VOL. 61 – NO. 36 FRIDAY, AUGUST 29, 2014

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 20-422, Fair Criminal Record Screening Amendment Act of 2014
- Office on Aging proposes a code of conduct for providing services to seniors in the District of Columbia
- Office of Tax and Revenue proposes guidelines for collecting taxes on the newly taxable services
- Public Charter School Board schedules a public hearing on new school applications
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the Great Streets and H Street NE Small Business Capital Improvement Grants
- Public Charter School Board provides list of schools with approved charter amendments
- Public Service Commission schedules community hearings on the Triennial Underground Infrastructure Improvement Projects Plan

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.

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DISTRICT OF COLUMBIA
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BOARDS, COMMISSIONS, AND AGENCIES

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-421

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 19, 2014

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to change the name of the District's Annuitants' Health and Life Insurance Employer Contribution Trust Fund to the Other Post-Employment Benefits Fund ("Fund"), to specify requirements for payment and calculation of the District's annual contribution to the Fund, to include requirements for actuarial analyses conducted for the Fund, to require the Mayor and District agencies or instrumentalities to provide information necessary for the administration of the Fund, to require the preparation of various studies for the Fund, to require that the Chief Financial Officer rebid its contract with an enrolled actuary every 5 years, to create an annual audit requirement, to require an annual report, to require that a proposed reprogramming of monies from the Fund be deemed disapproved unless a resolution is introduced to approve the reprogramming, and to establish an Other Post-Employment Benefits Fund Advisory Committee, and to amend the Confirmation Act of 1978 to make the Other Post-Employment Benefits Fund Advisory Committee subject to the provisions of the act

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Other Post-Employment Benefits Fund Amendment Act of 2014"

Sec 2 The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D C Law 2-139, D C Official Code § 1-601 01 *et seq*), is amended as follows

(a) The table of contents is amended as follows

(1) Title XXI is amended by adding sections designations 2109a through 2109f to read as follows

"SEC 2109a CALCULATION OF DISTRICT OF COLUMBIA PAYMENT TO OTHER POST-EMPLOYMENT BENEFITS FUND

"SEC 2109b ACTUARIAL STATEMENT AND OPINION

"SEC 2109c INFORMATION ABOUT THE OTHER POST-EMPLOYMENT BENEFITS SYSTEM

"SEC 2109d PREPARATION OF STUDIES, ENROLLED ACTUARY

"SEC 2109e ANNUAL AUDIT

"SEC 2109f ANNUAL REPORT, PROHIBITION ON REPROGRAMMING"

(2) A new Title XXI-A is added to read as follows

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"XXI-A OTHER POST-EMPLOYMENT BENEFITS FUND ADVISORY COMMITTEE
"SEC 2151 ESTABLISHMENT OF THE OTHER POST-EMPLOYMENT BENEFITS FUND ADVISORY COMMITTEE
"SEC 1252 COMPOSITION AND TERM
"SEC 1253 DUTIES
"SEC 1254 MEETINGS AND RECORDS"

(b) Section 2109 (D C Official Code § 1-621 09) is amended as follows

(1) Subsection (c) is amended by striking the phrase "Annuitants' Health and Life Insurance Employer Contribution Trust Fund" and inserting the phrase "Other Post-Employment Benefits Fund" in its place

(2) New subsections (d-1) and (d-2) are added to read as follows

"(d-1) Each fiscal year, the District shall ensure that a sufficient amount is appropriated for the Fund, as the District of Columbia payment to the Fund, which shall be equal to, or greater than, the amount calculated as provided for in section 2109a, and as determined by the enrolled actuary engaged pursuant to section 2109a(a)

"(d-2) If at any time the balance of the Fund is not sufficient to meet all obligations against the Fund, the Fund shall have claims on the revenues of the District of Columbia to the extent necessary to meet the obligation, subject to appropriation "

(c) New sections 2109a through 2109f are added to read as follows

"Sec 2109a Calculation of District of Columbia payment to Other Post-Employment Benefits Fund

"(a)(1) As specified in paragraph (2) of this subsection, the Chief Financial Officer shall engage an enrolled actuary to make the following determinations as of a specified date on the basis of the entry age normal funding method and in accordance with generally accepted actuarial principles and practices with respect to the Fund

"(A) The normal cost, determined as a level percentage of covered annual payroll,

"(B) The unfunded accrued liability payment, which, for the purposes of this section, means the level amount or the level percentage of covered annual payroll that, when contributed annually to the Fund for a period of not greater than 30 years, would be sufficient to fund the liability for benefits accrued by participants as of the valuation date ("accrued liability") in excess of the current value of assets of the Fund ("unfunded accrued liability"),

