, INKS, DYES, PIGMENTS,

REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCILS, AND FURNISHINGS

804.1 The Department shall place a tag, label, or other appropriate marking to indicate the condemnation of equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that do not meet the requirements of these regulations.

804.2 The tag or other method used to identify the equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that are the subject of a condemnation order shall include a summary of the provisions specified in Section 803 and shall be signed and dated by the Department.

805 ADMINISTRATIVE – CONDEMNATION ORDER, EQUIPMENT, WATER, INKS, DYES, PIGMENTS, REUSABLE INSTRUMENTS, DISPOSABLE ITEMS, JEWELRY, SHARPS, MARKING INSTRUMENTS AND STENCIL, AND FURNISHINGS RESTRICTIONS

805.1 Equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings that are subject to a condemnation order may not be used, sold, moved, or otherwise destroyed by any person, except as specified in Subsection 806.2.

806 ADMINISTRATIVE – CONDEMNATION ORDER, REMOVING THE OFFICIAL TAG OR MARKING

806.1 No person shall remove the tag, label, or other appropriate marking except under the direction of the Department as specified in Subsection 806.2.

806.2 The Department shall issue a notice of release from a condemnation order and shall remove condemnation tags, labels, or other appropriate markings from body art equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings if:

(a) The condemnation order is vacated; or

(b) The licensee obtains authorization from the Department to discard equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings in a body art establishment identified in the condemnation order.

807 ADMINISTRATIVE – CONDEMNATION ORDER, WARNING OR HEARING NOT REQUIRED

807.1 The Department may issue a condemnation order to a licensee, or to a person who owns or controls the equipment, water, inks, dyes, pigments, reusable instruments, disposable items, jewelry, sharps, marking instruments and stencils, and furnishings as specified in Section 802, without prior warning, notice of a hearing, or a prior hearing on the condemnation order.

807.2 The licensee shall have the right to request a hearing within fifteen (15) business days of receiving a Department condemnation order. The Department shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the condemnation action.

808 ADMINISTRATIVE – SUMMARY SUSPENSION OF LICENSE, CONDITIONS WARRANTING ACTION

808.1 The Department may summarily suspend a license to operate a body art establishment if it is denied access to the body art establishment to conduct an inspection, or determines through an inspection, or examination of operators, employees, records, or other means as specified in the regulations, that an imminent health hazard exists.

809 ADMINISTRATIVE – CONTENTS OF SUMMARY SUSPENSION NOTICE

809.1 A summary suspension notice shall state:

(a) That the license of a body art establishment is immediately suspended and that all operations shall immediately cease;

(b) The reasons for summary suspension with reference to the provisions of these regulations that are in violation;

(c) The name and address of the Department representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and

(d) That the licensee may request a hearing by submitting a timely request in accordance with Subsection 810.2, which request does not stay the Department's imposition of the summary suspension.

810 ADMINISTRATIVE – SUMMARY SUSPENSION, WARNING OR HEARING NOT REQUIRED

810.1 The Department may summarily suspend a license as specified in Section 808 by providing written notice as specified in Section 809 of the summary suspension to the licensee, without prior warning, notice of a hearing, or prior hearing.

810.2 The licensee shall have the right to request a hearing within fifteen (15) business days after receiving the Department's summary suspension notice. The Department shall hold a hearing within seventy-two (72) hours of receipt of a timely request, and shall issue a decision within seventy-two (72) hours after the hearing. The request for a hearing shall not act as a stay of the summary suspension.

811 ADMINISTRATIVE – SUMMARY SUSPENSION, TIME FRAME FOR REINSPECTION

811.1 After receiving a written request from the licensee stating that the conditions cited in the summary suspension order no longer exist, the Department shall conduct a reinspection of the body art establishment for which the license was summarily suspended within three (3) business days of receiving the request.

812 ADMINISTRATIVE – SUMMARY SUSPENSION, TERM OF SUSPENSION, REINSTATEMENT

812.1 A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and the Department has confirmed, through reinspection or other appropriate means that the conditions cited in the notice of suspension have been eliminated.

813 ADMINISTRATIVE – REVOCATION OR SUSPENSION OF LICENSE

813.1 Failure to comply with any of the provisions of these regulations shall be grounds for the revocation or suspension of any license issued to a body art establishment pursuant to the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)). The Department may revoke a license of a body art establishment upon a showing of a subsequent violation when there is a history of repeated violations or where a license has been previously suspended.

813.2 Before a license is revoked or suspended, a licensee shall be given an opportunity to answer and to be heard on the violations, as specified in Subsections 904.1 and 904.2.

CHAPTER 9 SERVICE OF PROCESS AND HEARING ADMINISTRATION

900 SERVICE OF PROCESS – NOTICE, PROPER METHODS

900.1 A notice issued in accordance with these regulations shall be deemed properly served if it is served by one (1) of the following methods:

(a) A Department representative, a law enforcement officer, or a person authorized to serve a civil process, personally services the notice to the

licensee, the operator, or the person operating the body art establishment without a license;

(b) The Department sends the notice to the last known address of the licensee or person operating a body art establishment without a license, in accordance with Section 205 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1802.05 (2012 Repl.)), or by other public means so that a written acknowledgment of receipt may be acquired; or

(c) For civil infraction penalties, the notice is provided by the Department in accordance 16 DCMR § 3102.

901 SERVICE OF PROCESS — RESTRICTION OR EXCLUSION, CONDEMNATION, OR SUMMARY SUSPENSION ORDERS

901.1 An employee restriction order, exclusion order, condemnation order, or summary suspension order shall be:

(a) Served as specified in Subsection 900.1(a); or

(b) Clearly posted by the Department at a public entrance to the body art establishment and a copy of the notice sent by first class mail to the licensee or manager of a body art establishment, as appropriate.

902 SERVICE OF PROCESS — NOTICE, EFFECTIVENESS

902.1 Service is effective at the time of the notice's receipt as specified in Subsection 901.1(a), or if service is made as specified in Section 901.1(b) at the time of the notice's posting.

903 SERVICE OF PROCESS — PROOF OF PROPER SERVICE

903.1 Proof of proper service may be made by certificate of service signed by the person making service or by admission of a return receipt, certificate of mailing, or a written acknowledgment signed by the licensee or person operating a body art establishment without a license or an authorized agent.

904 ADMINISTRATIVE HEARINGS — NOTICE, REQUEST, AND TIME FRAME

904.1 A person who receives a notice of hearing for an administrative remedy as specified in this chapter and elects to respond to the notice shall file a response to the notice within seven (7) calendar days after service.

904.2 In response to an adverse administrative action, a licensee may submit a written request for a hearing to the Department within fifteen (15) calendar days of the receipt of notice of adverse action.

904.3 A hearing request shall not stay a condemnation order as specified in Subsection 803.1(d), or the imposition of a summary suspension as specified in Subsection 809.1(d).

905 ADMINISTRATIVE HEARINGS – CONTENTS OF RESPONSE TO HEARING NOTICE, OR HEARING REQUEST

905.1 A response to a hearing notice shall be in writing and contain the following:

(a) An admission or denial of each allegation of fact;

(b) A statement as to whether the respondent waives the right to a hearing;

(c) A statement of defense, mitigation, or explanation concerning any allegation of fact, if any; and

(d) The name and address of the respondent's legal counsel, if any.

905.2 A request for a hearing shall be in writing and contain the following:

(a) An admission or denial of each allegation of fact;

(b) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact; and

(c) The name and address of the requester's legal counsel, if any.

906 ADMINISTRATIVE HEARINGS – TIMELINESS

906.1 The Department shall afford a hearing within seventy-two (72) hours after receiving a written request for a hearing from:

(a) A licensee or person who is subject to a condemnation order as specified in Section 802; or

(b) A person whose license is summarily suspended as specified in Section 808.

906.2 A licensee or person who submits a request for a hearing as specified in Subsection 906.1 may waive the expedited hearing in a written request to the Department.

CHAPTER 10 ADMINISTRATIVE AND CRIMINAL SANCTIONS, AND JUDICIAL REVIEW

1000 ADMINISTRATIVE SANCTIONS – NOTICE OF INFRACTIONS

1000.1 The Department may impose civil infraction fines penalties for violations of any provision of these regulations pursuant to the Department of Consumer & Regulatory Affairs Civil Infractions Act of 1985, (Civil Infraction Act), effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801, *et seq*. (2012 Repl.)).

1001 CRIMINAL SANCTIONS – CRIMINAL FINES, IMPRISONMENT

1001.1 A body art establishment that is in violation of Subsections 200.5, 203.2, 311.1, and 314.3 of these regulations shall be subject to license suspension or revocation as specified in Section 813 and a maximum fine of two thousand, five hundred dollars ($2,500) in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(c)(5) (2013 Supp.)).

1001.2 Any person who violates Subsections 600.1 and 600.2 of these regulations shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not to exceed two thousand five hundred dollars ($2,500), imprisonment for not more than three (3) months, or both in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-0193; D.C. Official Code § 47-2809.01(d)(3) (2013 Supp.)).

1002 JUDICIAL REVIEW – APPEALS

1002.1 Any person aggrieved by a final order or decision of the Department may seek judicial review in accordance with the Department of Health Functions Clarification Act of 2001, effective October 3, 2001, as amended (D.C. Law 14-28; D.C. Official Code § 7-731(b) (2012 Repl.)).

CHAPTER 99 DEFINITIONS

9900 GENERAL PROVISIONS

9900.1 The terms and phrases used in this title shall have the meanings set forth in this chapter, unless the text or context of the particular chapter, section, subsection, or paragraph provide otherwise.

9901 DEFINITIONS

9901.1 As used in this chapter, the following terms and phrases shall have the meanings ascribed:

Aftercare Instructions – written instructions given to a customer, specific to the body art procedure received and caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

Antiseptic solution – a liquid or semi-liquid substance that is approved by the U.S. Food and Drug Administration to reduce the number of microorganisms present on the skin and on mucosal surfaces.

Bloodborne pathogens – a microorganism present in human blood and other bodily fluids that can cause disease. Bloodborne pathogens include the hepatitis B virus, hepatitis C virus, and human immunodeficiency syndrome.

Board – the Department of Consumer and Regulatory Affairs (DCRA) Board of Barber and Cosmetology.

Body art establishment – any structure or venue, whether temporary or permanent, where body art procedures are performed, including training facilities.

Body art or body art procedure – the process of physically modifying the body for cosmetic or other non-medical purposes, including tattooing, body-piercing, and fixing indelible marks or figures on the skin through scarification, branding, tongue bifurcation, and tissue removal.

Body artist – an individual licensed to perform body art procedures in accordance with the Regulation of Body Artists and Body Art Establishments Act of 2012, effective October 23, 2012 (D.C. Law 19-193; D.C. Official Code § 47-2809.01) (2013 Supp.)).

Body piercing – the perforation of any human body part followed by the insertion of an object, such as jewelry, for cosmetic or other nonmedical purposes by using any of the following instruments, methods, or processes: stud and clasp, captive ball, soft tissue, cartilage, surface, surface-to-surface, microdermal implantation or dermal anchoring, subdermal implantation, and transdermal implantation. The term "body-piercing" does not include nail piercing.

Branding – the process of applying extreme heat with a pen-like instrument or other instrument to create an image or pattern.

Cleaning area – the area in a body art establishment used in the decontamination, sterilization, sanitization or other cleaning of instruments or other equipment used body art procedures.

Cleaning products – any material used to apply cleansing agents to the skin, such as cotton balls, tissue and paper products, paper or plastic cups, towels, gauze, or sanitary coverings.

Communicable disease – a disease that can be transmitted from person to person directly or indirectly, including diseases transmitted via blood or body fluids.

Condemnation order – a written administrative notice: (1) to remove any body art equipment or supplies, or (2) to cease conducting any particular procedures because the equipment or supplies are not being used or the procedures are not being conducted in accordance with the requirements of these regulations.

Contaminated – the presence or reasonably anticipated presence of blood, infectious materials or other types of impure materials that have corrupted a surface or item through contact.

Contaminated waste – any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; contaminated sharps and pathological and microbiological wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations, Part 1910.1030, known as "Occupational Exposure to Bloodborne Pathogens".

Customer – an individual upon whom a body art procedure is performed.

Decontamination – the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where the pathogens are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.

Decontamination and sterilization area – a room, or specific section of a room, that is set apart and used only to maintain supplies, and to clean, decontaminate and sterilize jewelry and instruments.

Department – the Department of Health.

Disinfectant – an EPA registered hospital grade disinfectant which is effective against Salmonella cholerasesuis, Staphylococcus aureus and Pseudomonas aeruginosa; or to reduce or eliminate the presence of disease-causing microorganisms, including human immunodeficiency virus (HIV) and

hepatitis B virus (HBV) for use in decontaminating inanimate objects and work surfaces.

Ear piercing – the creation of an opening in an individual's ear lobe with an ear piercing gun to insert jewelry or other decoration.

Ear piercing gun – a mechanical device that pierces an individual's ear using a single-use stud and clasp ear piercing system.

Exposure – an event whereby the eye, mouth or other mucous membrane, non-intact skin or parenteral contact with the blood or bodily fluids of another person, or contact of an eye, mouth or other mucous membrane, non-intact skin or parenteral contact with other potentially infectious matter

Exposure control plan – a written action plan that specifies precautionary measures taken to manage and minimize potential exposure to bloodborne pathogens in the workplace.

Germicidal soap – an agent designed for use on the skin that kills disease-causing microorganisms, including but not limited to, products containing povidone-iodine, chloroxylenol, triclosan, and chlorhexidine gluconate.

Germicidal solution – an agent that kills disease-causing microorganisms on hard surfaces; a disinfectant or sanitizer registered with the Environmental Protection Agency and/or a 1:100 dilution of 5.25% sodium hypochlorite (household chlorine bleach) and water, made fresh daily, dispensed from a spray bottle, and used to decontaminate inanimate objects and surfaces.

Gloves – protective hand covers that reduce the risk of injury and exposure to bloodborne pathogens; those which are medical-grade latex, vinyl or hypoallergenic single-use disposable gloves and are labeled for surgical or examination purposes, for instrument cleaning shall be heavy-duty, multi-use and waterproof.

Ink cup – a small container for an individual portion of pigment that may be installed in a holder or palette and in which a small amount of pigment of a given color is placed.

Instruments – devices, including but not limited to sharps, including but not limited to needles, needle bars, needle tubes, hemostats, forceps, pliers, and other items that may come in contact with a customer's body or possible exposure to bodily fluids during the body art procedures.

Medical-grade sharps container – a puncture-resistant, leak-proof, rigid container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol:

Minor – any person under the age of eighteen (18).

Mucosal surface – the moisture-secreting membrane lining of all body cavities or passages that communicates with the exterior, including but not limited to the nose, mouth, vagina, and urethra.

Multi-type establishment – an operation encompassing both body-piercing and tattooing in the same establishment and under the same management.

Operator or manager – any person who owns, controls, or operates a body art establishment, whether or not the person actually performs body art procedures.

Permanent cosmetics – the application of pigments in human skin tissue for the purpose of permanently changing the color or other appearance of the skin, including but not limited to permanent eyeliner, eyebrow, or lip color.

Pre-sterilized instruments – instruments that are commercially sterilized and packaged by the manufacturer and bear a legible sterilization lot number and expiration date.

Procedure area – a room or designated portion of a room that is set apart and only used to perform body art.

Procedure site – an area or location on the human body selected for the placement of body art.

Sanitary – clean and free of agents of infection or disease.

Sanitization – reduction of the population of microorganisms to safe levels, as determined by the Department of Health, by a product registered with the Environmental Protection Agency ("EPA") or by chemical germicides that are registered with the EPA as hospital disinfectants.

Sanitized – effective bactericidal treatment by a process that provides sufficient concentration of chemicals for enough time to reduce the bacteria count including pathogens to a safe level on instruments, equipment, and animate objects.

Scarification – placing of an indelible mark on the skin by the process of cutting or abrading the skin to bring about permanent scarring.

Sharps – any object, sterile or contaminated, that may penetrate the skin or mucosa, including but not limited to pre-sterilized single needles, scalpel blades and razor blades; but not including disposable safety razors which have not broken the skin.

Single-use – products or items intended for one-time use that are disposed of after use on a customer.

Sterilization – process of destruction of all forms of microbial life, including spores by physical or chemical means.

Sterilizer – an autoclave that is designed and labeled by the manufacturer as a medical instrument sterilizer and is used for the destruction of microorganisms and their spores.

Tattoo – placing of pigment into the skin dermis for cosmetic or other nonmedical purposes, including the process of micropigmentation or cosmetic tattooing.

Tissue removal – placing an indelible mark or figure on the skin through removal of a portion of the dermis.

Tongue bifuraction – cutting of the human tongue from tip to part of the way toward the base, forking at the end into two or more parts.

Valid license or registration – a current license or registration issued by the Mayor that is not suspended, revoked, or expired.

Workstation – the area within a procedure area where body-artists perform body art procedures. The workstation includes but is not limited to the customer's chair or table, counter, mayo stand, instrument tray, storage drawer, and body artist's chair.

All persons wishing to comment on these proposed rules should submit written comments no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the Office of the General Counsel, Department of Health, 899 North Capitol Street, N.E., Room 547, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the above address, excluding weekends and holidays. You may also submit your comments to Angli Black at (202) 442-5977 or email Angli.Black@dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-161
July 11, 2014

SUBJECT: Delegation of Authority to the Director of the District Department of Transportation under the Transportation Infrastructure Amendment Act of 2010

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2012 Repl.), and the Transportation Infrastructure Amendment Act of 2010, effective March 31, 2011, D.C. Law 18-339, D.C. Official Code § 9-1171 (2013 Repl.), it is hereby **ORDERED** that:

1. The Director of the District Department of Transportation ("DDOT Director") is delegated the authority of the Mayor under the Transportation Infrastructure Amendment Act of 2010.

2. The authority delegated herein to the DDOT Director may be further delegated to subordinates under the jurisdiction of the DDOT Director.

3. This Order supersedes all previous Mayor's Orders to the extent of any inconsistency.

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 2014-162
July 11, 2014

SUBJECT: Appointments and Rescission – Science Advisory Board

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and section 12 of the Department of Forensic Sciences Establishment Act of 2011, effective August 17, 2011, D.C. Law 19-18, D.C. Official Code § 5-1501.11 (2012 Repl.), which established the Science Advisory Board ("Board"), it is hereby **ORDERED** that:

1. **DR. MICHAEL COBLE**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0251 on June 22, 2013, is appointed as a scientist member to the Board, for a two (2) year term to end April 18, 2016.

2. **DR. WILLIAM GROSSHANDLER**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0252 on June 22, 2013, is appointed as a scientist member to the Board, for a one (1) year term to end April 18, 2015.

3. **DR. CLIFTON P. BISHOP**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0253 on June 22, 2013, is appointed as a scientist member to the Board, for a three (3) year term to end April 18, 2017.

4. **DR. SANDY ZABELL**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0254 on June 22, 2013, is appointed as a scientist member, and statistician, to the Board, for a two (2) year term to end April 18, 2016.

5. **JOSEPH P. BONO**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0255 on June 22, 2013, is appointed as a scientist member, with expertise in quality assurance, to the Board, for a two (2) year term to end April 18, 2016.

6. **DR. JAY SIEGEL**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0256 on June 22, 2013, is appointed as a forensic scientist member to the Board, for a three (3) year term to end April 18, 2017.

7. **PETER M. MARONE**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0257 on June 22, 2013, is appointed as a forensic scientist member to the Board, for a one (1) year term to end April 18, 2015.

8. **IRV LITOFSKY**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0258 on June 22, 2013, is appointed as a forensic scientist member to the Board, for a three (3) year term to end April 18, 2017.

9. **DR. CHARLOTTE WORD**, who was nominated by the Mayor on May 2, 2013, and deemed approved by the Council of the District of Columbia pursuant to Proposed Resolution 20-0259 on June 22, 2013, is appointed as a forensic scientist member to the Board, for a one (1) year term to end April 18, 2015.

10. Mayor's Order 2013-225, dated November 26, 2013, is hereby rescinded in its entirety.

11. **EFFECTIVE DATE:** This Order shall be effective *nunc pro tunc* to April 18, 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 2014-163
July 11, 2014

SUBJECT: 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 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 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. **LT. MICHELLE ROBINSON** is appointed as a member of the Domestic Violence Fatality Review Board ("Board"), representing the Metropolitan Police Department, and shall serve in that capacity at the pleasure of the Mayor.

2. **RAFAEL SA'ADAH** is appointed as a member of the Board, representing the Fire and Emergency Medical Services Department, and shall serve in that capacity at the pleasure of the Mayor.

3. **MARIA AMATO** is appointed as a member of the Board, representing the Department of Corrections, and shall serve in that capacity at the pleasure of the Mayor.

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 2014-164
July 15, 2014

SUBJECT: Appointment – District of Columbia Commission on the Martin Luther King, Jr. Holiday

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with Mayor's Order 2013-243, dated December 23, 2013, it is hereby **ORDERED** that:

1. **DR. KENDRICK BROWN SELASSIE** is appointed as a private citizen member of the District of Columbia Commission on the Martin Luther King, Jr. Holiday, for a term to end February 19, 2016.

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

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-165
July 17, 2014

SUBJECT: Appointment – Washington Convention Center Advisory Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 218 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994, D.C. Law 10-188, D.C. Official Code § 10-1202.18 (2013 Repl. and 2014 Supp.), it is hereby **ORDERED** that:

1. **DANIEL NADEAU** is appointed as a designee representative of the Hotel Association of Washington, D.C. and shall serve in that capacity until replaced by the Hotel Association.

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

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CANCELLATION AGENDA

WEDNESDAY, JULY 30, 2014 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

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

ABRA-085719-***Neisha Thai***-Retail-CR 4445 Wisconsin Avenue, NW
[Enforcement confirmed that the Licensee is Out of Business and no longer operating due to US Marshal Service execution of eviction notice.]

ABRA- 085719- ***Slaviya***- Retail - CR – 2424 18th Street, NW Unit C-1
[Licensee did not make 2nd Year Payment.]

ABRA- 089282 – ***Yo Sushi***- Retail - CR - 50 Massachusetts Avenue, NE
[Enforcement confirmed that the Licensee is Out of Business. Licensee has not made Year 2 payment.]

ABRA- 079224 – ***Muse Nightclub***- Retail – CN – 717 6th Street, NW
[Enforcement confirmed that the Licensee is Out of Business.]

ABRA- 086700 – ***The Getaway***- Retail – CR – 1400-1402 Meridian Place, NW
[Enforcement confirmed that the Licensee is Out of Business and licensee did not make 2nd Year Payment.]

ABRA- 086034 – ***Serendipity 3***- Retail – CR – 3148-3150 M Street NW
[Enforcement confirmed that the Licensee is Out of Business.]

Revised 7/22/2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, JULY 30, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On July 30, 2014 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#14-CC-00083 Beacon Hotel & Corporate Quarters, 1615 RHODE ISLAND AVE NW Retailer C Hotel, License#: ABRA-077109

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2. Case#14-251-00170 Science Club, 1136 19TH ST NW Retailer C Tavern, License#: ABRA-074353

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3. Case#14-CC-00084 Courtyard By Marriott Embassy Row, 1600 RHODE ISLAND AVE NW Retailer C Hotel, License#: ABRA-071165

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4. Case#14-251-00191 Capitale, 1301 K ST NW Retailer C Nightclub, License#: ABRA-072225

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5. Case#14-AUD-00033 Eat First, 609 H ST NW Retailer C Restaurant, License#: ABRA-060387

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6. Case#14-CC-00085 Ninnella, 106 13TH ST SE Retailer C Restaurant, License#: ABRA-029448

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7. Case#14-CC-00087 Casa Blanca Restaurant, 1014 VERMONT AVE NW Retailer D Restaurant, License#: ABRA-020067

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8. Case#14-CC-00082 WA-ZO-BIA, 618 T ST NW Retailer C Restaurant, License#: ABRA-079306

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9. Case#14-CC-00088 Toscana Cafe, 601 2ND ST NE Retailer D Restaurant, License#: ABRA-083567

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10. Case#14-CMP-00326 TABLE DC, 903 N ST NW Retailer D Restaurant, License#: ABRA-089395

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11. Case#14-PRO-00038 The V.I.P. Room, 6201 3RD ST NW Retailer C Tavern, License#: ABRA-094561

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, JULY 30, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of letter dated July 18, 2014 from Lisa Drazin, Trustee for The Bernice J. Drazin Trust. ***Marrakech Lounge,*** 1817 Columbia Road NW, Retailer CT, Lic#: 087585.

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2. Review of letter dated July 17, 2014 from Mary Ann Brazell Owner. ***The Cupboard,*** 1504 East Capitol Street NE, Retailer B, Lic#: 86607.

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3. Review of Amendment to Settlement Agreement dated July 21, 2014 for Reed-Cooke Neighborhood Association, ANC 1C and Quang V.Le. ***Le Liquor,*** 1776 Columbia Road NW, Retailer A, Lic#: 90659.

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4. Review of Settlement Agreement dated March 4, 2014 between Rudrakaiash LLC and ANC 6D. ***Masala Art,*** 1101 4th Street SW Unit 120, Retailer CR, Lic#: 94766.

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5. Review of First Settlement Agreement dated June 29, 2014 for Café Dallul, Reed-Cook Neighborhood Association, ANC 1C and the Kalorama Citizens Association. ***RendezVous Lounge,*** 2226 18th Street NW, Retailer CT, Lic#: 014272.

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6. Review of request to provide Gift and Loans from Wholesalers. ***Cambria Winery,*** 5476 Chardonnay Lane Santa Monica, CA, Lic#: 456714.

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7. Review of eleven (11) requests from E & J Gallo to provide retailers with products valued at more than $50 and less than $500.

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, JULY 30, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Change of Hours Application. ***Approved Hours of Operation and Alcoholic Beverage Sales:*** Sunday-Saturday 9am to 10pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales:*** Sunday-Saturday 7am to 12am. ANC 1A. SMD 1A09. No Outstanding Fines or Citations. No pending Enforcement matters. No Settlement Agreement. ***Gray's Market,*** 3306 Georgia Avenue NW, Retailer B Grocery, License No. 093808.

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2. Review Application for Safekeeping of License. ANC 6E. SMD 6E02. No Outstanding Fines or Citations. No pending Enforcement matters. No Settlement Agreement. ***Variety Market***, 1511 7th Street NW, Retailer B Grocery, License No. 001111.

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3. Review Application for Manager's License. ***Jamel A. Evans***-ABRA 095998.

4. Review Application for Manager's License. ***Jacob K. Ishler***-ABRA-096015.

5. Review Application for Solicitor's License. ***Carol Lee Taylor***-ABRA 086442.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

ACADEMY OF HOPE ADULT PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Academy of Hope Adult Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors for computer hardware purchases.

Please visit www.aohdc.org for full detail. Questions and proposals may be e-mailed to aoh@aohdc.org with the subject line of "Computer Hardware Purchases." Deadline for submissions is **12:00 pm July 31st**. Appointments for presentations will be scheduled at the discretion of the school office **after** receipt of proposals only.

E-mail is the preferred method for responding but you can also mail proposals and supporting documents to the following address:

Academy of Hope Adult Public Charter School
601 Edgewood St. NE, Ste. 25
Washington, DC 20017

ACHIEVEMENT PREP PUBLIC CHARTER SCHOOL

PUBLIC NOTIFICATION

Achievement Prep Public Charter School participates in the National School Lunch Program (NSLP) and as part of the renewal process the school is required to inform the community about it. Achievement Prep Public Charter School follows the laws and regulations to participate in the NSLP.

"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.

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, July 31, 2014 at 6:00 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.

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Office Supplies

The Carlos Rosario PCS is looking to enter into a Master Purchasing Agreement(s) for office supplies for our two locations located at1100 Harvard Street NW and 514 V Street NE. For more information please contact Gwen Ellis via email gellis@carlosrosario.org, all quotes are due by 4 PM August 4, 2014.

CARLOS ROSARIO PUBLIC CHARTER SCHOOL

REQUEST FOR QUOTES

Various Signs

The Carlos Rosario PCS is soliciting bids for the creation and installation of various identification and school signs for our campus, located at1100 Harvard Street NW. To receive the specifications please contact Gwen Ellis via email gellis@carlosrosario.org, all quotes are due by 4 PM August 1, 2014.

DC SCHOLARS PUBLIC CHARTER SCHOOL

COMPUTING DEVICES

REQUEST FOR PROPOSALS

DC Scholars Public Charter School, in accordance with section 2204 (c) (1) (A) of the D.C. School Reform Act of 1995 (Public Law 104-134), hereby solicits proposals for technical devices. DC Scholars Public Charter School serves grades PS -5 with approximately 396 students and 55 staff. The school is located at 5601 East Capitol Street, SE, Washington, DC 20019 and operates from 7:45am-6:00pm daily. DC Scholars PCS is requesting proposals for technical equipment and services.

The proposal should include:
- pricing for the following types of devices:
  - Desktops
  - Laptops
  - Mice
  - Keyboards
  - Virtual stations
  - Handheld devices
  - Laptop carts

-pricing for on-site support services

DC Scholars Public Charter School will receive proposals titled "Proposal for Computing Virtual Devices" until July 31, 2014. All proposals should be sent to vharris@dcscholars.org

Proposals will be opened and recorded at 9AM on July 31, 2014. A contract will be offered within one week of the bid opening. Bids may not be withdrawn after the closing period.

Bid will be evaluated on price, references, ability to meet specifications, customer service, and alignment to Scholar Academies' mission. The school seeks a one-year contract with specified options for renewals. We are price sensitive and open to ideas to revise our scope slightly in order to generate savings.

All questions should be in writing by e-mail. Please put "Computing RFP" in the subject heading. No phone calls regarding this RFP will be accepted.

All quotes are due by July 31, 2014. Any further questions, please contact vharris@dcscholars.org .

DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Computing Devices

Democracy Prep Congress Heights (DPCH) is seeking proposals to provide 200 Chromebooks, 200 Chrome OS licenses, and 6-7 charging carts, and be able to meet a very aggressive timeframe to ensure delivery in August before the start of the school year. For a full copy of the RFP please send an e-mail to:

DPCongressHeights_Ops@democracyprep.org.

All bids not addressing all areas as outlined in the RFP and/or received past the deadline will not be considered. Bids must be received by 10:00AM, Friday, August 1, 2014 via e-mail or to the following location:

Democracy Prep Public Charter School
Attention: Amanda Poole
3100 Martin Luther King Jr Ave SE
Washington, DC 20032

DEMOCRACY PREP CONGRESS HEIGHTS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS (RFP)

Network Hardware and Services

Democracy Prep Congress Heights (DPCH) is seeking proposals from individuals or companies to provide hardware and services to improve the school's wireless network infrastructure and who are able to do so in a very aggressive timeframe to ensure the infrastructure is operational in August before the start of the 2014-2015 school year. For a full copy of the RFP please send an e-mail to:

DPCongressHeights_Ops@democracyprep.org

All bids not addressing all areas as outlined in the RFP and/or received past the deadline will not be considered. Bids must be received by 10:00AM, Friday, August 1, 2014 via e-mail or 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

PUBLIC NOTIFICATION

National School Lunch Program Participant

Euphemia L. Haynes Public Charter School strives to provide healthy and nutritious meals. To achieve this goal, we have partnered with the USDA and are participants in the National School Breakfast and Lunch programs. In addition to the meals we serve with the National School Breakfast and Lunch programs we have a no junk food policy at our school and we are proud to say the snacks served to our students are healthy as well.

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.

EARLY CHILDHOOD ACADEMY PUBLIC CHARTER SCHOOL (ECA)

REQUESTS FOR PROPOSALS

Janitorial Services - vendors licensed to provide daily evening janitorial services.

The walk-through for janitorial services will be held at 2:00 pm **ONLY** on July 11, 2014. ECA will receive bids online or in-person until 4:00 pm on July 30, 2014, for the period August 2014 – June 2015. Send requests for scope of work to bids@ecapcs.org. Bids will be opened July 31, 2014.

ELSIE WHITLOW STOKES COMMUNITY FREEDOM PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

The Elsie Whitlow Stokes Community Freedom Public Charter School solicits expressions of interest in the form of proposals for Afterschool Chess Education Services.

The full RFP, containing guidelines for submission, applicable qualifications and bid specifications, can be obtained by submitting a request to ewsprocurement@gmail.com.

Deadline for submissions is **5pm EST August 8, 2014.** Please e-mail proposals and supporting documents to ewsprocurement@gmail.com, specifying the RFP service request type in the subject heading. No phone calls please. Elsie Whitlow Stokes Community Freedom PCS reserves the right to cancel the abovementioned RFPs at any time.

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH
COMMUNITY HEALTH ADMINISTRATION

NOTICE OF FUNDING AVAILABILITY (NOFA)

Request for Applications #CHA_IACS081514
AMENDED
INNOVATIONS IN AMBULATORY CARE SERVICES GRANTS PROGRAM

This notice supersedes the NOFA RFA#CHA_IACS072514 published in DC Register on 07/04/2014 volume 61/28.

The Government of the District of Columbia, Department of Health (DOH) Community Health Administration (CHA) is soliciting applications for funding to implement or continue innovations in primary care services delivery that will increase access to care and/or improve outcomes for primary care patients residing in the District of Columbia.

This funding will be available through local appropriations in the Fiscal Year 2015 budget, and will be subject to the enactment of the Fiscal Year 2015 Budget Support Act of 2014.

Approximately $750,000 in local appropriated funds will be available for up to four (4) awards. Award sizes will range from a minimum of $75,000 up to a maximum of $600,000 per year. The target grant period start date is January 5, 2015. The grants may be extended for a maximum of two (2) additional option years – for a total of three years of funding - subject to availability of funds, grantee performance, and program evaluation findings.

The following entities are eligible to apply for grant funds under this RFA: private not-for-profit organizations, private medical practices, and/or consortia with a record of providing, or assisting in the provision of, comprehensive primary medical, dental, and/or behavioral health care to medically-vulnerable populations in the District.

The Request for Applications **RFA #CHA_IACS081514 release date will be Friday, August 15, 2014.** The complete RFA will be posted in the District Grants Clearinghouse section of the Office of Partnerships and Grants Services website, www.opgs.dc.gov. A limited number of copies of the RFA will be available for pick up at DOH/CHA offices located at 899 North Capitol Street, NE Washington, DC 20002 3rd floor*.

The **deadline for submission** of applications will be **Friday, October 3, 2014 at 4:30 pm**. A **Pre-Application Conference** will be held at 899 N. Capitol St. NE*, **on Monday, September 8, 2014, from 2:00pm – 4:00 pm**.

For questions, please contact Bryan Cheseman at bryan.cheseman@dc.gov or at (202) 442-9339.

*899 N. Capitol St. NE is a secured building. Government issued identification must be presented for entrance.

DEPARTMENT OF HEALTH

HEALTH PROFESSIONAL LICENSING ADMINISTRATION

NOTICE OF MEETING

Board of Medicine
July 30, 2014

On July , 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.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

DISTRICT OF COLUMBIA HOMELAND SECURITY COMMISSION

NOTICE OF CLOSED MEETING

Pursuant to DC Code § 2-575(b), DC Code § 7-2271.04 and DC Code § 7-2271.05., the Homeland Security Commission hereby provides notice that it will hold a **CLOSED MEETING** on the date, time and place noted below for the purposes of discussing its Annual Report to the Mayor.

July 30, 2014
1850 K Street, NW, 11th floor
Washington DC 20006
3:00 am to 5:00 pm

For more information, please contact: Nicole Chapple, Assistant Director, External Affairs and Policy District of Columbia Homeland Security and Emergency Management Agency, 2720 Martin Luther King Jr. Avenue, SE, Washington, DC. Telephone: (202) 481-3049. Email: Nicole.Chapple@dc.gov.

HOSPITALITY HIGH SCHOOL

REQUESTS FOR PROPOSALS

Security Guards

Hospitality High School is offering the opportunity to bid on the services of **two unarmed security guards**: one male and one female Monday – Friday from 7:00 a.m. to 4:30 p.m. at Hospitality High School. The RFP with bidding requirements and supporting documentation can be obtained from: our website www.washingtonhospitality.org. Deadline for receiving bids is 08/08/14 at 2:30 pm.

Qualified Therapeutic Consultants

Hospitality High School is offering the opportunity to bid on the services of qualified Therapeutic Consultants who will **provide Occupational Therapists, Speech Language Pathologists, and Physical Therapists**. The RFP with bidding requirements and supporting documentation can be obtained from: our website www.washingtonhospitality.org. Deadline for receiving bids is 08/08/14 at 2:30 pm.

Information Technology Services

Hospitality High School is offering the opportunity to bid on the services of an IT Management company whose **major focus is Help desk and IT support**. The RFP with bidding requirements and supporting documentation can be obtained from: our website www.washingtonhospitality.org. Deadline for receiving bids is 08/08/14 at 2:30 pm.

All bids not addressing all areas as outlined in the RFPs will not be considered.

INGENUITY PREP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Accounting, Special Education, and School Furnishing Services

Ingenuity Prep is advertising the opportunity to bid on following services for the 2013-14 school year: Accounting Services, Special Education Evaluation and Direct Services, and School Furnishing Services.

Additional specifications outlined in the Request for Proposals may be obtained from:

Will Stoetzer, Director of Business and Operations
4600 Livingston Rd. SE
Washington, DC 20010
Email: wstoetzer@ingenuityprep.org

Bids will only be accepted via email submission. Bids submitted in person, via courier, or mail will not be accepted. Please use subject line "RFP – [Type of proposed service] – [Vendor Name]". Ingenuity Prep will receive bids until August 1st,2014 at 3 p.m. No proposals will be accepted after the deadline.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

DISTRICT OF COLUMBIA FINANCIAL LITERACY COUNCIL

NOTICE OF PUBLIC MEETING

The Members of the District of Columbia Financial Literacy Council (DCFLC) will hold a meeting on Thursday, August 7, 2014 at 3:00 PM. The meeting will be held at 810 First St, NE, 7th Floor (DISB Conference Room) Washington, DC 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at http://disb.dc.gov.

For additional information, please call (202) 442-7832 or e-mail idriys.abdullah@dc.gov

DRAFT AGENDA

I. Call to Order

II. Welcoming Remarks

III. Minutes of the Previous Meeting

IV. Unfinished Business

V. New Business

VI. Executive Session-Final Review of 2013 Annual Report

VII. Adjournment

EXECUTIVE OFFICE OF THE MAYOR
OFFICE ON LATINO AFFAIRS

NOTICE OF FUNDING AVAILABILITY

FY2015 Latino Community Development Grant RFA #22615-15

Background information on the grant:
The District of Columbia's Mayor's Office on Latino Affairs (OLA) is soliciting grant applications from qualified 501(c)(3) community-based organizations (CBOs) serving the District's Latino residents. Established with a budget of $1,400,000 by Mayor Vincent C. Gray, the FY 2015 Latino Community Development Grant Program offers one-time grants of up to $50,000 to CBOs with a current and valid 501(c)(3) status located in the District of Columbia. The grant funds are intended to enhance existing Latino-serving programs focused on Education (all ages), Workforce Development, Economic Development, Housing Services, Civil Engagement, Legal Services, Crisis Intervention, and Arts, Culture and Humanities.

Amount of grant funds available and number of awards:
OLA expects to award 28-45 grants. Eligible CBOs can be funded up to $50,000

Eligible organizations and entities:
Applicants must meet **all** of the following conditions without exception:

- Non profit agency with a current and valid 501(c)(3) status;
- Located in the District of Columbia;
- Evidence that a majority (60%) of the clients served by the program presented in a proposal to OLA are Latinos residing in the District of Columbia;
- Program staff meet qualifications of position requirements and are able to deliver services in a culturally and linguistically appropriate manner;
- Service facilities meet all applicable federal, state and local regulations for their intended use;
- Charter Schools are **not** eligible to apply.

Program scope: OLA is soliciting applications from eligible community based organizations that have **existing** services targeting the Latino population in the District of Columbia.

Programs can be targeted to the general Latino population or specific sub-groups, such as children, youth, persons with disabilities, adults, seniors, etc. OLA seeks to award programs that address the following areas: Education (all ages), Workforce Development, Economic Development, Housing Services, At-Risk Youth Empowerment, Civil Engagement, Legal Services, Crisis Intervention, Arts, Culture and Humanities, and Gang Intervention.