"(C) The current value of the assets in the Fund,

"(D) The estimated covered annual payroll, and

"(E) Such additional information as the Chief Financial Officer may need to make the determinations specified in paragraph (4) of this subsection and in subsection (b) of this section

"(2) Unless the actuary engaged by the Chief Financial Officer pursuant to paragraph (1) of this subsection determines that a more frequent valuation is necessary to support the actuary's opinion, the actuary shall make the determinations described in paragraph (1) of this subsection upon the request of the Chief Financial Officer and at least once every year

"(3)(A) On the basis of the most recent determinations made under paragraph (1)

of this subsection, the enrolled actuary shall certify to the Chief Financial Officer each year, at a time specified by the Chief Financial Officer, the following information for the next fiscal year with respect to the Fund

"(i) The normal cost,

"(ii) The present value of future benefits payable from the Fund for covered employees as of the valuation date,

"(iii) The unfunded accrued liability payment,

"(iv) The current value of assets as of the valuation date, and

"(v) The value of assets used in developing the amortization of unfunded accrued liability payment

"(B) In calculating the District's annual required contribution to the Fund, a closed amortization period of 30 years or less shall be used

"(4) On the basis of the most recent certification submitted by the enrolled actuary under paragraph (3) of this subsection, the Chief Financial Officer shall certify the sum of the normal cost and the unfunded accrued liability payment ("amount of the District payment") for the next fiscal year for the Fund

"(b)(1) On the basis of the most recent determinations made under subsection (a)(4) of this section, the Chief Financial Officer shall, by February 1st of each year, certify to the Mayor and the Council the amount of the District contribution to the Fund

"(2) The Mayor, in preparing each annual budget for the District of Columbia pursuant to section 442 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 798, D C Official Code § 1-204 42), and the Council, in adopting each annual budget in accordance with section 446 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 801, D C Official Code § 1-204 46), shall, for the Fund, include in the budget no less than the amount of the District payment for the Fund certified by the Chief Financial Officer under paragraph (1) of this subsection The Mayor and the Council may comment and make recommendations concerning any such amount certified by the Chief Financial Officer

"(c)(1) Before the enactment of any law, resolution, regulation, rule, or agreement producing any change in health and life insurance benefits for annuitants, the Mayor shall notify the Chief Financial Officer, who in turn shall engage and pay for an enrolled actuary to estimate the effect of that change in benefits over the next 5 fiscal years on the

"(A) Accrued liability of the Fund,

"(B) Unfunded accrued liability of the Fund,

"(C) Unfunded accrued liability payment with respect to the Fund,

"(D) Normal cost with respect to the Fund, and

"(E) The District's annual required contribution to the Fund

"(2) The Mayor shall transmit the estimates of the actuary to the Chief Financial Officer and the Council, and the change in benefits shall not become effective until the end of a 30-day period of review, which shall begin on the date of the Mayor's transmittal

"Sec 2109b Actuarial statement and opinion

"(a) As a part of the actuarial report presented to the Chief Financial Officer, the actuary

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shall prepare an actuarial statement The statement shall contain

"(1) The dates of the fiscal year and the most recent actuarial valuation,

"(2) The total amount of the contributions made by participants and the total amount of all other contributions, including the District payment, received for the fiscal year and for each preceding fiscal year for which the information was not previously reported,

"(3) The number of participants, whether or not retired, and beneficiaries receiving benefits covered as of the last day of the fiscal year,

"(4) The following information as of the date of the most recent actuarial valuation and, if available and sufficiently comparable so as not to be misleading, for at least the 2 preceding actuarial valuations

"(A) The aggregate annual compensation of participants,

"(B) The actuarial value of assets of the Fund,

"(C) The actuarial accrued liability, if applicable,

"(D) The difference between the actuarial value of assets of the system and actuarial accrued liability, if applicable,

"(E) The actuarial value of assets of the system expressed as a percentage of actuarial accrued liability, if applicable,

"(F) The difference between the actuarial liability expressed as a percentage of the aggregate annual compensation of participants, if applicable, and

"(G) The actuarial assumptions and methods used in determining the information described in this paragraph and other factors that significantly affect the information described in this paragraph, and

"(5) Other information necessary to disclose fully and fairly the actuarial condition of the Fund

"(b)(1) The actuarial report shall also contain an opinion of the enrolled actuary on the actuarial statement attesting that

"(A) To the best of the actuary's knowledge the statement is complete and accurate,