Release Date of RFA: Friday, July 25, 2014

Availability of RFA: Download at OLA's website (www.ola.dc.gov) and/or pick up a copy at the OLA's office located at Reeves Center, 2000 14th ST NW, 2nd Floor,

Washington, DC 20009

Pre-bidder's conference: Tuesday, July 29, 2014, 10:00am – 11:30AM
At Office on Latino Affairs and Via Webex Webinar:

Topic: OLA FY14 LCDG Pre-bidders Conference
Time: 10:00 am, Eastern Daylight Time (New York, GMT-04:00)
Meeting Number: 732 801 343
Meeting Password: olalcdg

To start or join the online meeting

Go to
https://dcnet.webex.com/dcnet/j.php?MTID=md9eb62d6cef1137298f2dc53ff526932

Audio conference information

To receive a call back, provide your phone number when you join the meeting, or call the number below and enter the access code.
Call-in toll-free number (US/Canada): 1-877-668-4493

Access code: 732 801 343

Deadline for Submission: Tuesday, August 26, 2014 at 5:00 pm
Via OLA's Grant Management System

Contact Name: Josué Salmerón, Grants Program Manager, (202) 671-2827, Josue.salmeron@dc.gov

EXECUTIVE OFFICE OF THE MAYOR
OFFICE ON LATINO AFFAIRS

NOTICE OF FUNDING AVAILABILITY

FY2015 Latino Community Health Grant RFA # LCH-22615-15

Background information on the grant:
The District of Columbia's Mayor's Office on Latino Affairs (OLA) is soliciting grant applications from qualified 501(c)(3) community-based health clinics with proven expertise and a history of serving the Latino community of the District of Columbia. Established with a budget of $400,000 by Mayor Vincent C. Gray, the FY 2015 Latino Community Health Grant Program offers one-time grants of up to $100,000 to qualified community-based health clinics with a current and valid 501(c)(3) status located in the District of Columbia. The grant funds are intended to support the provision of existing health services, early detection, prevention, treatment, and/or education programs for Latino residents of the District.

Amount of grant funds available and number of awards:
OLA expects to award 4-6 grants. Eligible CBOs can be funded up to $100,000

Eligible organizations and entities:
Applicants must meet **all** of the following conditions without exception:

- Non profit agency with a current and valid 501(c)(3) status;
- Located in the District of Columbia;
- Evidence that a majority (60%) of the clients served by the program presented in a proposal to OLA are Latinos residing in the District of Columbia;
- Program staff meet qualifications of position requirements and are able to deliver services in a culturally and linguistically appropriate manner;
- Service facilities meet all applicable federal, state and local regulations for their intended use;
- Charter Schools are **not** eligible to apply.

Program scope: OLA is soliciting applications from eligible 501 (c) 3 community healthcare organizations that have existing services and programs targeting the Latino population in the District of Columbia. OLA strongly encourages collaborations for this competition.

Proposed programs should be linguistically and culturally appropriate/sensitive and delivered in an ADA accessible, safe, and HIPAA-compliant environment.

Programs can be targeted to the general Latino population or specific sub-groups, such as families, youth, persons with disabilities, adults, seniors, etc. OLA seeks to award programs that address one or more of the following areas: Oral Health, Health Education in the Primary Care Setting, Mental Health and Stress management and common mental disorders that are appropriately treated in the primary care setting.

Release Date of RFA: Friday, July 25, 2014, at 5:00PM

Availability of RFA: Download at OLA's website (www.ola.dc.gov) and/or pick up a copy at the OLA's office located at Reeves Center, 2000 14th ST NW, 2nd Floor, Washington, DC 20009

Pre-bidder's conference: Wednesday, July 30, 2014, 10:00am – 11:30AM
At Office on Latino Affairs and Via Webex Webinar:

Topic: OLA FY14 LCHG Pre-bidders Conference
Time: 10:00 am, Eastern Daylight Time (New York, GMT-04:00)
Meeting Number: 735 962 374
Meeting Password: olalchg

To start or join the online meeting

Go to
https://dcnet.webex.com/dcnet/j.php?MTID=m66596cd76f34534c85dcdcbef7f8004c

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Audio conference information

To receive a call back, provide your phone number when you join the meeting, or call the number below and enter the access code.
Call-in toll-free number (US/Canada): 1-877-668-4493

Access code: 735 962 374

Deadline for Submission: Tuesday, August 26, 2014, at 5:00PM
Via OLA's Grant Management System

Contact Name: Josué Salmerón, Grants Program Manager, (202) 671-2827, Josue.salmeron@dc.gov

MUNDO VERDE PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Professional Development Expeditionary Learning

Mundo Verde Public Charter School intends to enter into a sole source contract with Expeditionary Learning for professional development training for approximately $60,000 for the upcoming school year.

- As an Expeditionary Learning school, Mundo Verde PCS has a need for continuing professional development around the Expeditionary Learning principles.
- EL Schools constitutes the sole source for expeditionary learning professional development services.

For further information regarding this notice contact Elle Carne at **202-630-8373 or ecarne@mundoverdepcs.org** no later than **4:00 pm August 1, 2014.**

MUNDO VERDE PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Apple Inc

Mundo Verde Public Charter School intends to enter into a sole source contract with Apple Inc for computers, Ipads and relevant accessories for over $25,000 for the upcoming school year.

- Mundo Verde PCS is an Apple product based school and uses these products for administrative and instructional purposes, specifically for our Expeditionary Learning model.
- Apple Inc constitutes the sole source for all Apple products with educational discounts.

For further information regarding this notice contact **Elle Carne at 202-630-8373 or ecarne@mundoverdepcs.org** no later than **4:00 pm August 1, 2014.**

OPTIONS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Food Service Management Services

Options Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2014-2015 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposals (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on July 22, 2014 from:

Rodney Foxworth
202.547.1028
Rfoxworth@Optionsschool.org

Bids will be accepted at the above address on August 12, 2014 no later than 1:30 P.M.

All bids not addressing all areas as outlined in the (RFP) will not be considered.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED ISSUANCE OF STOCK OR EVIDENCES OF INDEBTEDNESS

FORMAL CASE NO. 1124, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR A CERTIFICATE OF AUTHORITY AUTHORIZING IT TO ISSUE DEBT SECURITIES

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code §§ 2-505, 34-502 and 34-503 (2001), that it intends, in not less than 30 days from the date of publication of this Notice in the *D.C. Register*, to take final action on the Application of Potomac Electric Power Company ("Pepco" or "Company") for a certificate authorizing the Company to issue and sell up to $750 million of long-term secured and unsecured debt securities.[1]

2. In its Application, filed on July 16, 2014, Pepco requests authority to issue up to $750 million of long-term secured and unsecured debt securities for a three-year period.[2] The Company states that it plans to use the proceeds from the financing for six primary purposes: (1) to refund maturing debt securities; (2) for redemptions; (3) to refund outstanding securities of the Company, should market conditions make refinancing feasible; (4) to refund short-term debt incurred to finance utility construction and operations on a temporary basis; (5) to fund ongoing capital requirements of the Company; and (6) for other general corporate purposes.[3] Pepco further states that the precise timing and types of financing selected will depend on factors such as prevailing and anticipated market conditions, the costs and volume of the Company's anticipated and outstanding short-term debt, the costs of the Company's outstanding securities, and capital structure considerations.[4] Pepco also seeks expedited review of its Application under the Commission's expedited review process in Chapter 35 of the Commission's rules (15 DCMR §§ 3500-3505 (2000)).[5]

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[1] *Formal Case No. 1124, In the Matter of the Application of Potomac Electric Power Company for a Certificate of Authority Authorizing it to Issue Debt Securities* ("*Formal Case No. 1124*"); Pepco Application for Authority to Issue Debt Securities, filed July 16, 2014 ("Pepco Application").

[2] Pepco Application at 6.

[3] Pepco Application at 2.

[4] Pepco Application at 2.

[5] Pepco Application at 1. *See also,* 15 DCMR § 3501.1, describing the Commission's expedited review process: "An application for authority to issue or amend tariffs or issue stock or evidences of indebtedness that are payable in more than one year shall be approved by the Commission within thirty

3. Pepco's Application and supporting documentation are on file with the Commission and may be reviewed in the Office of the Commission Secretary, 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, or may be viewed on the Commission's website by visiting www.dcpsc.org. and, under the "eDocket System" tab, selecting "Search Current Dockets" and typing "FC 1124" in the field labeled "Select Case Number." Copies of the Application are available to any person requesting copies at a per-page reproduction fee.

4. Any person desiring to comment on the Application or object to the expedited handling of the Application shall file written comments or objections stating the reasons for the objections no later than 30 days from the date of publication of this Notice in the *D.C. Register*. Comments and objections should be addressed to Brinda Westbrook-Sedgwick, Commission Secretary, at the address listed in the preceding paragraph. Any responses to comments or objections shall be filed within 35 days from the date of publication of this Notice in the *D.C. Register*. Once the comment period expires, the Commission will take final action.

(30) days after the publication date in the D.C. Register, provided that: (1) no objection is filed within thirty (30) days after the publication date; and (2) the Commission does not order additional time for review of the application."

THE NEXT STEP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

Food Service Management Services

The Next Step Public Charter School 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, After school Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposals (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on Friday, July 25, 2014 from **Jennifer Edwards 202.319.2277 or jennifer@nextsteppcs.org**

Bids must be received by August 18, 2014 by 1:00 pm. Bids must be submitted in person between 10:30 am and 2:30 pm at 3047 15th Street, NW, Washington, DC 20009 or by mail to 3047 15th Street, NW, Washington, DC 20009.

All bids not addressing all areas as outlined in the RFP will not be considered.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18741 of BB&H Joint Venture, pursuant to 11 DCMR § 3104.1, for a special exception to continue an accessory parking lot under section 214, in the R-1-B District, at premises 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

HEARING DATE: April 29, 2014
DECISION DATE: July 8, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F initially submitted a report in opposition to the special exception relief for the Applicant's failure to comply with the conditions in the Board's previous order. (Exhibit 24). The ANC later filed an updated report noting the Applicant's cooperation in meeting the requirements in the conditions, and the ANC expressed conditional support for the application. (Exhibit 32.) The Office of Planning ("OP") report stated that OP did not oppose the relief and OP offered conditions to be included in the order. (Exhibit 27.) The D.C. Department of Transportation ("DDOT") filed a report expressing no objection to the project if the Applicant removes the trash dumpsters from the accessory parking lot. (Exhibit 28.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 214. There are no parties in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP, ANC, and DDOT reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 214, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

BZA APPLICATION NO. 18741
PAGE NO. 2

It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of THREE (3) YEARS beginning on the date upon which the order became final.

2. There shall be no dumpsters in the accessory parking lot.

3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.

4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.

5. The parking space and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned as necessary.

6. An exterminator shall perform extermination services once a month, or as necessary, to control any rodents.

7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.

8. The Applicant shall provide to the ANC and the residences within 200 feet, an annual report summarizing its compliance with the conditions.

9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.

10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

11. The Applicant shall maintain a barrier along the north side of the accessory parking lot so as to limit ingress and egress into the accessory parking lot along its northern border.

VOTE: 3-0-2 (Lloyd J. Jordan, Marnique Y. Heath and Anthony J. Hood (by absentee vote) to Approve; Jeffrey L. Hinkle and S. Kathryn Allen not participating)

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: July 16, 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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. 18795 of Gerard Boquel and Lew Hages, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 772.1, a variance from the nonconforming lot occupancy requirements under § 2001.3, and a variance from the building on alley lots provisions under § 2507.3, to allow an alley dwelling in the DC/C-2-C District at premises 2123 Twining Court, N.W. (Square 68, Lots 807 and 808).[1]

HEARING DATE: July 15, 2014
DECISION DATE: July 15, 2014 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.[2] (Exhibit 27.)

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") 2B, 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 2B, which is automatically a party to this application. At the hearing the Applicant testified that the ANC had reviewed the project and voted to support it. The Applicant believed that the ANC had filed its report, but it was not in the record when the Board heard the case and deliberated on it. The Board gave leave for the record to remain open for the ANC's report. Thus, the Applicant shared the ANC's letter of June 16, 2014, in which the ANC indicated that at a regular, duly noticed meeting held on June 11, 2014, with a quorum present, the ANC met and considered the application and voted unanimously (7:0) to support it.

The Office of Planning ("OP") submitted a timely report in which OP stated that it could not recommend approval of the area variance relief from § 2507.3, pursuant to § 3103.5, although it was supportive of the proposal in concept. At the hearing the Applicant presented witness testimony by the Applicant's real estate agent regarding the issues raised by OP in its report. At the hearing OP's representative stated that it found the Applicant's witness' testimony helpful in addressing the issues OP raised in its report and

[1] The Applicant amended the application in its self-certification form by adding variance relief under § 2001.3 and removing the request for relief from § 2101.1, (Exhibit 27.).

[2] The Office of the Zoning Administrator ("OZA") had issued a referral letter dated February 20, 2014 (Exhibit 9), but the Office of Planning in its report questioned the relief that the OZA cited as being required. (Exhibit 24.) Ultimately, the Applicant submitted a self-certification form, clarifying the relief requested. (Exhibit 27.)

noted that the proposed residential use is compatible with the uses surrounding the property. Also, as to the requests for variance relief from §§ 772.1 and 2001.3, OP's report indicated that it would support this variance relief should the BZA accept the request for relief from § 2507.3. (Exhibit 24.) The District's Department of Transportation ("DDOT") submitted a timely report indicating it had no objection to the application. (Exhibit 23.)

This project also came before the Historic Preservation Review Board ("HPRB"), as the property is both landmarked on the National Register of Historic Places and in the Dupont Circle Historic District. The HPRB review of the project was found to be consistent with the preservation act. (Exhibit 30.) At the public hearing, Board Member Turnbull requested confirmation that the Applicant's submitted plans would reflect Option C in the HPRB report. Specifically, the BZA requested that the Applicant address how they responded to the two recommendations which were asked of them by the HPO staff and recommended to the HPRB. The first recommendation was that the applicants were encouraged "to develop a variation of Option C that pulls the proposed roof deck further in from the sides and pulled back from the outside wall to eliminate the projecting handrail", and the other recommendation was "to consider the amount of roof removal such as a different type of HVAC system (e.g. ductless mini-split system)." The Board left the record open for the Applicant to submit their responses.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances under § 3103.2 from the strict application of the lot occupancy requirements under § 772.1, the nonconforming lot occupancy requirements under § 2001.3, and from the building on alley lots provisions under § 2507.3, to allow an alley dwelling in the DC/C-2-C District. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing but for the two items it gave leave to have submitted: the ANC report and written confirmation that the plans were in conformance with Option C in the HPRB report. Based upon the record before the Board, and having given great weight to the OP report[3] 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 §§ 772.1, 2001.3, and 2507.3, 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.

[3] While the Board acknowledged the Applicant's testimony that the ANC had reviewed the application at its June meeting and voted unanimously to support it, as the Board did not have the written report when it was deliberating on the case, it could not give it great weight. However, the Board gave leave for the ANC's report to be submitted into the record.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 7.**

VOTE: **4-0-1** (Marnique Y. Heath, Jeffrey L. Hinkle, S. Kathryn Allen, and Michael G.Turnbull to APPROVE; Lloyd L. Jordan, 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: July 16, 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.

BZA APPLICATION NO. 18795
PAGE NO. 4

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. 18796 of 1801 4th Street, NW LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the side yard requirements under subsection 405, and a variance from the court requirements under section 406, to redevelop an existing building into a flat (two-family dwelling) in the R-4 District at premises 1801 4th Street, N.W. (Square 3095, Lot 27).

HEARING DATE: July 15, 2014
DECISION DATE: July 15, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B did not submit a report in the application. The Office of Planning ("OP") also submitted a report in support of the application. The Department of Transportation submitted a report having no objection to the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from §§ 401, 403, 404, 405, and 406. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from §§ 401, 403, 404, 405, and 406, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions

of law. It is therefore **ORDERED** that this application (Pursuant to Exhibit 33A – Plans) is hereby **GRANTED.**

VOTE: **4-0-1** (S. Kathryn Allen, Marnique Y. Heath, Michael G. Turnbull and Jeffrey L. Hinkle to APPROVE. Lloyd J. Jordan 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: July 15, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18797 of John Ferguson and Veronica Slajer, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under subsection 403.2, a variance from the nonconforming structure provisions under subsection 2001.3, to allow an addition to an existing one-family row dwelling in the R-4 District at premises 626 A Street, S.E. (Square 869, Lot 809).

HEARING DATE: July 15, 2014
DECISION DATE: July 15, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to Advisory Neighborhood Commission ("ANC") 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B did not submit a report in the application in time for the public hearing. The Office of Planning ("OP") submitted a report in support of the application. The Department of Transportation submitted a report having no objection to the application. Neighboring residents submitted letters in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for variances from §§ 403 and 2001.3. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report filed in this case, the Board concludes that in seeking variances from §§ 403 and 2001.3, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (Pursuant to Exhibit 7 – Plans) is hereby **GRANTED.**

VOTE: **4-0-1** (S. Kathryn Allen, Michael G. Turnbull, Marnique Y. Heath and Jeffrey L. Hinkle to APPROVE. Lloyd J. Jordan 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: July 15, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18798 of Janet Katowitz, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception for a rear deck addition to an existing one-family row dwelling under § 223, not meeting the lot occupancy (§ 403), rear yard (§ 404), and nonconforming structure (§ 2001.3) requirements and for a variance under § 199 Definition of Yard from the requirement that no structure shall occupy in excess of 50% of a required yard, in the R-4 District at premises 1425 North Carolina Avenue, N.E. (Square 1056, Lot 94).[1]

HEARING DATE: July 15, 2014
DECISION DATE: July 15, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a letter dated July 11, 2014, indicating that at a regularly scheduled and properly noticed meeting on July 10, 2014, with a quorum present, the ANC voted 5-5-1 to support the application for the special exception and variance relief requested. (Exhibit 28.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application with a condition. (Exhibit 26.) The District Department of Transportation ("DDOT") submitted a letter recommending "no objection" provided the Applicant designed the alley gate to swing inward and not outwards into the alley. (Exhibit 24.)[2]

Letters of support were submitted for the record by Michael Almy, the neighbor to the east of the Applicant, and from the Capitol Hill Restoration Society. (Exhibits 25C and 30.)

[1] The Applicant amended the application to include variance relief under § 199 Definition of Yard from the requirement that no structure shall occupy in excess of 50% of a required yard. (Exhibit 25.)
[2] At the public hearing, the Applicant proffered that she would change the project, as requested by DDOT in its report, so as to design the alley gate to swing inwards into the property rather than to swing outwards into the alley.

Letters of opposition were submitted for the record by Charles Brockner, 1421 Ames Place, N.E., and Sharon D. Davis, 1433 Ames Place, N.E. (Exhibits 20-22.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the strict application from the requirement under § 199 Definition of Yard that no structure shall occupy in excess of 50% of a required yard. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

The Applicant satisfied the burden of § 3119.2 in its request for special exception relief to allow a rear deck addition to an existing one-family row dwelling under § 223, not meeting the lot occupancy (§ 403), rear yard (§ 404), and nonconforming structure (§ 2001.3) requirements. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 223, 403, 404, and 2001.3 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 7.**

BZA APPLICATION NO. 18798
PAGE NO. 3
BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

FINAL DATE OF ORDER: July 16, 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.

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
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO	
Petitioner.	PERB Case No. 14-RC-01
and	Certification No. 157
District of Columbia Public Service Commission,	
Agency.	

CERTIFICATION OF REPRESENTATIVE

The requirements of voluntary recognition having been confirmed in in the above-captioned matter by the District of Columbia Public Employee Relations Board (Board), in accordance with the District of Columbia Comprehensive Merit Personnel Action of 1978 (CMPA) and the Board's Rules and it appearing that an exclusive representative has been properly recognized;

Pursuant to the authority vested in the Board by the CMPA, as codified under D.C. Code § 1-605.02(1) and (2) (2001 ed.), D.C. Code § 1-617.10(b)(1); and in accordance with Board Rule 502.12;

IT IS HEREBY CERTIFIED THAT:

The American Federation of States, County and Municipal Employees, District Council 20, AFL-CIO has been designated by a majority of the employees of the above-named public employer in the unit described below, as their preference for its exclusive representative for the purpose of collective bargaining over terms and conditions of employment, including compensation, with the named employer.