"(B) Each assumption and method used in preparing the statement is reasonable, and the assumptions and methods in the aggregate are reasonable, taking into account (but not limited to) the experience of the benefits system, and

"(C) The assumptions and methods in combination offer the actuary's best estimate of anticipated experience

"(2) In formulating an opinion, the actuary may rely on the correctness of any accounting matter as to which any qualified public accountant has expressed an opinion, if the actuary so indicates

"(c) The actuarial statement and opinion required by this section shall be included as part of the annual report required pursuant to section 2109f(a)(1)

"(d) For the purposes of sections 2109b through 2109e, the term "benefits system" means the District's system for funding and administering other post-employment benefits to annuitants

"Sec 2109c Information about the other post-employment benefits system

"Upon request by the Chief Financial Officer, the Mayor and the head of any District agency or instrumentality shall furnish to the Chief Financial Officer information with respect to the benefits system to which this title applies as the Chief Financial Officer considers necessary to enable it to carry out its responsibilities under this title and to enable the enrolled actuary engaged pursuant to section 2109a(a) to carry out its responsibilities under this title

"Sec 2109d Preparation of studies, enrolled actuary

"The Chief Financial Officer shall

"(1) Direct the enrolled actuary engaged pursuant to section 2109a to

"(A) From time to time, prepare an experiential study for the Fund,

"(B) Each fiscal year, prepare an asset allocation study for the Fund, and

"(C) Prepare such other analyses as are best practice for other post-employment benefits funds or the District of Columbia Retirement Board, and

"(2) Rebid its contract with an enrolled actuary no less frequently than every 5 years

"Sec 2109e Annual audit

"(a) The Office of the Chief Financial Officer shall engage an independent qualified public accountant to conduct an annual audit of the Fund in accordance with generally accepted auditing standards The examination shall involve such tests of the books and records of the Fund as are considered necessary by the accountant The independent qualified public accountant shall also offer an opinion as to whether the separate schedules required by subsection (b) of this section and the summary material required under section 2109a present fairly, in all material respects, the information contained therein when considered in conjunction with the financial statements taken as a whole The opinion by the independent qualified public accountant shall be made a part of the annual report required pursuant to section 2109f In offering the opinion, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary if the accountant so states this reliance

"(b)(1) The financial statement shall contain a statement of assets and liabilities, and a statement of changes in net assets available for benefits under the benefits system, which shall include details of revenues and expenses and other changes aggregated by general source and application In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant

"(A) A description of the benefits system, including any significant changes in the system made during the period and the impact of the changes on benefits,

"(B) The funding policy (including the policy with respect to prior service cost), and any changes in the policy during the year,

"(C) A description of any significant changes in benefits made during the period,

"(D) A description of material lease commitments, other commitments, and contingent liabilities,

"(E) A description of agreements and transactions with persons known to be parties in interest, and

"(F) Any other matters necessary to fully and fairly present the financial

statements of the Fund

"(2) The statement required under paragraph (1) of this subsection shall have attached the following information in separate schedules

"(A) A statement of the assets and liabilities of the Fund, aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year,

"(B) A statement of receipts in and disbursements from the Fund during the preceding 12-month period, aggregated by general source and application,

"(C) A schedule of all assets held for investment purposes, aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether the party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value,

"(D) A schedule of each transaction involving a person known to be a party in interest, the identity of the party in interest and the party of interest's relationship, or that of any other party in interest, to the Fund, and

"(i) A description of each asset to which the transaction relates,

"(ii) The purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan,

"(iii) Expenses incurred in connection with the transaction, and

"(iv) The cost of the asset, the current value of the asset, and the net gain or loss on each transaction,

"(E) A schedule of all loans or fixed-income obligations that were in default as of the close of the fiscal year or were classified during the year as uncollectible and the following information with respect to each loan on the schedule (including a notation as to whether parties involved are known to be parties in interest)

"(i) The original principal amount of the loan,

"(ii) The amount of principal and interest received during the reporting year,

"(iii) The unpaid balance,

"(iv) The identity and address of the obligor,

"(v) A detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), and

"(vi) The amount of principal and interest overdue (if any) and an explanation thereof,

"(F) A list of all leases that were in default or were classified during the year as uncollectible, and the following information with respect to each lease on the list (including a notation as to whether parties involved are known to be parties in interest)

"(i) The type of property leased (and, if fixed assets such as land, buildings, and leaseholds, then the location of the property),

"(ii) The identity of the lessor or lessee from or to whom the Fund is leasing,

"(iii) The relationship of the lessors and lessees, if any, to the

Fund, the government of the District of Columbia, any employee organization, or any other party in interest,

"(iv) The terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options,

"(v) The date the leased property was purchased and its cost,

"(vi) The date the property was leased and its approximate value at that date,

"(vii) The gross rental receipts during the reporting period,

"(viii) Expenses paid for the leased property during the reporting period,

"(ix) The net receipts from the lease,

"(x) The amounts in arrears, and

"(xi) A statement as to what steps have been taken to collect amounts due or otherwise remedy the default,

"(G) The most recent annual statement of assets and liabilities of any common or collective trust maintained by a bank or similar institution in which some or all the assets of the Fund are held, of any separate account maintained by an insurance carrier in which some or all of the assets of the Fund are held, and of any separate trust maintained by a bank as trustee in which some or all of the assets of the Fund are held, and for each separate account or a separate trust, such other information as may be required by the Chief Financial Officer to comply with this subsection, and

"(H) A schedule of each reportable transaction, the name of each party to the transaction (except that, for an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold), and

"(i) A description of each asset to which the transaction applies,

"(ii) The purchase or selling price if a sale or purchase, the rental rate if a lease, or the interest rate and maturity date if a loan,

"(iii) Expenses incurred in connection with the transaction, and

"(iv) The cost of the asset, the current value of the asset, and the net gain or loss on each transaction

"(3) For the purposes of paragraph (2)(H) of this subsection, the term "reportable transaction" means a transaction to which the Fund is a party and which is

"(A) A transaction involving an amount in excess of 5% (or other percentage that may be established from time to time by the United State Department of Labor for "reportable transactions") of the current value of the assets of the Fund,

"(B) Any transaction (other than a transaction respecting a security) that is part of a series of transactions with or in conjunction with a person in a fiscal year, if the aggregate amount of the transactions exceeds 5% (or other percentage that may be established from time to time by the United States Department of Labor for reportable transactions) of the current value of the assets of the Fund,

"(C) A transaction that is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of the transactions in the fiscal year

exceeds 5% (or other percentage that may be established from time to time by the United States Department of Labor for reportable transactions) of the current value of the assets of the Fund, or

"(D) A transaction with, or in conjunction with, a person respecting a security, if any other transaction with or in conjunction with the person in the fiscal year respecting a security is required to be reported by reason of subparagraph (A) of this paragraph

"Sec 2109f Annual report, prohibition on reprogramming

"(a)(1) By April 1st of each year, the Office of the Chief Financial Officer shall publish an annual report regarding the Fund

"(2) The annual report published pursuant to this subsection shall include

"(A) Along with the assumptions for the Fund used by the enrolled actuary pursuant to section 2109b, a side-by-side comparison with the assumptions currently used by the District of Columbia Retirement Board,

"(B) A side-by-side comparison of the Fund's asset allocation and the District of Columbia Retirement Board's asset allocation for the prior fiscal year,

"(C) The most recent recommendations transmitted by the Other Post-Employment Benefits Fund Advisory Committee pursuant to section 2153, and

"(D) A description of actions taken by the Chief Financial Officer in response to the recommendations described in paragraph (2)(C) of this subsection, including an explanation of why no action was taken on a recommendation, if applicable

"(b)(1) Notwithstanding D C Official Code §§ 47-363(b)-(d), upon receipt of a reprogramming request of monies in the Fund, the Chairman of the Council shall cause a notice of the request to be published in the District of Columbia Register, together with a statement that the request shall be deemed disapproved 10 days from the date of publication in the District of Columbia Register, unless a proposed approval resolution is filed before that time by a Councilmember, and that if a proposed approval resolution is filed, the request shall be deemed disapproved 30 days (excluding weekends, holidays, and days of Council recess) from the date of the receipt of the reprogramming request, unless before the end of the 30-day review period the Council adopts a resolution of disapproval or approval

"(2) The publication of a notice of a reprogramming request shall satisfy the public notice requirements of this section and the rules of the Council and no further notice shall be necessary for the Council to adopt a resolution affecting the request

"(3) The Council shall consider the reprogramming request according to its rules No reprogramming request may be submitted to the Chairman of the Council under this subsection during such time as the Council is on recess, according to its rules, nor shall any time period provided in this subsection or in the Council's rules with respect to the request continue to run during such time as the Council is on recess

"(4)(A) If no proposed approval resolution of a reprogramming request is filed with the Secretary to the Council ("Secretary") within 10 days of the publication of the request from the Mayor in the District of Columbia Register, the request shall be deemed disapproved