Unit Description:

All professional and non-professional employees employed by the District of Columbia Public Service Commission, excluding all management officials, supervisors, confidential employees, employees who are covered by another union's certification, employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title 1, Chapter 6, subchapter XVII of the D.C. Official Code.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

June 4, 2014

Clarene Phyllis Martin
Executive Director

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order and Certification in PERB Case No. 14-RC-01 was transmitted to the following parties on this the 6th day of June, 2014.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government, Employees, AFL-CIO, Local 2978,	
Petitioner,	PERB Case No. 03-CU-02
and	Opinion No. 1313
District of Columbia Department of Health, Maternal and Family Health Administration,	
Petitioner.	

DECISION

I. Statement of the Case

On January 13, 2003, the Public Employee Relations Board ("Board"), in Certification No. 125, certified the American Federation of Government Employees, AFL-CIO, Local 2978 ("Local 2978"), as the exclusive bargaining representative for all non-professional employees employed by the District of Columbia Department of Health, Maternal and Family Health Administration ("DOH").

On May 30, 2003, Local 2978 and DOH filed a Joint Petition for Compensation Unit Determination for Newly Certified Bargaining Unit ("Petition"). Notices concerning the Petition were issued on July 14, 2003, for conspicuous posting at DOH. The Notice solicited comments concerning the appropriate compensation unit placement for this unit of employees.[1] The Notice required that comments be filed in the Board's office no later than July 29, 2003. No comments were received.

[1] Labor organizations are initially certified by the Board under the Comprehensive Merit Personnel Act ("CMPA") to represent units of employees that have been determined to be appropriate for purposes of non-compensation terms-and-conditions bargaining. Once this determination is made, the Board then determines the compensation unit in which these employees should be placed. Unlike the determination of a terms-and-conditions unit, which is governed by criteria set forth under D.C. Code § 1-617.09, unit placement for purposes of authorizing collective bargaining over compensation is governed by D.C. Code § 1-617.16(b).

On September 24, 2003, the Board issued an Order granting the Petition, stating in a footnote that "[i]n view of the time sensitive posture of this case, the Board has decided to issue its Order now. A decision will follow." Slip Op. No. 724, FN 1.

II. Discussion

Local 2978 and DOH seek a determination concerning the appropriate unit for the purposes of negotiations for compensation for the following group of employees:

> All non-professional employees employed by the District of Columbia Department of Health, Maternal and Family Health Administration, including research assistants, social service assistants, statistical assistants, public health outreach technicians, clerks, clerical assistants, secretaries, secretary/typists, office automation clerks, program assistants, administration support assistants (typing) and computer specialists; excluding registered nurses, managers, confidential employees, supervisors, employees engaged in personnel work in other than a purely clerical capacity, and employees engaged in administering the provisions of the Title XVII of the District of Columbia Comprehensive Merit Personnel Act of 1978.

(Petition at 1-2). In the Petition, the parties indicate that the appropriate compensation unit placement for these employees is Compensation Unit 1.[2]

The Board authorizes and establishes compensation units pursuant to the standard set forth by D.C. Code § 1-617.16(b):

> In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

---

[2] Compensation Unit 1 consists of:

> All career service professional, technical, administrative and clerical employees who currently have their compensation set in accordance with the District Service Schedule and who come within the personnel authority of the Mayor of the District of Columbia, the Board of Trustees of the University of the District of Columbia, and the District of Columbia Board of Library Trustees, except physicians employed by the Department of Human Services and the Department of Corrections and Registered Nurses employed by the Department of Human Services.

AFSCME, et al., v. Barry, et al., 28 D.C. Reg. 1764, Slip Op. No. 5, PERB Case No. 80-R-08 (1981), modified in PERB Case No. 95-RC-12, Certification No. 84 (1995).

The Board has "departed from strict adherence to [the above-noted] criteria where the employing agency has independent personnel and compensation bargaining authority, e.g., D.C. General Hospital, D.C. Public Schools, the D.C. Water and Sewer Authority, notwithstanding the existence of occupational groups that the agency may have in common with other agencies and personnel authorities." *Government of the District of Columbia, et al., v. Unions in Compensation Units 1, 2, 13, and 19*, 45 D.C. Reg. 6725, Slip Op. No. 557 at p. 4, PERB Case Nos. 97-UM-02 and 98-CU-04 (1988); *see also WASA v. AFGE, Local 631, et al.*, 46 D.C. Reg. 122, Slip Op. No. 510, PERB Case Nos. 96-UM-07, 07-UM-01, 97-UM-03, and 97-CU-01 (1997). Exceptions are also made "where the pay scheme of the occupational group is so unique as to warrant a separate compensation unit determination." *Id.*

The Board has established a two-part test to determine an appropriate compensation unit:

(1) The employees of the proposed unit comprise broad occupational groups; and
(2) The proposed unit minimizes the number of different pay systems or schemes.

AFSCME Local 2401 v. DCPS, Office of Contracts and Acquisitions, __ D.C. Reg. __, Slip Op. No. 962, PERB Case No. 08-CU-01 (2009).

In the instant Petition, the first prong of the test is met. Specifically, Local 2978 and DOH request that the bargaining unit employees be placed in a compensation unit comprised of a broad group of employees who possess certain general skills, and who currently have their compensation set in accordance with the District Service Schedule.

Additionally, the Petition fulfills the second prong of the test. Incorporating the proposed unit into Compensation Unit 1 will result in fewer pay systems.

Having considered the Petition, the Board hereby determines that the appropriate compensation unit for all non-professional employees employed by the DOH is Compensation Unit 1.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

August 22, 2012

CERTIFICATE OF SERVICE

This is to certify that the attached Order in PERB Case No. 03-CU-02 was transmitted via U.S. Mail to the following parties on this the 22nd day of August, 2012.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Edna McManus	
Complainant,	PERB Case No. 03-U-38
v.	Opinion No. 1413
D.C. Dep't of Corrections	
and	
Fraternal Order of Police/Dep't of Corrections Labor Committee, Respondents.	

DECISION AND ORDER

I. Statement of the Case

Complainant Edna McManus ("Complainant") filed the above-captioned Unfair Labor Practice Complaint ("Complaint"), against Respondents District of Columbia Department of Corrections ("DOC") and Fraternal Order of Police/Dep't of Corrections Labor Committee ("FOP") for alleged violations of sections 1-617.04 of the Comprehensive Merit Protection Act ("CMPA") and sections 1-624.1(4), 1-624.3(a-b), 1-624.13(a) and 1-624.23(1)(b)(3) of the D.C. Compensation Act. (Complaint at 3). Specifically, the Complainant alleged that she was wrongfully terminated from her position with Respondent DOC, and that Respondent FOP did not provide legal representation. (Complaint at 2). Respondent DOC filed a document styled Answer Complaint ("DOC Answer") in which it denies the alleged violations and raises the following affirmative defenses:

(1) The Complainant has failed to allege any conduct in violation of D.C. Code § 1-617.04 for which a remedy may be ordered by [the Board];
(2) The Complaint is facially deficient by the failure of the Complainant to specify the particular provision of D.C. Code § 1-617.04 for which it is alleged to have violated. The Respondent is prejudiced by an inability to answer this complaint due to the

failure of the Complainant to so designate the applicable statutory provisions alleged to have been violated;

(3) The Complainant has failed to allege that the alleged actions or omissions of the Respondent were a result of her union activity or that the Respondent was aware of such union activity or has demonstrated any anti-union animus;

(4) The [Board] does not have jurisdiction over §§ 1-624.1(4), 1-624.3(a-b), 1-624.13(a) and 1-624.23(1)(b)(3), concerning disability compensation for District of Columbia Employees. Jurisdiction for these matters is vested solely in the Office of Hearing and Adjudication for the Department of Employee Services.

(5) The Respondent has not undertaken any adverse action against the Complainant. As further information the termination of the Complainant has been held in abeyance as a result of her actions before the Office of Hearings and Adjudication.

(DOC Answer at ¶¶ 18-22).

Respondent FOP filed an Answer ("FOP Answer"), denying the alleged violations and raising the following affirmative defenses:

(1) The claims raised in the Complaint asserting violations of D.C. Code § 1-617.04 occurring prior to January 14, 2003, are barred as untimely pursuant to the one hundred twenty-day jurisdictional limitation period of PERB Rule 520.4;

(2) The Complaint fails to state a claim against the FOP/DOC LC or its Chairperson, Pamela Chase, for violation of D.C. Code 1-617.04 where there are no allegations in the Complaint of conduct deemed improper under § 1-617.04(b)(1),(2),(3),(4) or (5);

(3) The Complainant has not plead any violation of D.C. Code § 1-617.03 in regard to alleged conduct on the part of the FOP/DOC LC or its Chairperson, Pamela Chase.

(FOP Answer at 3). A hearing in this matter was held on November 9, 2005, and the Hearing Examiner's Report and Recommendation ("Report") is before the Board for disposition.

II. Discussion

A. Facts

The Hearing Examiner found the following facts:

> Complainant alleged an injury to her left wrist on February 26, 2002, for which she sought and was granted compensation from the D.C. Department of Employment Services.
>
> While Complainant's compensation case was pending, Respondent [DOC] proposed the termination of her employment on December 2, 2002, charging her as absent without leave from August 25, 2002, through September 7, 2002. Subsequently, on February 20, 2003, [DOC] notified Complainant of a final decision to terminate

> her employment for that period of unauthorized absence, to be effective close of business February 28, 2003. [DOC] advised Complainant of her right to elect to appeal the termination through either the negotiated grievance procedure or the Office of Employee Appeals.
>
> Complainant elected to appeal through the Office of Employee Appeals, which ultimately found the appeal to be moot on the ground that the termination was never effected, and was in fact rescinded prior to its effective date.

(Report at 2). The Hearing Examiner noted that the Complainant "stated for the record her unsupported belief that the termination action was based on anti-union animus related to her efforts to represent other unspecified employees at an earlier date uncertain," but that the Complainant did not claim to have performed such representational duties at any time within 120 days of the filing of the Complaint. *Id.* Further, the Hearing Examiner notes that the Complainant admitted that she did not seek representation from FOP with respect to workers' compensation proceedings at any time after September 2002, and that the Complainant was unable to provide any evidence of a request for representation from FOP with respect to the termination action after December 2002. (Report at 2-3).

B. Analysis

The Hearing Examiner found that the Complainant raised two allegations in her Complaint: first, that DOC violated the CMPA by terminating the Complainant's employment, and second, that FOP violated the CMPA by failing to provide representation in connection with the workers' compensation proceeding and termination action. (Report at 3).

The Hearing Examiner concluded that the claim against DOC was "deficient for two independent reasons, and therefore should be dismissed." (Report at 3). First, the Hearing Examiner noted that the record shows that the termination action was rescinded prior to its effective date, and stated that "[i]t requires no citation of authority to conclude that a complaint alleging a wrongful termination fails to state a claim under circumstances where, as here, there has not been, in fact, any termination." *Id.* Second, the Hearing Examiner found that there was no competent evidence provided or offered by the Complainant upon which to conclude that the termination action related in any way to activity protected by the CMPA within the Board's jurisdiction. *Id.* The Hearing Examiner recommended that this portion of the Complaint be dismissed for failure to state a cognizable claim upon which relief can be granted. *Id.*

Based upon the pleadings, record, and evidence provided at the hearing, the Hearing Examiner determined that the Complainant had not been terminated from her position with Respondent DOC, and therefore that her allegation of wrongful termination should be dismissed. (Report at 3). Further, the Hearing Examiner determined that the Complainant had provided "no competent evidence" to relate the termination action to the CMPA. *Id.* To maintain a cause of action before the Board, a Complainant must allege "the existence of some evidence that, if

proven, would tie the Respondent's actions to the asserted violative basis for it." *Goodine v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996). Additionally, "a complaint that fails to allege the existence of such evidence does not present allegations sufficient to support a cause of action." *Id.* In the instant case, the record shows that the Complainant was not terminated, and the Complaint fails to allege the existence of any evidence that, if proven, would tie Respondent DOC's actions to a CMPA violation. (Report Ex. 2; Complaint at 1-2). In light of these findings, the Hearing Examiner's determination that the Complainant failed to state a cognizable claim is reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board will adopt the Hearing Examiner's recommendation that the portion of the Complaint alleging a violation of the CMPA by Respondent DOC be dismissed. *See American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, Slip Op. No. 702, PERB Case No. 00-U-12 (March 14, 2003).

In the claim against FOP for failure to provide representation in connection with the workers' compensation proceeding, the Hearing Examiner noted that the Complainant admitted that she did not request representation in the workers' compensation proceeding any time within 120 days of the filing of the Complaint. The Hearing Examiner concluded that Board Rule 520.4's 120 day rule is jurisdictional and mandatory, and therefore this aspect of the Complaint is untimely and must be dismissed "irrespective of whether or not [FOP] had any obligation to provide representation to Complainant in connection with a workers' compensation proceeding." (Report at 3-4). The Hearing Examiner also found no support for the Complainant's contention that the alleged violation was a continuing violation. (Report at 4).

As for the claim against FOP for failure to provide representation in the termination action, the Hearing Examiner determined that the Complainant was unable to establish that she ever sought union representation within 120 days of the filing of the Complaint, and thus that portion of the Complaint must be dismissed as untimely. (Report at 4). The Hearing Examiner found no evidence that this allegation was continuing in nature. *Id.*

Board Rule 520.4 is jurisdictional and mandatory. *See Hoggard v. D.C. Public Schools and AFSCME Council 20, Local 1959*, 43 D.C. Reg. 1297, Slip Op. No. 352, PERB Case No. 93-U-10 (1993), *aff'd sub nom., Hoggard v. Public Employee Relations Board*, MPA-93-33 (D.C. Super. Ct. 1994), aff'd 655 A.2d 320 (D.C. 1995). Taking into account the pleadings, record, and evidence provided by the parties, the Hearing Examiner determined that the portions of the Complaint pertaining to the claim against Respondent FOP were untimely. (Report at 3-4). Based upon the Complainant's admission that she did not request union representation in the workers' compensation proceeding any time within 120 days of the filing of the Complaint, and that the Complainant could not establish that she sought union representation in the termination action within 120 days of filing the Complaint, the Board finds that this determination is reasonable, supported by the record, and consistent with Board precedent. Therefore, the Board will adopt the Hearing Examiner's recommendation that the portion of the Complaint alleging a violation of the CMPA by Respondent FOP be dismissed. *See American Federation of Government Employees, Local 872,* Slip Op. No. 702.

Therefore, the Complainant's Unfair Labor Practice Complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. Complainant Edna McManus's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 3, 2013

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Washington Teachers Union, Local 6, American Federation of Teachers, AFL-CIO,	
Complainant,	PERB Case No. 05-U-07
v.	Opinion No. 1414
District of Columbia Public Schools,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Complainant Washington Teachers Union, Local 6 ("Union" or "Complainant") filed the above-captioned Unfair Labor Practice Complaint ("Complaint"), against Respondent District of Columbia Public Schools ("Agency" or "Respondent") for alleged violations of sections 1-617.04(a)(1) and (5) of the Comprehensive Merit Protection Act ("CMPA"). Respondent filed a document styled Answer to Unfair Labor Practice Complaint ("Answer") in which it denies the alleged violations and raises the following affirmative defenses:

(1) The Complaint fails to state an unfair labor practice for which relief may be granted;
(2) The Board lacks jurisdiction to grant the requested relief because the Respondent has complied with the arbitration award the Union seeks to enforce; and
(3) An award of attorneys' fees is contrary to Board precedent.

(Answer at 4). On December 15, 2004, Complainant filed a Motion for Decision on the Pleadings ("Motion"), in which it alleged that the Respondent failed to file a timely answer, and requested the Board render a decision on the pleading.

The Complaint, Answer, and Motion are before the Board for disposition.

II. Discussion

A. Facts

The material facts of this case are undisputed. On April 11, 2002, the Agency notified Helen Morse, an elementary school teacher at Winston Education Center, that she was to be terminated for grave misconduct. (Complaint at 1; Answer at 2). The Union filed a grievance on behalf of Ms. Morse, and the matter was appealed to arbitration. (Complaint at 1; Answer at 2). Arbitration hearings were held on March 3 and 19, 2004. (Complaint at 2; Answer at 2). In an award dated June 10, 2004, the arbitrator sustained the grievance and ordered the Agency to reinstate the grievant with no break in service or loss of pay and benefits, and to remove all references to the disciplinary action from the grievant's file. (Complaint at 2; Answer at 2).

The parties agree that on September 13, 2004, the Union wrote to the Agency to demand compliance with the arbitration award, and that on October 25, 2004, the Union sent an e-mail to the Agency to demand compliance with the arbitration award. (Complaint at 2; Answer at 2-3). Further, the parties agree that the grievant has not been reinstated, and that the Agency did not seek review of the arbitration award, in accordance with D.C. Code § 1-605.02(6). (Complaint at 2; Answer at 3).

B. Motion for Decision on the Pleadings

In its Motion, the Union contends that the Agency failed to file a timely response to the Complaint, and that in accordance with Board Rule 520.7, the Agency should be deemed to have admitted the material facts alleged in the Complaint and waived a hearing. (Motion at 1). Further, the Union alleges that if there are no disputed issues of material fact, the Board may render a decision on the pleadings, in accordance with Board Rule 520.10. (Motion at 2).

Board Rule 520.6 states that a respondent "shall file, within fifteen (15) days from service of the complaint, an answer containing a statement of its position with respect to the allegations set forth in the complaint." Respondents who fail to file a timely answer are "deemed to have admitted the material facts alleged in the complaint and to have waived a hearing." Board Rule 520.7. The Complaint was filed on November 22, 2004. Including the five additional days due to service by U.S. Mail (provided for by Board Rule 501.4), the Answer was due on December 13, 2004. The Answer was filed with the Board on December 13, 2004, and thus was not untimely.

Notwithstanding, as there are no disputed issues of material fact, a decision on the pleadings is appropriate in this case. *See* Board Rule 520.10 ("If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision on the pleadings or may requests briefs and/or oral argument."); *see also Goodine v. Fraternal Order of Police/Dep't of Corrections Labor Committee*, 43 D.C. Reg. 5163, Slip Op. No. 476, PERB Case No. 96-U-16 (1996).

C. Unfair Labor Practice Complaint

In its Complaint, and more fully in its Motion, the Union contends that the Agency committed an unfair labor practice by failing to comply with the arbitration award. (Motion at 3). The Union asserts that the Agency has not filed a timely request for review of the arbitrator's award, nor is there a genuine dispute over the language or terms of the award. (Motion at 3-4). Absent these factors, the Union alleges that the Agency's failure to comply with the arbitration award is an unfair labor practice. (Motion at 4).

The Agency does not dispute the Union's allegation that the grievant was not reinstated to her position, as ordered by the arbitrator. (Answer at 3). Instead, the Agency raises the affirmative defense that the Complaint fails to state an unfair labor practice for which relief can be granted. (Answer at 4). Specifically, the Agency states that during the process of reinstating the grievant, the Agency's Office of Human Resources discovered that the grievant did not possess a teaching license. *Id.* Via letter dated September 27, 2004, the Agency notified the grievant that according to its records she did not possess a valid teaching license, and had never possessed a valid teaching license. *Id.*; Answer Attachment 1. The letter instructed the grievant to notify the Agency if its information was incorrect and provide the appropriate documentation. *Id.* As of the date of the Answer, the Agency states that the grievant had not provided the Agency with proof of a valid teaching license, and the Agency asserts that it cannot reinstate the grievant until she provides such information. *Id.* In support of this assertion, the Agency cites District of Columbia Municipal Regulations, Title 5, Chapter 10, General Personnel Policies, 1001 Certification, section 1001.2, which requires employees to "satisfy the requirements of the applicable license as approved by the Board of Education as well as all applicable testing requirements," and Chapter 13, Conditions of Employment, section 1319.4, which provides that "failure to maintain a valid professional certificate shall result in ineligibility for employment in the field of the certificate and may result in termination." (Answer at 4). Further, the Agency states that the grievant was expected to receive her back pay on January 1, 2005. (Answer at 5). It contends that it has complied with the arbitration award, and there is no unresolved issue or basis for the Complaint. *Id.*

The Union has not disputed the Agency's assertion that the grievant lacks a valid teaching license, or that District of Columbia Municipal Regulations requiring the grievant to possess a valid teaching license are applicable in this case.

The Board has previously considered the question of whether the failure to implement an arbitrator's award or settlement agreement constitutes an unfair labor practice. In *American Federation of Government Employees, Local 872 v. D.C. Water and Sewer Authority*, 46 D.C. Reg. 4398, Slip Op. No. 497 at p. 3, PERB Case No. 96-U-23 (1996), the Board held that "when a party simply refuses or fails to implement an award or negotiated agreement *where no dispute exists over its terms*, such conduct constitutes a failure to bargain in good faith and, thereby, an unfair labor practice under the CMPA." (emphasis added). However, in *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee v. D.C. Dep't of Youth Rehabilitation Services*, 59 D.C. Reg. 6755, Slip Op. No. 1127, PERB Case No. 11-U-31 (2011), the Board found that an agency did not act in bad faith in refusing to reinstate an employee as a

part of a negotiated agreement when it learned during the reinstatement process that reinstating the employee would be in violation of District law. *Id.* The Board concluded that such a scenario constitutes a genuine dispute over the terms of an agreement, and an agency does not violate the CMPA by failing to implement the terms of the agreement. *Id.*

The facts of the instant case are similar to those of *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*. Although that case involved a negotiated agreement and the instant case involves an arbitration award, the Board uses the same analysis under *AFGE Local 872*. *AFGE Local 872* at p. 3. In each case, an agency was obligated to reinstate an employee, and in each case the agency learned during the reinstatement process that District law prohibited the employee from being returned to his or her former position. Consistent with the precedent set by *Fraternal Order of Police/Dep't of Youth Rehabilitation Services Labor Committee*, the Board concludes that the Agency did not bargain in bad faith when it refused to reinstate the grievant to her former position as an elementary school teacher because it learned during the reinstatement process that the grievant did not possess a valid teaching license. Therefore, the Union's unfair labor practice complaint is dismissed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Washington Teachers Union, Local 6's Unfair Labor Practice Complaint is dismissed.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 10, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 05-U-07 was transmitted via U.S. Mail and e-mail to the following parties on this the 10th day of September, 2013.

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/s/ Erin E. Wilcox

Erin E. Wilcox, Esq.
Attorney-Advisor

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO,	
Complainant,	PERB Case No. 13-U-02
v.	Opinion No. 1421
District of Columbia Public Schools	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On October 9, 2012, Complainant Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("CSO" or "Union") filed an unfair labor practice complaint ("Complaint") against Respondent District of Columbia Public Schools ("DCPS"). CSO alleged that DCPS violated D.C. Code § 1-617.04(a)(1) and (5) of the Comprehensive Merit Personnel Act ("CMPA") by failing to provide written responses regarding CSO's compensation proposal and the matters of Janice Talley and Sharon Wells. (Complaint at ¶¶ 16-17). CSO requests that the Board order DCPS to immediately provide the requested information, post a notice informing the bargaining unit of its violation of the CMPA, award costs and fees pursuant to D.C. Code § 1-617.13(d), and take any other necessary and appropriate action the Board deems necessary. *Id.* at ¶ 19. DCPS denied the allegations in its answer ("Answer") and stated that it had, in fact, supplied CSO with the requested information. (Answer at 4). Therefore, DCPS requests that the Board dismiss the Complaint with prejudice. *Id.* at 5.

II. Factual Background

At the time of the Complaint, CSO and DCPS were conducting collective bargaining negotiations on a successor labor contract. (Complaint at ¶ 6, Answer at 2). Around August or

September 2010, CSO notified the Board that the two parties were at an impasse in their negotiations. (Complaint at ¶ 7, Answer at 2). CSO states that the parties attempted to break the impasse with a mediation session, but were unsuccessful. (Complaint at ¶¶ 8-9). DCPS denies this, stating they have no recollection of participating in a mediation session, but admits that their lead negotiator has since left DCPS so they cannot confirm or deny with certainty. (Answer at 2-3). Notwithstanding, both parties agree that the Board has since assigned an impartial arbitrator on August 28, 2012, to conduct an impasse arbitration hearing. (Complaint at ¶¶ 10-11, Answer at 3).

During this process, the parties continued to meet in order to break the impasse on their own, and CSO claims it sent a compensation proposal covering the bargaining unit to DCPS on or about July 24, 2012. (Complaint at ¶¶ 12-13). CSO claims that DPCS indicated that it would provide a written response to the proposal and a written explanation of its own bargaining position, but that it has since failed to provide either. *Id.* at ¶ 13. DCPS claims that on October 12, 2012, Arbitrator Lois Hochhauser held a status conference where the parties agreed that the only issue left to be resolved in the successor contract negotiations was compensation; the "Arbitrator's Summary of Proceeding and Order," included as an exhibit, confirms this. (Answer at 3; Respondent's Ex. 1). At the conference, DCPS's counsel requested an additional two weeks to submit its response to CSO's proposal and its last best offer, and CSO's counsel agreed. *Id.* The Arbitrator then ordered DCPS to provide its response and last best offer by October 26, 2012. *Id.* On October 17, 2012, DCPS provided its written response to CSO's proposal, and stated its intent to proceed with its original proposal rather than accept CSO's proposal. (Respondent's Ex. 2).

CSO also claims that it has sought a written response regarding the pending matters of Talley and Wells since its August 2012 monthly meeting with DPCS. (Complaint at ¶ 14). While the Complaint does not state what the matters were about, response letters from DCPS dated October 17, 2012, indicate that both Talley and CSO expressed concerns regarding her compensation, and that Wells had filed a grievance on August 15, 2012, regarding her termination. (Respondent's Ex. 2). CSO claims that information on both matters is relevant and necessary to processing grievances for Talley and Wells. (Complaint at ¶ 18). CSO further claims it raised these matters on a number of occasions during the monthly meetings, but that DCPS failed to respond despite indicating that it would do so. *Id.* at ¶ 14. On October 17, 2012, DCPS provided written responses on both matters, agreeing to pay a lump sum of $7,500 to Talley as a settlement, and refusing to process the Wells grievance. (Respondent's Ex. 2).

CSO alleges that DCPS violated § 1-617.04(a)(1) and (5) by failing to provide a written response to its compensation proposal and/or its last best offer and by consequently preventing CSO from being fully prepared for its impasse arbitration hearing. (Complaint at ¶ 16). CSO similarly alleges DCPS has violated § 1-617.04(a)(1) and (5) by failing to provide written responses regarding the Talley and Wells matters. *Id.* at ¶ 17. In its affirmative defenses, DCPS contended that CSO has failed to state a cause of action for which relief may be granted by the Board, and claimed that it had supplied CSO with all requested information. (Answer at 5).

III. Discussion

A. Decision on the Pleadings

The material facts of this case are undisputed. DCPS acknowledges that CSO made multiple requests for information. (Complaint at ¶¶ 13-15, Answer at 4). It is undisputed that CSO provided DCPS with a compensation proposal in July 24, 2012. (Complaint at ¶ 13, Answer at 4). The evidence shows that the requests concerning the Talley and Wells matters are undisputed as well. (Complaint at ¶ 14, Answer at 4). The Complaint alleged that CSO requested this information numerous times since the parties' monthly meeting in August, and DCPS had failed to respond despite indicating it would. (Complaint at ¶ 14). While DCPS denied the allegations in ¶ 14 of the Complaint, it only raised the defense that it did respond to both matters on October 17. (Answer at 4). The responses themselves clearly show their nature as responses to requests: the email to Talley explicitly states that it "will serve to confirm that [DCPS] has agreed to resolve the concerns you and [CSO] have expressed regarding your compensation", and the email to CSO about Wells explicitly states it "responds to your August 15th grievance regarding the termination of Ms. Wells' employment". (Respondent's Ex. 2). The fact that DCPS had not responded to CSO's information requests by October 9, the date CSO filed its Complaint, is undisputed by the parties, as the information was, in fact, provided on October 17. (Answer at 4, Respondent's Ex. 2).[1] Therefore, there are no disputes on material issues of fact or supporting evidence to warrant a hearing. This matter turns not on issues of fact but on a question of law, and can be appropriately decided on the pleadings pursuant to Board Rule 520.10.[2]

B. Compensation Proposal Response

The Board has previously ruled that "an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining." *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 59 D.C. Reg. 6781, Slip Op. No. 1131, PERB No. 09-U-59 at p.4 (2011); *see also FOP/MPD Labor Committee v. MPD*, 59 D.C. Reg. 3386, Slip Op. No. 835, PERB Case No. 06-U-10 (2006); *AFGE, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C. Reg. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002); *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. DCPS*, 54 D.C. Reg. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002). The response to CSO's compensation proposal clearly qualifies under this precedent, as it was relevant and necessary to the parties' collective bargaining and their upcoming arbitration proceeding. (Answer at 3, Respondent's

[1] *See also AFGE, AFL-CIO Local 2978 v. DC DOH*, 60 D.C. Reg. 2551, Slip. Op. No. 1356, PERB Case No. 09-U-23 (2013) (the fact that DOH had not responded to AFGE's request other than to request more time to comply by the date of the Complaint is among the undisputed facts justifying deciding the case based on the pleadings).

[2] Board Rule 520.10 provides as follows:

> If the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.

Ex. 1). Both parties agreed at the Arbitrator's status conference that compensation was the only issue that required resolution in their impasse regarding their successor contract. *Id.*

The Board has also previously ruled that "it is not enough that an agency respond, but it must do so in a timely manner". *DC DOH*, Slip Op. No. 1003 at p. 4; *see also CSO*, Slip Op. No. 977 at p. 8. The Board has ruled that periods of time as short as one and one-half months are a "more than reasonable" period of time to respond to information requests. *AFGE, Local 631 v. District of Columbia Water and Sewer Authority*, Slip Op. No. 924, PERB Case No. 08-U-04 at p. 5 (2007).[3] Here, CSO waited over two and a half months from July 24 to October 9 before filing its Complaint, and as previously stated, DCPS's primary defense is that it provided the information on October 17, eight days after the complaint was filed. (Complaint at ¶ 13, Answer at 5). However, the Board has previously ruled, in a case involving these very same parties, "that an agency does not satisfy its statutory obligations by eventual but belated responses, *particularly responses that are provided only after an unfair labor practice complaint has been filed.*" *CSO v. DCPS*, 59 D.C. Reg. 5378, Slip Op. No. 977, PERB No. 08-U-53 at pp. 7-8 (2009) (emphasis added); *see also American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003, PERB Case No. 09-U-65 at p. 4 (2009); *Doctors' Council of D.C. General Hospital v. D.C. Health and Hospitals Public Benefit Corp.*, 47 D.C. Reg. 10108, Slip Op. No. 641, PERB Case No. 00-U-29 (2000). Under this precedent, DCPS' belated response to CSO's information requests cannot justify its delay.

DCPS had more than a reasonable period of time to respond to CSO's compensation proposal, and its failure to do so constitutes a violation of the duty to bargain in good faith under D.C. Code § 1-617.04(a)(5). *See CSO*, Slip Op. No. 977 at p. 8 (citing *Psychologists Union, Local 3758 of the D.C. Department of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health*, 54 D.C. Reg. 2644, Slip Op. No. 809 at p. 7, PERB Case No. 05-U-41 (2005)). This violation also derivatively constitutes a violation of "the counterpart duty not to interfere with the employees' statutory rights to organize a labor union free from interference, restraint or coercion; to form, join or assist any labor organization or to refrain from such activity; and to bargain collectively through representatives of their own choosing" as protected by D.C. Code § 1-617.04(a)(1). *CSO*, Slip Op. No. 977 at p. 8 (quoting *AFSCME, Local 2776 v. D.C. Department of Finance and Revenue*, 37 D.C. Reg. 5658, Slip Op. No. 245, PERB Case No. 89-U-02 at p. 2 (1990)).

However, it is undisputed that the parties brought the matter of compensation before an impartial arbitrator in the October 12, 2012, status conference. (Answer at 3, Respondent's Ex. 1). The parties agreed that in regards to their impasse on the successor contract, this was the only issue that needed resolution. *Id.* This led to the Arbitrator's order that DCPS submit its written response to CSO's last best offer as well as their own by October 26, 2012. *Id.* The Arbitrator also ordered that the hearing on this matter take place on November 28, 2012. *Id.*

[3] *See also Woodland Clinc v. Engineers and Scientists of California, MEBA, AFL-CIO*, 331 NLRB 735 (2000) (rejecting contention that a seven week delay in providing requested information is insufficient to support an unfair labor practice finding).

According to a letter filed by DCPS's counsel in response to a request by the Board, the arbitration hearing has not taken place as of September 3, 2013. Letter from Dennis J. Jackson to Erin Wilcox (September 3, 2013). The Board will take no action on a case where arbitration is pending; the proper course of action is to hold complaints in abeyance pending voluntary arbitration of identical facts. *See AFSCME, Local 2093 v. District of Columbia Board of Education*, Slip Op. No. 10, PERB Case No. 80-U-05 (April 17, 1981).[4] Therefore, the Board rules that the allegation regarding CSO's compensation proposal be held in abeyance pending the outcome of the impasse arbitration hearing.

C. Talley and Wells Responses

Both the Talley and Wells matters are concerns that are relevant and necessary to CSO's role in processing grievances, which DCPS is obligated to provide information about. *See FOP*, Slip Op. No. 1131 at p. 4; *MPD*, Slip Op. No. 835; *DC DPR*, Slip Op. No. 697; *Teamsters*, Slip Op. No. 804. The Complaint refers to both matters as grievances, and DCPS does not dispute this classification in its Answer. (Complaint at ¶ 18, Answer at 5). Furthermore, DCPS' October 17 response about the Wells matter explicitly refers to it as a grievance, and the response about the Talley matter agrees to pay her a lump sum of $7,500 in exchange for closing the matter to "any further appeals, claims or actions, administrative or legal of any kind." (Respondent's Ex. 2).

CSO alleges it has sought a written response on the Talley and Wells matters since its August 2012 monthly meeting with DCPS. (Complaint at ¶ 14). As stated previously, this fact is undisputed by DCPS, and the evidence provided shows that CSO made a request for a response on both matters, with the response on the Wells matter specifically referring to "your August 15th grievance". (Respondent's Ex. 2). CSO waited almost two months for responses on these matters before filing its Complaint; per Board precedent, this is a more than reasonable time to respond to an information request. *See DC WASA,* Slip Op. No. 924 at p. 5.

The matter of arbitration prevented the Board from ruling on the matter of CSO's compensation proposal, due to precedent of deference to the arbitration process. *See DC BOE*, Slip Op. No. 10. However, the arbitration process does not affect the allegations regarding the Talley and Wells matters. Both parties agreed that the only matter to be resolved by arbitration is that of compensation. (Answer at 3, Respondent's Ex. 1). Therefore, the allegations concerning the Talley and Wells matters can be decided by the Board.

Under the facts and evidence of this case, DCPS has failed to meet its statutory duty of good faith bargaining, thereby violating D.C. Code § 1-617.04(a)(5). *See CSO*, Slip Op. No. 977 at p. 8 (citing *Psychologists*, Slip Op. No. 809 at p. 7). As stated previously, DCPS's failure to

[4] *See also AFGE, AFL-CIO, et al. v. District of Columbia, et al.*, 45 D.C. Reg. 8071, Slip Op. No. 502, PERB Case No. 97-U-01 at p. 2 (1996) (granting a Motion to Hold Hearing in Abeyance pending the Completion of Mediation/Arbitration); *District of Columbia v. AFGE, District 14, et al.*, 33 D.C. Reg. 3918, Slip Op. No. 142, PERB Case No. 86-U-03 (1986) (dismissing a Complaint on the ground that the issues raised were previously decided by an Arbitrator in a case involving dual jurisdiction or an arbitrator in a contract dispute and the Board in a statutory dispute arising from the same factual circumstances).

bargain in good faith derivatively violates D.C. Code § 1-617.04(a)(1) as well. *Id.* (quoting *DC DFR*, Slip Op. No. 245 at p. 2).

Since we have determined that DCPS has violated the CMPA by not providing the requested information regarding the Talley and Wells matters to CSO in a timely manner, we now turn to the issue of the appropriate remedy. CSO asks that the Board order DCPS to: (1) provide CSO with the information it seeks concerning the Talley and Wells matters; (2) post an appropriate notice that DCPS violated D.C. law and will cease and desist from future violations; (3) award costs and fees pursuant to D.C. Code § 1-617.13(d)[5]; and (4) take any other action the Board deems necessary to remedy the unfair labor practice. (Complaint at ¶ 19).

The fact that DCPS provided the requested information regarding the Talley and Wells matters on October 17 is undisputed. (Answer at 4, Respondent's Ex. 2). Therefore, CSO's request that the Board order DCPS to provide the requested information regarding the Talley and Wells matters is moot.

DCPS shall post a notice acknowledging that it has violated the CMPA. Board precedent states that "when a violation is found, the Board's order is intended to have therapeutic as well as remedial effect. Moreover, the overriding purpose and policy of relief afforded under the CMPA for unfair labor practices, is the protection of rights and obligations." *CSO*, Slip Op. No. 977 at p. 9 (quoting *National Association of Government Employees, Local R3-06 v. DC WASA*, 47 D.C. Reg. 7551, Slip Op. No. 635, PERB Case No. 99-U-04 at pp. 15-16 (2000)). Moreover, "it is the furtherance of this end, i.e., the protection of employees rights, ... [that] underlies [the Board's] remedy requiring the posting of a notice to all employees concerning the violation found and the relief afforded...." *Id.* (quoting *Bagenstose v. DCPS*, 41 D.C. Reg. 1493, Slip Op. No. 283, PERB Case No. 88-U-33 at p. 3 (1991)). Furthermore, "a notice posting requirement serves as a strong warning against future violations." *Id.* (quoting *Cunningham v. FOP/MPD Labor Committee*, 49 D.C. Reg. 7773, Slip Op. No. 682, PERB Case Nos. 01-U-04 and 01-S-01 at p. 10 (2004)).

CSO has also requested that reasonable costs be awarded pursuant to § 1-617.13(d). (Complaint at ¶ 19). The Board has ruled that it may, under certain circumstances, award reasonable costs, stating:

> First, any such award of costs necessarily assumes that the party to whom the payment is to be made was successful in at least a significant part of the case, and that the costs in question are attributable to that part. Second, it is clear on the face of the statute that it is only those costs that are "reasonable" that may be ordered reimbursed... Last, and this is the [crux] of the matter, we

[5] D.C. Code § 1-617.13(d) provides as follows:

> The Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine.

> believe such an award must be shown to be in the interest of justice.
>
> Just what characteristics of a case will warrant the finding that an award of costs will be in the interest of justice cannot be exhaustively catalogued... What we say here is that among the situation in which such an award is appropriate are those in which the losing party's claim or position was wholly without merit, those in which the successfully challenged action was undertaken in bad faith, and those in which a reasonabl[y] foreseeable result of the successfully challenged action is the undermining of the union among the employees for whom it is the exclusive bargaining representative.

DC DFR, Slip Op. No. 245 at pp. 4-5.[6]

In the present case, the Board has found that DCPS failed to respond for two months to CSO's information requests regarding the Talley and Wells matters. Though DCPS eventually responded on October 17, it could not fulfill its statutory obligations with a belated response, particularly because an unfair labor practice complaint on those matters had already been filed eight days prior. *See CSO*, Slip Op. No. 977 at pp. 7-8; *DC DOH*, Slip Op. No. 1003 at p. 4; *Doctors' Council*, Slip Op. No. 641. Therefore, DCPS has not articulated a viable defense or countervailing concern which outweighs its duty to disclose the requested information. (Answer at 5). The Board finds that under the circumstances of this case: (1) DCPS' position was wholly without merit; and (2) a reasonably foreseeable result of DCPS' conduct was the undermining of CSO among the employees for whom it is the exclusive representative.

In view of the above, we believe that the interest-of-justice criteria articulated in Slip Op. No. 245 would be served by granting CSO's request for reasonable costs in the present case. Therefore, the Board grants CSO's request for reasonable costs. However, calculation of the reasonable costs shall be deferred until the resolution of the remaining allegation in this proceeding.

For the reasons discussed above, the Board concludes that DCPS has violated the CMPA by failing to provide information to the CSO. The remaining allegation concerning DCPS' failure to timely respond to CSO's compensation proposal shall be held in abeyance pending the outcome of the parties' impasse arbitration hearing.

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[6] The Board has previously ruled that § 1-617.13 does not authorize it to award attorney fees. *See CSO,* Slip Op. No. 977 at p. 9; *International Brotherhood of Police Officers, Local 1445, AFL-CIO/CLC v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); *University of the District of Columbia Faculty Association NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

ORDER

IT IS ORDERED THAT:

1. DCPS, its agents and representatives shall cease and desist from interfering with, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVII Labor-Management Relations" of the Comprehensive Merit Personnel Act ("CMPA") to bargain collectively through representatives of their own choosing.

2. DCPS shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining-unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.

3. Within fourteen (14) days from the issuance of this Decision and Order, DCPS shall notify the Public Employee Relations Board ("Board"), in writing, that the Notice has been posted accordingly.

4. For the reasons stated in this Slip Opinion, the CSO's request for reasonable costs is granted with respect to the costs associated in this proceeding for prosecuting DCPS' violation for failure to timely respond to CSO's requests for information regarding the Talley and Wells matters. However, calculation of the reasonable costs shall be deferred until the Board issues a decision on the remaining allegation concerning DCPS' alleged failure to timely respond to CSO's July 24, 2012 compensation proposal.

5. The remaining allegation concerning DCPS' alleged failure to timely respond to CSO's July 24, 2012 compensation proposal shall be held in abeyance pending the outcome of the parties' impasse arbitration hearing.

6. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

September 24, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-02 was transmitted via File & ServeXpress to the following parties on this the 24th day of September, 2013.

Mr. Mark Murphy, Esq.
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& Welch, PC
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FILE & SERVEXPRESS

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/s/ Erin E. Wilcox

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Attorney-Advisor

PERB Public Employee Relations Board

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NOTICE

TO ALL EMPLOYEES OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS ("DCPS"), THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1421, PERB CASE NO. 13-U-02 (September 24, 2013).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we violated the law and has ordered DCPS to post this notice.

WE WILL cease and desist from violating D.C. Code § 1-617.04(a)(1) and (5) by the actions and conduct set forth in Slip Opinion No. 1421.

WE WILL cease and desist from interfering, restraining, or coercing employees in the exercise of rights guaranteed by the Labor-Management subchapter of the Comprehensive Merit Personnel Act ("CMPA").

WE WILL cease and desist from refusing to bargain collectively in good faith with the Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO ("CSO").

WE WILL NOT, in any like or related manner, interfere, restrain or coerce employees in their exercise of rights guaranteed by the Labor-Management subchapter of the CMPA.

WE WILL NOT, in any like or related manner, refuse to bargain collectively in good faith with CSO.

District of Columbia Public Schools

Date:_____ By:_____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, whose address is: 1100 4th Street, SW, Suite E630; Washington, D.C. 20024. Phone: (202) 727-1822.

BY NOTICE OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 24, 2013

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725,	
Complainant,	PERB Case No. 13-A-13
v.	Opinion No. 1444
District of Columbia Department of Consumer and Regulatory Affairs,	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner American Federation of Government Employees, Local 2725 ("Union," "AFGE," or "Petitioner") filed the above-captioned Arbitration Review Request ("Request"), seeking review of Arbitrator Homer LaRue's Arbitration Award ("LaRue Award"). Petitioner asserts that the Arbitrator's Award is contrary to "well-defined and dominant law" and should be remanded. (Request at 2).

Respondent District of Columbia Dep't of Consumer and Regulatory Affairs ("Agency," "DCRA," or "Respondent") filed an Opposition to the Union's Arbitration Review Request ("Opposition"). The Request and Opposition are now before the Board for disposition.

II. Procedural History

A. Background

On July 25, 2008, the late Arbitrator John Truesdale issued an Arbitration Award ("Truesdale Merits Award") sustaining the Union's grievance and awarding back pay for two grievants. (Request at 2; Opposition at 2). The Agency filed an Arbitration Review Request with the Board, challenging the Truesdale Merits Award. (Request at 2-3; Opposition at 2).

While that Arbitration Review Request was pending, the Union submitted a Petition for Attorney fees to Arbitrator Truesdale, which was granted on January 16, 2009 ("Truesdale Fee Award"). (Request at 2; Opposition at 2). The Agency filed a second Arbitration Review Request with the Board, challenging Arbitrator Truesdale's award of attorneys' fees at the rate allowed. (Request at 2-3; Opposition at 2). On September 30, 2009, the Board denied both Arbitration Review Requests, dismissing the merits Arbitration Review Request as untimely, and dismissing the attorneys' fees Arbitration Review Request for failure to meet the criteria for reversal under D.C. Code § 1-605.02(6). *D.C. Dep't of Consumer and Regulatory Affairs v. American Federation of Government Employees, Local 2725*, 59 D.C. Reg. 5392, Slip Op. No. 978, PERB Case No. 09-A-01 (2009); *D.C. Dep't of Consumer and Regulatory Affairs v. American Federation of Government Employees, Local 2725*, 59 D.C. Reg. 5502, Slip Op. No. 992, PERB Case No. 09-A-03 (2009).

The Agency petitioned for review of the Board order regarding attorneys' fees to the D.C. Superior Court. (Request at 3; Opposition at 2). On August 19, 2010, the D.C. Superior Court affirmed the Board's order on attorneys' fees. (Request at 4; Opposition at 2; *See D.C. Dep't of Consumer and Regulatory Affairs v. D.C. Public Employee Relations Board*, No. 2009 CA 008104 B (D.C. Super. Ct. Aug. 19, 2010)). Following the D.C. Superior Court's decision, the Union petitioned Arbitrator Truesdale for supplemental fees, and Arbitrator Truesdale issued an order for additional briefing on the matter. (Request at 4). The Agency challenged Arbitrator Truesdale's order for additional briefing before the Board, alleging procedural and substantive defects in the briefing order. *See D.C. Dep't of Consumer and Regulatory Affairs v. American Federation of Government Employees, Local 2725*, 59 D.C. Reg. 15198, Slip Op. No. 1338, PERB Case No. 11-A-01 (2012). On October 18, 2012, the Board dismissed the Agency's challenge, finding that a briefing order is not a final arbitration award and is thus not appealable. *Id.* at 2.

Prior to the issuance of Slip Op. No. 1338, Arbitrator Truesdale passed away. (Request at 4; Opposition at 2). The parties selected Arbitrator LaRue to arbitrate the Union's claim for supplemental attorneys' fees. (Request at 5; Opposition at 2). On July 31, 2013, Arbitrator LaRue ruled in favor of the Agency, finding that he lacked jurisdiction to consider and grant the Union's second petition for attorneys' fees. (Request at 5; Opposition at 2). The Union appealed the LaRue Award, and this appeal is the matter presently before the Board.

B. Truesdale Award on Attorneys' Fees

Arbitrator Truesdale was asked to determine whether the Union's petition for attorneys' fees had merit, and if so, in what amount fees should be granted. (Truesdale Fee Award at 2). Arbitrator Truesdale noted that in the Union's post-hearing brief in the underlying grievance proceedings, the Union requested that he retain jurisdiction for the purposes of resolving any disputes involved in effecting the underlying award, and for the purpose of determining any attorneys' fees to which the Union may be entitled based upon his findings. (Truesdale Fee Award at 4). The Arbitrator concluded that contrary to the Agency's arguments, the parties' collective bargaining agreement ("CBA")'s silence with respect to attorneys' fees did not deprive

him of jurisdiction to decide and award attorneys' fees, nor was the *functus officio*[1] doctrine controlling. (Truesdale Fee Award at 10). Instead, Arbitrator Truesdale determined that the Federal Back Pay Act ("BPA"), 5 U.S.C. §5596, conferred jurisdiction to decide the Union's petition for attorneys' fees. *Id.* After addressing the BPA's standards for evaluating attorneys' fee requests, and the prerequisites for an award of attorneys' fees, the Arbitrator concluded that an award of attorneys' fees was appropriate, and awarded the Union's attorney $40, 964.00. (Truesdale Fee Award at 10-14).

C. LaRue Award on Supplemental Attorneys' Fees

Following Arbitrator Truesdale's death and the Board's refusal to halt the processing of the Union's supplemental attorneys' fee request, Arbitrator LaRue was asked to consider the Union's supplemental fee petition. (Request at 5; Opposition at 2). Arbitrator LaRue was asked to determine whether he had jurisdiction to consider and grant the Union's supplemental petition for attorneys' fees. (LaRue Award at 5).

Arbitrator LaRue first analyzed the application of the doctrine of *functus officio* to the supplemental attorneys' fee petition. (LaRue Award at 13). Arbitrator LaRue found that he "stands in the shoes of Arb[itrator] Truesdale as to the issue of the arbitrator's jurisdiction to hear this matter." (LaRue Award at 14). He noted that in Slip Op. No. 1338 (the Agency's challenge to Arbitrator Truesdale's briefing order), the Board "was quite clear that it dismissed the [Agency's] [arbitration review request] because it was premature." *Id.* However, Arbitrator LaRue noted that in dismissing the Agency's arbitration review request, the Board "express[ed] no opinion on the questions the arbitrator directed the parties to brief." *Id*; *citing* Slip Op. No. 1338 at p. 2. Further, Arbitrator LaRue found that the Board made no findings of fact or conclusions of law on the question of whether the doctrine of *functus officio* applied to Arbitrator Truesdale's authority to hear the supplemental fee petition. *Id.*

Arbitrator LaRue then examined a portion of Slip Op. No. 992 (regarding the Truesdale Fee Award), in which the Board wrote:

> DCRA first argues that the arbitrator issued the present award [i.e., the attorneys' fee award] "after his jurisdiction ended on October 24," and therefore he exceeded his jurisdiction. [Citation omitted]. Where the Board has no precedent on an issue, it looks to precedent set by other Labor Relations Authorities such as the Federal Labor Relations Authority ("FLRA"). It is well settled that an Arbitrator may retain jurisdiction after issuing a final and binding award on the merits for the purpose of resolving questions relating to attorney fees. [Footnotes omitted]. Moreover, the retention of jurisdiction by the Arbitrator for the purpose of resolving questions relating to attorney fees does not interfere in

[1] *Functus officio* is defined as "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." *Black's Law Dictionary* (9th ed. 2009).

> any way with the Agency's right to file exceptions to the award on the merits. [Footnote omitted].

(LaRue Award at 15; *citing* Slip Op. No. 992 at p. 4). Arbitrator LaRue found it clear from the language cited in Slip Op. No. 992 that the Board "premised its conclusion of law as to the issue of *functus officio* on the finding that Arb[itrator] Truesdale retained jurisdiction at the time that he issued the Merits Award" for the purpose of considering a request for attorneys' fees. (LaRue Award at 15). He concluded that "law-of-the case" in the Slip Op. No. 992 "goes only to the authority of Arb[itrator] Truesdale to issue an attorney fee award after the award on the merits where the award on the merits contained a clear retention of jurisdiction by the arbitrator," but that Board's decision in Slip Op. No. 992 did not speak to the question of Arbitrator Truesdale's authority to hear and decide the Union's request for a supplemental fee award following the issuance of the initial fee award in which there was no retention of jurisdiction. *Id.* at 15-16. In other words, "[t]he condition precedent for Arb[itrator] Truesdale's exercise of jurisdiction to hear and to decide the initial fee award request does not exist in the instant matter." (LaRue Award at 16). Arbitrator LaRue concluded that he could not exercise authority which Arbitrator Truesdale did not possess after issuing the initial fee award. *Id.*

Next, Arbitrator LaRue determined that the BPA is not an independent basis for arbitral jurisdiction. (LaRue Award at 16-18). Arbitrator LaRue rejected the Union's contention that the *functus officio* argument against jurisdiction does not apply in a dispute regarding attorneys' fees under the BPA. *Id.* at 16. The Arbitrator found that the Union had cited no cases supporting its position that an arbitrator has jurisdiction to consider a request for attorneys' fees "independent of the CBA and the law applicable thereto." *Id.* Further, Arbitrator LaRue found that while Section 7701(g) of the BPA outlines the standards for the award of attorneys' fees, it "does not establish the BPA as the jurisdiction basis for the seeking of such fees." *Id.* Arbitrator LaRue interpreted the language of Section 5596(b)(1) of the BPA to mean that employees "found by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement" to have been adversely affected by a wrongful personnel action are entitled to an award of attorneys' fees, but the arbitrator "must look to the CBA and the law pertaining to arbitration under a collective bargaining agreement for his source of authority" to entertain the petition in dispute in the instant case. *Id.* at 17. He concluded that only if the parties' CBA grants an arbitrator authority to act does the BPA "set the basis" for that action. *Id.*

Arbitrator LaRue found that there was nothing in the language of the BPA to provide an independent basis for arbitral jurisdiction over the Union's supplemental fee petition. (LaRue Award at 17). Instead, the Arbitrator concluded that the doctrine of *functus officio* applied to the instant case, and he did not have authority to hear or decide the issue of supplemental attorneys' fees raised by the Union before Arbitrator Truesdale. *Id.*[2]

[2] Additionally, Arbitrator LaRue noted that the parties argued "other points" in their briefs on the supplemental fee petition. (LaRue Award at 18). The Arbitrator stated that he "need not address all of those other issues of contract interpretation or equity irrespective of their merit." *Id.*

Finally, Arbitrator LaRue determined that the limited nature of the inquiry in the instant case did not cure the jurisdictional defect. (LaRue Award at 18-19). In so concluding, he considered the Union's argument that:

> [G]iven that the instant Arbitrator will have before him an extremely limited inquiry, that is, he need only determine whether the attorney fees were reasonable for the oppositions the Union had to file to defend the late Arbitrator Truesdale's awards, there is no rational basis for determining that he cannot make such an inquiry.

(LaRue Award at 18). Additionally, the Arbitrator noted the Union's contention that the Agency should not be able to "bollix up the case sufficiently such that the delay that ensues may mean that the arbitrator will not be alive to hear the petition of legitimate attorney fees." *Id.* Arbitrator LaRue agreed with the Union that the Agency's "dilatory tactics" seemed contrary to the purpose of the attorneys' fees provision of the BPA, as well as that the inquiry before him would be limited in nature and practically feasible to accomplish, should he be able to reach the merits of the dispute. *Id.* However, the Arbitrator found that "[n]o matter how appealing the policy or prudential reasons might be for the assertion of jurisdiction in the instant matter, the arbitrator is a creature of the contract and must be bound by its terms." *Id.* at 18-19. He went on to note that a fundamental element of the parties' agreement to arbitrate a dispute is that "once the arbitrator's work has been completed – defined as the issuance of a final award – the arbitrator may take no further action absent the retention of jurisdiction beforehand." *Id.* at 19.

III. Discussion

A. Union's Position before the Board

In its Request, the Union alleges that Arbitrator LaRue's determination that he lacked jurisdiction to hear the supplemental fee petition because jurisdiction to hear such a petition was not specifically retained by the Arbitrator is contrary to "well-defined and dominant law, ascertained by significant legal precedent." (Request at 2). The Union contends that the BPA provides an independent statutory basis for an award of attorneys' fees following an award of back pay, and does not require any specific retention of jurisdiction by the arbitrator. *Id.* The Union asks the Board to remand the matter to Arbitrator LaRue with instructions to consider the Union's supplemental fee petition. *Id.*

Before elaborating on the merits of its Request, the Union points to several factual discrepancies in Arbitrator LaRue's Award. First, the Union states:

> In his Award, Arbitrator LaRue stated that the D.C. Superior Court issued 'orders of denial' of the Agency's challenges to the '[Board] decisions, which had affirmed the Merits Award as well as the Fee Award' on August 19, 2010, and October 18, 2012, respectively. [Citation omitted]. This statement is untrue, as the D.C. Superior

> Court did not issue any order regarding this case on October 18, 2012, or on any date close thereto; the D.C. Superior Court did not hear a petition for review of the merits award, as the Agency did not challenge the merits award in D.C. Superior Court; the decision that issued on August 19, 2010, was a fee award decision from the D.C. Superior Court [citation omitted], not a merits award decision; the October 18, 2012, Order was a [Board] Order, not a D.C. Superior Court Order, as stated by Arbitrator LaRue; and that Order was not affirming the fee award as stated by Arbitrator LaRue, but was instead the [Board's] denial of the Agency's challenge to a simple scheduling order for briefing issued by Arbitrator Truesdale on September 2010 regarding the Union's supplemental petition for fees.

(Request at 3-4). The Union contends that none of these matters were disputed by the parties, and were part of the record of this case before both the Board and the D.C. Superior Court. *Id.* at 4. The Union states that it is also undisputed that the Union did not seek supplemental attorneys' fees until after the D.C. Superior Court decision affirming the original fee award, and not prior to the issuance of the D.C. Superior Court decision, as stated by Arbitrator LaRue. *Id*; *citing* LaRue Award at 5.

In its Request, AFGE contends that Arbitrator LaRue's Award is contrary to law because the BPA does not require an arbitrator to specifically retain jurisdiction to hear a fee petition because the BPA provides an independent statutory basis for fee awards. (Request at 6). In support of this contention, the Union cites to several FLRA cases as "well-defined and dominant law" showing that the BPA is "legally an independent basis for jurisdiction over an award of attorney fees." (Request at 6-7). First, the AFGE points to *Philadelphia Naval Shipyard and Philadelphia Metal Trades Council (Philadelphia Naval Shipyard)*, 32 FLRA 417 (1998). (Request at 7). In that case, the union appealed an arbitrator's determination that he lacked jurisdiction to decide the merits of a fee petition filed after the successful resolution of the underlying case. (Request at 7-8). According to AFGE, the FLRA found that the arbitrator's position was contrary to law, noting that "where the Back Pay Act confers statutory jurisdiction on an arbitrator to consider an attorney fees request, the *functus officio* doctrine does not preclude an arbitrator from considering the request. We conclude, therefore, that the Back Pay Act confers jurisdiction on an arbitrator to consider an attorney fees request filed after an arbitrator's decision awarding backpay." (Request at 8; *citing Philadelphia Metal Trades Council*, 32 FLRA at 421). Further, AFGE asserts that the FLRA determined that under the BPA, "the specific retention of jurisdiction by the Arbitrator to hear a petition for attorney fees is unnecessary to establish arbitral jurisdiction to hear that petition." (Request at 9).

The Union contends that the FLRA's holding in *Philadelphia Metal Trades Council* is a "well-defined and dominant legal principle." (Request at 9). As an example, the Union cites to *Dep't of Defense, DLA and AFGE Local 2004*, 47 FLRA 791, 794 (1993), in which the FLRA remanded a case to an arbitrator with instructions to consider a fee petition because "no law or regulation...prohibits an arbitrator from considering a request for attorney fees filed within a

reasonable time after an award becomes final and binding." (Request at 9). AFGE states that the FLRA's holding "of course means that the failure to specifically retain jurisdiction for purposes of an attorney fee petition does not prohibit the arbitrator from considering that petition." *Id.* at 9-10. Further, AFGE points to *Alabama Ass'n of Civilian Technicians and Alabama Nat'l Guard*, 51 FLRA 1262, 1263-64 (1996), in which the FLRA held:

> [I]t is well-established that, under the Back Pay Act, 5 U.S.C 5596, and implementing regulations, 5 C.F.R. Part 550, an arbitrator may retain jurisdiction after issuing an award for the purpose of considering requests for attorney fees. (Citation omitted). However, an arbitrator is not required to do so in order to entertain a request for attorney fees. (Citation omitted.) Instead, as the Back Pay Act confers statutory jurisdiction on an arbitrator to consider an attorney fees request, such a request may be submitted to an arbitrator after issuance of an award…"

(Request at 10). Additionally, the Union notes that the BPA applies to DCRA, as the D.C. Court of Appeals has held that the attorney fee provision of the BPA was a component of the compensation system in effect as of December 31, 1979, and therefore applicable to District government employees. (Request at 11; *citing Zenian v. D.C. Office of Employee Appeals*, 589 A.2d 1161, 1163-4 (D.C. 1991) and *D.C. v. Hunt*, 520 A.2d 300, 304 (D.C. 1987)).

Finally, the Union contends that "it does not appear that the Arbitrator actually reviewed the Union's legal authority on the subject, as there is not a single reference in the Award to the above cases, to which the Union cited in its Brief." (Request at 11-12; *citing* Union Brief at 14-15). The Union hypothesizes that Arbitrator LaRue read only the Union's introductory paragraph on the subject in its Brief, which did not contain the legal authority, and "appears to have reviewed only the cases the Union provided for purposes of establishing that the Federal Back Pay Act applies to District of Columbia agencies, including the instant agency." (Request at 12; *citing* LaRue Award at 16, Union Brief at 12, n. 4). Additionally, the Union alleges that the Arbitrator misunderstood the Board's precedent regarding "the independent, statutory authority conferred by the Back Pay Act for purposes of attorney fee petitions." (Request at 12). The Union points to the Arbitrator's consideration of Slip Op. No. 992, from which he concluded that "[i]t is clear from the language cited that the PERB premised its conclusion of law as to the issue of *functus officio* on the finding of fact that Arb[itrator] Truesdale retained jurisdiction at the time that he issued the Merits Award." (Request at 12; *citing* LaRue Award at 15). AFGE states that contrary to Arbitrator LaRue's interpretation, the Board:

> fully explained in the decision that Arbitrator Truesdale had only retained jurisdiction to hear a petition for attorney fees until October 24, 2008, and her rendered his attorney fee decision on January 16, 2009, after the retained jurisdiction expired. Despite that expiration, the PERB found that the Arbitrator had not exceeded his jurisdiction. It is further clear that the above case does not stand for the proposition that the Arbitrator must

> specifically retain jurisdiction to hear an attorney fee petition under the Back Pay Act because the PERB cited approvingly in [Slip Op. No. 992] to Dep't of Treasury, Customs Services, Nogales and Nat'l Treasury Employees Union Chapter 116, 48 FLRA 938, 940-42 (1993), which relied upon Philadelphia Naval Shipyard, the dominant case holding that the Back Pay Act confers independent, statutory jurisdiction upon an arbitrator for purposes of awarding attorney fees. From these points, it is clear that the PERB was not stating in the [Slip Op. No. 992] case that the Arbitrator himself had specifically retained jurisdiction to hear a petition for attorney fees (and therefore he had authority to hear the petition), but that jurisdiction was retained within the Arbitrator via the Back Pay Act.

(Request at 12-13). Therefore, AFGE concludes that Arbitrator LaRue's determination that he lacked authority to hear a petition for fees is contrary to well-defined and dominant law, as ascertained by legal precedent, and that the violation is clear on the face of the LaRue Award. (Request at 13).

B. Agency's Position Before the Board

In its Opposition, the Agency contends that a recent U.S. Supreme Court case, *Oxford Health Plans, LLC v. John Ivan Sutter*, 133 S. Ct. 2064 (2013) mandates that the Board affirm Arbitrator LaRue's conclusion that he lacks jurisdiction to consider the supplemental fee petition. (Opposition at 3). The Agency asserts that in *Oxford*, the Supreme Court concluded that "[s]o long as an arbitrator 'makes a good faith attempt' [to] interpret a contract, 'even serious errors of law or fact will not subject his award to vacatur.'" 133 S.Ct. at 2068, *citing Sutter v. Oxford Health Plans, LLC*, 675 F.3d 215, 220 (3rd Cir. 2012). The Agency further notes that the Court found that "an arbitral decision 'even arguably construing or applying the contract' must stand regardless of a court's view of its (de)merits." *Id.*; *citing Eastern Associated Coal v. Mine Workers*, 531 U.S. 57 (2000).

The Agency draws further parallels between its case and *Eastern Associated Coal*, stating that the Supreme Court found that the parties' CBA gave the arbitrator the authority to interpret the agreement, and concluded that the parties had bargained for the arbitrator's construction of their agreement. (Opposition at 5-6; *citing Eastern Associated Coal*, 531 U.S. at 62). The Agency states that "[w]hen considering the public policy argument Eastern presented, [the] Court looked to the essential holding of *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757 (1983)," which required the public policy at issue to be explicit, well-defined, and dominant. (Opposition at 6; *citing Eastern Associated Coal*, 531 U.S. at 62).

Next, the Agency states "DCRA reviews the last five arbitration review request decisions that PERB issued. With the exception of the Schools case, all affirm the arbitrator's decision and all contain the jurisprudence of *Oxford* and *Eastern*. Thus, PERB is in harmony with the broad

outline of these precedents." (Opposition at 7). The Agency then lists, with no explanatory text, the following five cases:

1) *D.C. Public Schools v. Council of School Officers, Local 4, American Federation of School Administrators*, 60 D.C. Reg. 12075, Slip Op. No. 1402, PERB Case No. 13-A-09 (2013).

2) *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1396, PERB Case No. 04-A-01 (July 1, 2013).

3) *D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 60 D.C. Reg. 9281, Slip Op. No. 1390, PERB Case No. 12-A-07 (2013).

4) *Office of the Chief Technology Officer v. American Federation of State, County, and Municipal Employees, District Council 20, Local 2776*, 60 D.C. Reg. 7218, Slip Op. No. 1386, PERB Case No. 12-A-06 (2013).

5) *D.C. Dep't of Health v. American Federation of Government Employees, Local 2725*, 60 D.C. Reg. 7196, Slip Op. No. 1382, PERB Case No. 13-A-01 (2013).

(Opposition at 7).

Finally, the Agency alleges that the LaRue Award "shows full harmony with the Supreme Court precedent," and states that "[g]iven the broad powers and deference given to arbitration decisions, DCRA[] should prevail in the instant matter." (Opposition at 7). The Agency's argument is as follows:

> As his first step [the] Arbitrator understandably drew his jurisdictional power from the collective bargaining agreement. The CBA provides the process for selecting arbitrators and that was the methodology used to choose Arbitrator LaRue. The decision he wrote has a new FMCS docket number on it. The decisions rendered by Arbitrator Truesdale bear a different FMCS docket number. PERB can take "judicial notice" that FMCS's mission is to supply arbitrators to disputants bound to agreements that call for arbitration. Thus, it is specious when the union claims its petition for supplemental attorney fees has nothing to do with the foundational obligation to arbitrate that the CBA contains. The CBA provides for obtaining arbitrators through the auspices of the American Arbitration Association or the Federal Mediation and Conciliation Service.
>
> Article 10, Section E 12 provides: "The arbitrator shall have full authority to award a remedy." This sentence could not be clearer.

> It grants jurisdiction and empowers the arbitrator to award a remedy.
>
> After Mr. LaRue was selected he inquired about any question about his jurisdiction. DCRA immediately said he had no jurisdiction [and] that the doctrine of *functus officio* barred any further award of fees. Briefs were duly filed and he decided based upon the CBA and Mr. Truesdale's prior decision on fees.
>
> In support of his decision that he lacked jurisdiction [,] Arbitrator LaRue noted that Mr. Truesdale had not held onto jurisdiction in his attorney fee award of January 16, 2009. That meant that once Mr. Truesdale published his attorneys' fees decision to the parties, jurisdiction ended. The doctrine of *functus officio* attached to the entire case.
>
> Second, LaRue looked at the statutes admittedly governing the case. 5. U.S.C. §6696(b)(1) permits attorneys' fees to be awarded but requires a foundational nexus with some personnel event, here the collective bargaining agreement. 5 U.S.C. §7701(g)(1) allows for the award of fees, assuming jurisdiction exists. The statutory text and LaRue's emphasis of it is clear and direct. Without the foundation of the grievance arbitration process no jurisdiction exists to consider attorney fees. Moreover[,] Arbitrator LaRue's analysis is correct, always using the collective bargaining agreement as the foundation of his analysis. Therein he rejects the Union's bizarre idea that the claim for fees can be independent of the CBA. The Union's argument is as illogical as claiming a construction crew can completely build the second story before the crew substantially finishes the first story. Arbitrator LaRue always used the CBA as his foundation. Both *Oxford* and *Eastern* require that standard. Arbitrator LaRue was meticulous with his reading of Mr. Truesdale's attorneys' fees decision. Arbitrator LaRue saw that Mr. Truesdale had decided to relinquish jurisdiction over further fees by not retaining jurisdiction in the attorney fees award that he wrote. Arbitrator LaRue is absolutely correct in his decision: he had no jurisdiction and the matter is concluded.

(Opposition at 8-9; internal citations omitted).

C. Analysis

The Comprehensive Merit Personnel Act ("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. Code § 1-605.02(6) (2001 ed.).

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. A petitioner must demonstrate that the arbitration award "compels" the violation of an explicit, well defined, public policy grounded in law and or legal precedent. *See United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29 (1987). Furthermore, the petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 47 DC Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); *see also District of Columbia Public Schools v. American Federation of State, County and Municipal Employees, District Council 20*, 34 DC Reg. 3610, Slip Op. No. 156 at p. 6, PERB Case No. 86-A-05 (1987). Absent a clear violation of law evident on the face of the arbitrator's award, the Board lacks authority to substitute its judgment for the arbitrator's. *Fraternal Order of Police/Dep't of Corrections Labor Committee v. Public Employee Relations Board*, 973 A.2d 174, 177 (D.C. 2009).

In the instant case, the Union alleges that the LaRue Award violates law from the FLRA establishing the BPA as an independent basis for arbitral jurisdiction over an attorneys' fee petition. (Request at 6-7). The Agency does not oppose the Union's argument directly, but rather contends that the LaRue Award must be upheld because the Arbitrator was arguably construing the parties' CBA, and that the Board must defer to the Arbitrator's interpretation of the CBA. (Opposition at 3-7). The Board will not modify or set aside the LaRue Award unless it falls within one of the three exceptions stated in D.C. Code § 1-605.02(6). *See, e.g., D.C. Water and Sewer Authority v. AFGE Local 631*, 59 D.C. Reg. 4536, Slip Op. Nos. 931 at p. 5, PERB Case Nos. 07-A-05 and 07-A-06 (2008). Therefore, the Board must determine whether the BPA creates an independent basis for jurisdiction over the Union's supplemental fee petition, and if so, whether the LaRue Award is contrary to that law and public policy.

The question of whether the BPA confers jurisdiction upon an arbitrator to consider a second or supplemental petition for attorneys' fees after an initial petition for attorneys' fees has been granted is an issue of first impression before the Board. Where the Board has no precedent on an issue, it looks to precedent set by other labor relations authorities, such as the National Labor Relations Board and the Federal Labor Relations Authority. *Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, Slip Op. No. 1119 at p. 5, PERB Case No. 08-U-38 (Oct. 7, 2011); *citing Forbes v. Int'l Brotherhood of Teamsters, Local 1714*, 36 D.C. Reg. 7107, Slip Op. No. 229, PERB Case No. 88-U-20 (1989) *and Fraternal Order of Police/Metropolitan Police Dep't Labor Committee v. D.C. Metropolitan Police Dep't*, 48 D.C. Reg. 8530, Slip Op. No. 649, PERB Case No. 99-U-27 (2001).

The FLRA has definitively found that the BPA "confers jurisdiction on an arbitrator to consider a request for attorney fees filed within a reasonable time after an arbitrator's award becomes final and binding," and that where the BPA confers statutory jurisdiction, the *functus officio* doctrine does not preclude an arbitrator from considering the request. *Philadelphia Naval Shipyard*, 32 FLRA at 417-21; *see also U.S. Dep't of the Army Red River Army Depot,*

Texarkana, Texas and Nat'l Association of Government Employees, 39 FLRA 1215, 1221 (1991) (arbitrator erred in concluding that he must be specifically authorized by the parties' CBA to award attorney fees because such authority is conferred upon him by the BPA); *Nat'l Association of Government Employees, Local R4-106 and Dep't of the Air Force Langley Air Force Base Virginia*, 32 FLRA 1159, 1164 (1988) (arbitrator erred in concluding that the doctrine of *functus officio* prevented him from considering union's request for attorneys' fees). The Board cited this precedent with approval in Slip Op. 992, the Board's decision on the Agency's appeal of Arbitrator Truesdale's attorneys' fees award, where it noted that "[i]t is well settled that an Arbitrator may retain jurisdiction after issuing a final and binding award on the merits for the purpose of resolving question relating to attorney fees," and cited to *Dep't of the Treasury, Customs Service, Nogales and National Treasury Employees Union Chapter 116*, 48 FLRA 938, 940-42 (1993). Slip Op. 992 at p. 4 n. 6.

In *American Federation of Government Employees, Local 1148 and U.S. Dep't of Defense Supply Center, Columbus, Ohio*, the FLRA rejected an arbitrator's determination that he lacked authority to consider a union's attorneys' fee request because the parties' CBA limited him to answering only questions put before him by the parties. 65 FLRA 402, 403 (2010). Instead, the FLRA determined that the BPA confers jurisdiction on an arbitrator to consider a request for attorney fees at any time during the arbitration or within a reasonable period of time after the backpay award becomes final and binding, unless the parties' CBA "clearly and unmistakably" waives the statutory right to such fees. *Id.* Further, the FLRA has determined that even in instances where an arbitrator does not specifically retain jurisdiction to consider attorneys' fees, a party may file a request for fees within a reasonable time, "consistent with the [a]rbitrator's statutory jurisdiction" over a case. *Alabama ACT and Alabama Nat'l Guard*, 51 FLRA 1262, 1264 (1996); *see also American Federation of Government Employees, Local 2054 and VA Central Arkansas Healthcare System*, 58 FLRA 163, 164 (2002) (a union may file a fee petition with an arbitrator once an award has become final, regardless of whether the arbitrator retained jurisdiction to hear fee petitions).

In his Award, Arbitrator LaRue states:

> The specific language of [Section 5596(b)(1) of the BPA] requires that an employee be "...found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement..." to have been adversely affected by a wrongful personnel action. That then entitles the employee to seek attorney's fees. This means, however, that the arbitrator must look to the CBA and the law pertaining to arbitration under a collective bargaining agreement for his source of authority to entertain the petition at dispute here. If the arbitrator determines that the CBA grants the arbitrator authority to act then the Back Pay Act sets the basis for that action.

(LaRue Award at 17). In the instant case, the grievants were found by an arbitrator – an appropriate authority under the parties' CBA – to have been adversely affected by a wrongful

personnel action, and were awarded back pay. (Request at 2; Opposition at 2). Notwithstanding, as shown by the FLRA precedent above, the BPA provides an independent basis to seek attorneys' fees, *separate* and apart from any authority granted by a party's CBA.

The BPA provides for recovery of attorneys' fees if the request for fees is "related to the personnel action" giving rise to the dispute. 5 U.S.C. § 5596(b)(1)(A)(ii). Additionally, the purpose of the BPA is to "facilitate[] the retention of counsel by government employees who are victims of wrongful personnel actions. When such actions are successfully overcome, the government is required to pay lost income to the employee and to reimburse the costs of litigation." *Naekel v. Dep't of Transportation, Federal Aviation Administration*, 845 F.2d 976, 980 (Fed. Cir. 1988). The FLRA has held that if an arbitrator determines that attorneys' fees are warranted, that determination "applies to all subsequent phases of litigation involving the case if the grievant prevails in the subsequent litigation." *U.S. Dep't of Health and Human Services, Social Security Administration and American Federation of Government Employees, Local 1923*, 48 FLRA 1040, 1050 (1993); *see also U.S. Dep't of Justice, Bureau of Prisons, Washington, D.C. and Bureau of Prisons Federal Correctional Institution, Ray Brook, N.Y.*, 32 FLRA 20, 27 (1998), reversed in part and remanded as to other matters, *American Federation of Government Employees, Local 3882 v. FLRA*, 944 F.2d 922 (D.C. Cir. 1991) (agency's duty to comply with an arbitrator's final award extends to subsequent litigation to enforce compliance where the employee prevails). Further, attorneys' fees are "routinely awarded for time spent litigating entitlement to attorney fees." *American Federation of Government Employees, Local 3882 v. FLRA*, 994 F.2d 20, 22 (D.C. Cir. 1993) ("*AFGE Local 3882*"); *see also U.S. Dep't of Defense, Dependents Schools and Federal Education Association*, 54 FLRA 514, 520 (1998) ("*FEA*"). In *AFGE Local 3882*, the D.C. Circuit determined that although the legislative history is silent as to the exact purposes of the BPA's attorneys' fees provision, "it is undoubtedly intended to facilitate suits to enforce federal labor policy," and that without the ability to collect "fees for fees" under the BPA, there would be a chilling effect on both victims of unjustified personnel actions and the attorneys willing to represent them. *Id.* at 23. In *FEA*, the FLRA determined that under the BPA, time spent collecting attorneys' fees is related to the underlying personnel action and is recoverable. 54 FLRA at 520.

As acknowledged by Arbitrator LaRue in his Award, there is no dispute that the BPA applies to agencies of the District of Columbia government. (LaRue Award at 16); *see also Zenian v. D.C. Office of Employee Appeals*, 598 A.2d 1161 (D.C. 1991); *D.C v. Hunt*, 520 A.2d 300 (D.C. 1987). Further, the D.C. Court of Appeals determined that the attorneys' fees provision of 5 U.S.C. § 5596 "is not an administrative process or mechanism but is instead a concrete personnel entitlement or benefit," and a "restitutionary form of compensation for employees who are forced to litigate District personnel actions later determined to be improper." *District of Columbia v. Hunt*, 520 A.2d 300, 304 (1987). The Court held that attorneys' fees are a benefit that "merely returns these employees to the position they would have occupied if such improper action never took place." *Id.* Therefore, although this is a case of first impression for the Board, the Board has determined that the same precedents applied to federal employees in the FLRA's BPA decisions, should also apply to D.C. employees in cases involving the BPA brought before the Board.

The parties' CBA is silent as to attorneys' fees resulting from arbitration. The BPA provided independent authority for the original award of attorneys' fees, and there is no reason why that authority does not extend to the supplemental petition. The Union's request for supplemental attorneys' fees is related to the underlying personnel action giving rise to the instant case. Permitting the Union to collect attorneys' fees in this instance furthers the purpose of the BPA to "facilitate the retention of counsel by government employees who are victims of wrongful personnel actions." *Naekel*, 845 F.2d at 980. Arbitrator Truesdale determined that attorneys' fees were appropriate in this case, and that determination "applies to all subsequent phases of litigation involving the case if the grievant prevails in the subsequent litigation." *U.S. Dep't of Health and Human Services,* 48 FLRA at 1050.

The parties' CBA does not "clearly and unmistakably" waive the statutory right to attorneys' fees granted by the BPA and recognized by the Board. There is no precedent cited by the parties, and the Board can find none, limiting the BPA's grant of statutory authority to one attorneys' fee petition. With no limitation on the BPA's grant of jurisdiction over subsequent fee petitions, and no clear and unmistakable waiver on the statutory right to attorneys' fees in the parties' CBA, the Board finds that the BPA provides independent statutory jurisdiction for an arbitrator to consider the supplemental fee petition in this case. The LaRue Award is thus on its face contrary to law and public policy, and the matter will be remanded to the Arbitrator for consideration of the Union's supplemental fee petition.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 2725's Arbitration Review Request is granted.

2. The matter is remanded to Arbitrator Homer LaRue, with instructions to consider the American Federation of Government Employees, Local 2725's supplemental fee petition.

3. 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.

November 26, 2013

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-A-13 was transmitted to the following parties on this the 26th day of November, 2013.

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Attorney-Advisor

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO	
Petitioner.	PERB Case No. 14-RC-01
and	Opinion No. 1474
District of Columbia Public Service Commission,	
Agency.	

DECISION ON UNIT DETERMINATION AND VOLUNTARY RECOGNITION

On December 20, 2013, the American Federation of State, County and Municipal Employees, District Council 20, AFL-CIO, ("AFSCME") filed an "Amended Petition for Recognition" ("Petition") with the Public Employee Relations Board. AFSCME seeks to represent, for the purpose of collective bargaining, a unit of unrepresented professional and non-professional employees employed by the District of Columbia Public Service Commission ("PSC"). The Petition was accompanied by a showing of interest. In addition, a roster of petitioner's officers and a copy of petitioner's constitution and bylaws were included, as required by Board Rule 502.1 (d).

On January 28, 2014, PSC submitted an alphabetical list of employees. PERB determined that the Petitioner's showing of interest met Board Rule 502.2. Notices concerning the Petition were issued on January 30, 2014, for conspicuous posting for fifteen (15) consecutives where employees in the proposed unit are located at PSC. The Notices required that comments or requests to intervene be filed in the Board's office no later than February 28, 2014. One comment was received by PERB, but did not provide evidence that the proposed unit was inappropriate for collective bargaining. No comments or objections were received by any

professional employees in the proposed bargaining unit. PSC does not dispute the appropriateness of the proposed bargaining unit, pursuant to the criteria set forth under D.C. Official Code §1-617.09(a) (2001 ed.).

On May 1, 2014, AFSCME submitted additional evidence that more than fifty-percent (50%) of the proposed bargaining unit desired to be represented by AFSCME for the purposes of collective bargaining. On May 6, 2014, the Executive Director determined that a majority of the employees desired to be represented by AFSCME for the purposes of collective bargaining, including a majority of the professional employees. On May 28, 2014, PSC submitted comments indicating their willingness to voluntary recognize AFSCME as the exclusive representative.

The unit sought by AFSCME is as follows:

> All professional and non-professional employees employed by the District of Columbia Public Service Commission, excluding all management officials, supervisors, confidential employees, employees who are covered by another union's certification, employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title 1, Chapter 6, subchapter XVII of the D.C. Official Code.

The Comprehensive Merit Personnel Act ("CMPA"), as codified at D.C. Official Code § 1-617.09(a) (2001 ed.), requires that a community of interest exist among employees for a unit to be found appropriate by the Board for collective bargaining over terms and conditions of employment. An appropriate unit must also promote effective labor relations and efficiency of agency operations.

After reviewing the Petition, the Board finds that a community of interest exists among the employees for the proposed bargaining unit and promotes effective labor relations and efficiency of agency operations. In addition, there is no other labor organization currently representing this group of employees. In accordance with D.C. Official Code § 1-617.10(b)(5), a majority of the professionals have petitioned for the above-described unit. Therefore, the Board finds that the proposed bargaining unit constitutes an appropriate unit under the CMPA.

Board Rule 502.12 provides in relevant part that "the Board may permit the employing agency to recognize the labor organization without an election on the basis of evidence that demonstrates majority status (more than 50%) ... indicating that employees wish to be represented by the petitioning labor organization." PSC has expressed a willingness to voluntarily recognize AFSCME as the exclusive representative for the proposed unit.

The Board has reviewed the evidence and concludes that the proffered evidence submitted by AFSCME establishes the will of a majority of employees in the unit regarding their desire to be represented by AFSCME for the purpose of collective bargaining with the District of Columbia Public Service Commission and other terms and conditions of employment.

The Board finds in all other respects that the requirements of D.C. Official Code § 1-617.10 (b)(1) (2001 ed.) and Board Rule 502.12 have been met. Therefore, a certification of representation shall be granted to AFSCME without an election.

ORDER

IT IS HEREBY ORDERED THAT:

1. The following unit is an appropriate unit for collective bargaining over terms and conditions of employment:

   All professional and non-professional employees employed by the District of Columbia Public Service Commission, excluding all management officials, supervisors, confidential employees, employees who are covered by another union's certification, employees engaged in personnel work other than in a purely clerical capacity and employees engaged in administering the provisions of Title 1, Chapter 6, subchapter XVII of the D.C. Official Code.

2. Pursuant to D.C. Code § 1-617.10 (b) (1) (2001 ed.) and in accordance with Board Rule 502.12, the District of Columbia Public Service Commission, is permitted to voluntarily recognize, without an election, the American Federation of States, County and Municipal Employees, District Council 20, AFL-CIO, as the collective bargaining representative of the unit found to be appropriate above.

3. The attached Certification of Representative is granted to AFSCME as the exclusive collective bargaining representative for the unit found appropriate for the purpose of collective bargaining over compensation and other terms and conditions of employment.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

June 4, 2014

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Keith Allison, et al.	
Complainants,	PERB Case No. 14-S-04
v.	Opinion No. 1477
Fraternal Order of Police/ Department of Corrections Labor Committee	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On May 15, 2014, Keith Allison, Andra Parker, Julia Broadus, Almeada Allen, Edwin Hull, Jannease Johnson, and Bernard Bryant ("Complainants") filed a Standards of Conduct Complaint ("Complaint") against the Fraternal Order of Police/Department of Corrections Labor Committee ("Union" or "FOP"). Complainants allege Union Chairman, John Rosser, improperly removed Complainants Julia Broadus and Almeada Allen from the 2014 FOP/DOC Election Committee in violation of Article 9.3 of the Union's by-laws : Duties that governs the time frame and the manner in which the FOP/DOC Chairman can exercise his rights under Article 9.2 of the Union by-laws related to removal and appointment of all standing committee chairmen subject to ratification by the Executive Board. (Complaint at 3). The Complainants also moved for Preliminary Injunctive Relief requesting the Board grant preliminary relief and enjoin the May 16, 2014, FOP/DOC Labor Committee Election. (Complaint at 20). On June 4, 2014, FOP filed an answer to the Complaint.

II. Discussion

A. Motion for Preliminary Injunctive Relief

The Complainants' Motion for Preliminary Injunctive Relief was submitted to enjoin FOP from conducting elections scheduled to be held on May 16, 2014. Complainants did not submit their Motion until May 15, 2014, the day before the election.

The criteria the Board employs for granting preliminary relief in a standards of conduct complaint case under Board Rule 544.15 provides:

> The Board may order preliminary relief. A request for such relief shall be accompanied by affidavits or other evidence supporting the request. Such relief may be granted where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged violation is widespread; or the public interest is seriously affected; or the Board's processes are being interfered with, and the Board's ultimate remedy may be inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. *See AFSCME, D.C. Council 20, et al. v. D.C. Government, et al.*, 42 D.C. Reg. 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). Board Rule 544.15 substantially mirrors Board Rule 520.15, and thus the Board applies a similar standard to Board Rule 544.15 as Board Rule 520.15. In determining whether or not to exercise its discretion under Board Rule 520.15, this Board has adopted the standard stated in *Automobile Workers v. NLRB*, 449 F.2d 1046 (CA DC 1971). There, addressing the standard for granting relief before judgment under Section 10(j) of the National Labor Relations Act, the Court of Appeals - - held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by *pendente lite* relief." *Id.* at 1051. "In those instances where [this Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been] restricted to the existence of the prescribed circumstances in the provisions of Board Rule [544.15] set forth above." *Clarence Mack, et al. v. FOP/DOC Labor Committee, et al.*, 45 D.C. Reg. 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

In the present case, the relief sought for the Motion is now moot, and the Board declines to address the merits of the Motion. Therefore, the Motion for Preliminary Injunctive Relief is denied.

B. Standards of Conduct Complaint

It appears to the Board that the crux of the Complaint is that Complainants allege that removal of Complainants Broadus and Allen from the FOP Election Committee was unlawful and in violation of Article 9.3 of the bylaws. (Complaint at 3, 13). Respondent denies the allegations. (Answer at 10, 13). Further, the Complainants seem to allege that various election procedures were conducted in violation of the Union's bylaws. The Union denies the allegations that the election was improperly conducted.

The Respondent asserts that the Complainants have failed to assert any particularized harm. (Answer at 5). Further, the Respondent argues that the Complainants fail to state a claim for which relief may be granted. (Answer at 8). The Respondent argues that, even if there was a violation of the bylaws, a violation of the bylaws is not, standing alone, a standard of conduct violation. *Id.* The Respondent asserts that "[t]he instant Complaint provides no basis for any of

its claims beyond conjecture...." *Id.* Therefore, the Respondent argues that the standard of conduct complaint is outside of the Board's jurisdiction.

In order to determine the Board's jurisdiction, it is necessary to determine whether the allegations, if proven, would violate D.C. Official Code § 1-617.03(a). A complainant does not need to prove his/her case on the pleadings, but he/she must plead or assert allegations that, if proven, would establish a statutory violation of the CMPA. *Osekre v. American Federation of State, County, and Municipal Employees, Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998). The Board views contested facts in the light most favorable to the complainant in determining whether the complaint gives rise to a violation of the CMPA. *Id.*

A *pro se* litigant is entitled to a liberal construction of his/her pleadings when determining whether a proper cause of action has been alleged. *Thomas J. Gardner v. District of Columbia Public Schools and Washington Teachers' Union, Local 67, AFT AFL-CIO*, 49 DC. Reg. 7763, Slip Op. No. 677, PERB Case Nos. 02-S-01 and 02-U-04 (2002).

Therefore, pursuant to Board Rule 544.8, the Board orders the parties to an investigatory conference with the parties.

III. Conclusion

As the Complainant's Motion for Preliminary Injunctive Relief is moot, the Board denies the Motion. The Board has determined that an investigatory conference with the parties is necessary prior to any further action by the Board.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Motion for Preliminary Injunctive Relief is denied.
2. Pursuant to Board Rule 544.8, the parties will be scheduled for an investigatory conference concerning the Standards of Conduct Complaint.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Donald Wasserman, and Member Ann Hoffman

Washington, D.C.

June 9, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 14-S-04 was transmitted to the following Parties on the 11th of June, 2014.

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Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 07-U-10
	Opinion No. 1478
v.	
District of Columbia Metropolitan Police Department,	
Respondent.	

DECISION AND ORDER ON REMAND

This matter comes before the Board on remand from the Superior Court of the District of Columbia pursuant to its order reversing and remanding the decision of the Board in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 4548, Slip Op. No. 932, PERB Case No. 07-U-10 (2008).

The case was brought by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP"), which alleged in its complaint that the Metropolitan Police Department ("MPD") ordered officers in the First District to report to the Office of Internal Affairs ("OIA") for an administrative investigation. FOP alleged that MPD committed an unfair labor practice by refusing to allow a union representative to be present at the officers' interviews. MPD asserted in its answer that the Board did not have jurisdiction as the issue of union representation during investigatory questioning is addressed in the parties' collective bargaining agreement.

The case was assigned to a Hearing Examiner, who held a hearing and received briefs from the parties. In his Report and Recommendation, the Hearing Examiner made these findings of fact:

> The collective-bargaining agreement's Article 13, entitled "Investigatory Questioning" described three types of formal questioning conducted by MPD; administrative interview, criminal interview, and interrogation. Article 13 defines an administrative interview as: "Formal official questioning conducted by the Department to question an employee about an administrative matter." The same article defines a criminal interview as: "Formal official questioning conducted by the Department to question an employee about a criminal matter, where the member has not been identified as a target." The final classification of questioning is interrogation which Article 13 defines as: "Formal official questioning conducted by the Department of a member who has been, or may be, identified as a target of a criminal investigation." Article 13 also permits an FOP representative to be present at all administrative interviews. However, the same article declares: "In no event may a Union representative be present during any criminal interview or interrogation."
>
> In late July 2006, OIA received a complaint regarding a police officer assigned to MPD's First District. The report of the complaint recited that the police officer had confined a handcuffed individual to a police patrol wagon for about two hours. The complainant also asserted that the officer grabbed him, was rough with him, and slammed him against a car. The complainant also asserted that the police officer handcuffed him too tightly and had attempted to extort $50 from the complainant in exchange for release from custody. . . .
>
> Agent Rivera . . . formally interviewed the complainant. . . . [Rivera] visit[ed] the First District and obtain[ed] a list of the names of those of its police officers, who were on duty at the time of the incident described in the complainant's statement to Rivera.
>
> According to Agent Rivera's credited testimony, on July 31 he telephoned Sgt. Dukes, at the First District and informed him of the criminal investigation and the list of the First District officers, who were to be interviewed about the alleged incident. . . .
>
> Officer Deciutiis[1] arrived at OIA's office in time to greet Officer Mazloom, the first of the five officers to arrive for the interviews. Approximately ten minutes after Officer Mazloom arrived in the

[1] FOP's shop steward for the First District

> OIA's waiting area, Agent Rivera appeared and invited him into the interview room. At this point, Officer Deciutiis intervened and identified himself as an FOP representative for Mazloom. Rivera stated that Mazloom was not entitled to FOP representation and that he would explain why to Mazloom in the interview room. Rivera did not inform any of the First District officers of the nature of the investigation and the purpose of their interviews, respectively, until each entered the interview room. . . .
>
> Before the interview began, Agent Rivera told Officer Mazloom to relax, that "this is a criminal investigation. . . ." Continuing, Rivera told Mazloom: "You're just a potential witness in this case, I'm trying to determine if, at all you have any information that could help me to investigate this. . . ." Rivera also explained that Mazloom was not entitled to FOP representation at this interview because it was a criminal case and that he would be entitled to such representation in administrative investigations. . . .
>
> I also find from [Rivera's] testimony that he conducted the interviews of all the other First District officers who reported to OIA's office on that day in the same manner he employed in interviewing Officer Mazloom.

(Report and Recommendation 2-5.)

In his analysis and conclusions, the Hearing Examiner observed that the National Labor Relations Act "guarantees an employee's right to the presence of a union representative at an investigatory interview in which the risk of discipline reasonably inheres," *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251, 262 (1975), and that the Board had recognized that right under the Comprehensive Merit Personnel Act ("CMPA"). (Report and Recommendation 5) (citing *D.C. Nurses Ass'n v. D.C. Health & Hosps. Pub. Benefit Corp.*, 45 D.C. Reg. 6736, Slip Op. No. 558, PERB Case Nos. 97-U-16, 97-U-26 (1998)). The Hearing Examiner found that a risk of discipline did not reasonably inhere in the interviews in question:

> Fearing that they might be involved in an administrative investigation which might impact adversely upon their employment, they had asked Shop Steward Deciutiis to be with them. However, at that point, Rivera made clear to each officer that he or she was involved in a criminal investigation, and that he or she was not a target of the investigation. Thus, did Rivera lay to rest any reason for each interviewee's uncertainty about possible harm to their respective jobs as MPD officers.

(Report and Recommendation 6.) The Hearing Examiner concluded that FOP did not show that the officers were entitled to union representation during their interviews and recommended dismissal of the complaint. (*Id.*)

The Board rejected the Hearing Examiner's recommendation for the reason that Agent Rivera did not tell the officers that they were not targets of the investigation until after their request for representation, based upon a reasonable fear of discipline, had been denied. "The right to representation attaches when an employee reasonably fears discipline might arise from an interview and requests representation. By denying union representation at that point, the Board concludes that MPD's actions constitute a violation of D.C. Code § 1-617.04(a)(1)." *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 4548, Slip Op. No. 932 at p. 5, PERB Case No. 07-U-10 (2008). The Board summarily denied MPD's motion for reconsideration. *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 9817, Slip Op. No. 1283, PERB Case No. 07-U-10 (2008).

On judicial review, the Superior Court noted that a party to a collective bargaining agreement can waive a statutory right through clear and unmistakable language in the agreement. *Gov't of D.C. v. D.C. Pub. Employee Relations Bd.*, No. 2012 CA 005842P, slip op. at 6 (Super. Ct. June 10, 2013). Federal courts have indicated that *Weingarten* rights are subject to modification or clarification through the collective bargaining process. *Id.* at 7 (citing *U.S. Nuclear Regulatory Comm'n v. Fed. Labor Relations Auth.*, 25 F.3d 229, 230 (4th Cir. 1994)). The Superior Court observed that modification of *Weingarten* rights is reasonable in the context of criminal law enforcement and held that FOP agreed to modify *Weingarten* rights in its collective bargaining agreement. *Gov't of D.C. v. D.C. Pub. Employee Relations Bd.*, slip op. at 7. In article 13, section 3(b) of the collective bargaining agreement, which states that "[i]n no event may a Union representative be present during any criminal interview or interrogation," FOP waived any right of its members under the CMPA to have a union representative present during criminal interviews of its members.[2]

The Superior Court stated that neither the Board nor FOP disputed that Agent Rivera questioned the officers about a criminal matter. *Id.* at 8. That the interviews were criminal not administrative was decisive, yet neither the Hearing Examiner nor the Board considered this issue, the court averred. The court stated:

> PERB did not consider whether § 3(b) categorically excludes union representatives from criminal interviews, regardless of whether the officer reasonably fears criminal prosecution and related discipline as a result of the interview.

[2] "Interestingly enough," FOP acknowledges in its post-hearing brief, "this provision in the contract is a significant curtailment of employee rights enumerated by the Supreme Court in *Weingarten*." (Complainant's Post-Hearing Brief 10.)

> PERB's only discussion of the jurisdictional issue was that "In the present case, the Board has found nothing in the record which indicates that the Union is asserting a contractual violation as the basis for its complaint." PERB Decision at 6. That is correct, but PERB's precedent makes clear that the key question is whether "an interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed."

Id. at 9 (quoting *F.O.P. /Metro. Police Dep't Labor Comm. v. District of Columbia*, 59 D.C. Reg. 6039, Slip Op. No. 1007 at p. 8, PERB Case No. 08-U-41(2009)).

The answer to "the key question" of "whether an interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed" depends upon the facts and circumstances of the individual case. For example, the Board has held in document request cases that if the allegations made in the complaint concern statutory violations, the Board is empowered to decide whether a response to a document request was an unfair labor practice, even though the document request was made pursuant to a contractual provision. *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 5337, Slip Op. No. 1374 at p. 10, PERB Case No. 06-U-41 (2013); *F.O.P./Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 59 D.C. Reg. 11371, Slip Op. No. 1302 at p. 16, PERB Case Nos. 07-U-49, 08-U-13, and 08-U-16 (2012). However, in *AFSCME, D.C. Council 20, Local 2921 v. District of Columbia Public Schools*, 42 D.C. Reg. 5685, Slip Op. No. 339 at p. 5, PERB Case No. 92-U-08 (1992), the Board held that it did not have jurisdiction to consider a complaint regarding an agency's failure to provide the union with a step 3 grievance decision on the ground that the obligation to furnish that information was dictated by the collective bargaining agreement.

In *F.O.P./Metropolitan Police Department Labor Committee v. D.C. Metropolitan Police Department*, 60 D.C. Reg. 2585, Slip Op. No. 1360, PERB Case No. 12-U-31 (2013), *aff'd, F.O.P./Metropolitan Police Department Labor Committee v. D.C. Public Employee Relations Board*, No. 2013 CA 001289P (Super. Ct. Apr. 18, 2014), MPD refused to allow the union representative designated by an interviewee to be present during an administrative interview. MPD relied upon article 13, section 3(a) of the collective bargaining agreement, which allows MPD to refuse a particular union representative for good cause. The Board held that "it lacks jurisdiction over this matter because the very event giving rise to the complaint was expressly envisioned and authorized by the parties in their CBA, and because, in order to determine if a statutory violation occurred, the Board would need to interpret the parties' CBA, which it does not have the authority to do."*Id.* at p. 5.

That is not the situation in the present case. The issue here is that the Agency denied a union representative to be present for an interview it had *not yet characterized*, making it impossible for the interviewee and the Union representative to know which if any provision of the collective bargaining agreement applied. If the interviewee at that point could reasonably fear discipline arising from the interview, he had a *statutory* right to representation.

In the present case, the Superior Court found that PERB had an "obligation to defer to the grievance procedure to resolve what is at bottom a contractual dispute about whether a union representative had a right to attend criminal interviews." *Gov't of D.C. v. D.C. Pub. Employee Relations Bd.*, slip op. at 10. Any argument FOP might have suggesting that article 13, section 3(b) of the collective bargaining agreement did not exclude union representation in this case, the court asserted, would be for an arbitrator to consider. The court reversed the Board's decision and remanded the case for proceedings not inconsistent with the order.

In view of the holding and order of the Superior Court, we dismiss FOP's complaint and vacate Slip Opinion No. 932. Were the same facts involving a denial of union representation without contemporaneous disclosure of the nature of the interview to be presented to the Board in the future, we may not follow the decision of the Superior Court in this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The complaint is dismissed.

2. The Order in Opinion No. 932 is vacated.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Members Donald Wasserman and Ann Hoffman

Washington, D.C.

June 9, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 07-U-10 is being transmitted via U.S. Mail to the following parties on this the 24th day of June, 2014.

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/s/ Yvonne P. Waller

Yvonne P. Waller
Administrative Officer

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