"(B) If a proposed approval resolution is filed with the Secretary to the Council within 10 days of publication of the reprogramming request from the Mayor in the District of Columbia Register, the Council may approve or disapprove the reprogramming

request by resolution within 30 days (excluding weekends, holidays, and days of Council recess) of the receipt of the request from the Mayor If the Council neither affirmatively approves or disapproves the request within 30 days (excluding weekends, holidays, and days of Council recess) of the receipt of the request, the request shall be deemed disapproved

"(5) At any time before final action by the Council on a reprogramming request, including deemed disapproval, the Mayor may withdraw the reprogramming request "

(d) A new Title XXI-A is added to read as follows

"TITLE XXI-A

"OTHER POST-EMPOYMENT BENEFITS FUND ADVISORY COMMITTEE

"Sec 2151 Establishment of the Other Post-Employment Benefits Fund Advisory Committee

"There is established an Other Post-Employment Benefits Fund Advisory Committee ("Advisory Committee") to advise the Office of the Chief Financial Officer in its administration of the Other Post-Employment Benefits Fund ("Fund") established pursuant to section 2109(c)

"Sec 2152 Composition and term

"(a) The Advisory Committee shall consist of 7 members selected as follows

"(1) One individual appointed by the Council of the District of Columbia,

"(2) One individual appointed by the Mayor,

"(3) Four individuals appointed by the Chief Financial Officer, and

"(4) One individual who is either a member of the District of Columbia Retirement Board ("Board") or a member of the Board's professional staff

"(b) Advisory Committee members shall have expertise in one or more of the following areas

"(1) Accounting,

"(2) Employee benefits law,

"(3) Financial advisory services,

"(4) Government administration,

"(5) Investment management, and

"(6) Life and health insurance plans

"(c) Each member of the Advisory Committee shall serve a 5-year term

"(d) A vacancy on the Advisory Committee shall be filled in the same manner in which the original appointment was made

"(e) An Advisory Committee member whose term has expired may continue to serve as a member until a replacement member has been appointed

"(f) A member appointed to replace a member who has resigned, dies, or is no longer able to serve (as determined by the Advisory Committee) shall serve for the remainder of the unexpired term of the member being replaced

"(g) The Advisory Committee shall elect a chairperson by majority vote on an annual basis

"(h) Members shall serve without compensation, but shall receive actual and necessary expenses incurred in the performance of their official duties

"(i) The Mayor, Council, and Chief Financial Officer shall appoint members to the

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Advisory Committee within 90 days of the effective date of the Other Post-Employment Benefits Fund Amendment Act of 2014, passed on 2nd reading on July 14, 2014 (Enrolled version of Bill 20-627)

"Sec 2153 Duties

"(a) The Advisory Committee shall

"(1) Advise the Office of the Chief Financial Officer regarding

"(A) General administration of the Fund,

"(B) Fund investment objectives and practices,

"(C) Fund portfolio composition and asset allocation,

"(D) Authorized Fund investments,

"(E) The creation of relevant assumptions necessary for administration of the Fund,

"(F) Selection of other post-employment benefits consultants and other professionals, including

"(i) Actuaries,

"(ii) Accountants

"(iii) Financial advisors,

"(iv) Investment managers, and

"(v) Lawyers,

"(2) Review the policies and practices of the Office of the Chief Financial Officer with regard to the Fund and provide recommendations regarding best practices,

"(3) Review and critique the investment performance of the Fund, and

"(4) Advise the Office of the Chief Financial Officer regarding the potential for collaboration or consolidation with the District of Columbia Retirement Board in the management of the Fund in order to promote efficiency

"(b) By February 1st of each fiscal year, the Advisory Committee shall transmit written recommendations to the Chief Financial Officer for inclusion in the annual report for the Fund pursuant to section 2109f(a)(2)(C)

"Sec 2154 Meetings and records

"(a) The Advisory Committee shall hold no fewer than 2 meetings per year The chairperson of the Advisory Committee shall fix the time and place of each meeting

"(b) The meetings of the Advisory Committee shall not be subject to the Open Meetings Act, effective March 31, 2011 (D C Law 18-350, D C Official Code § 2-571 *et seq*)

"(c) Except for the written recommendations transmitted to the Chief Financial Officer pursuant to section 2153(b), any record or report of the Advisory Committee shall not be made available as a public record under section 202 of the Freedom of Information Act of 1976, effective March 25, 1977 (D C Law 1-96, D C Official Code § 2-532) "

Sec 3 Conforming amendment

Section 2(f) of the Confirmation Act of 1978, effective March 3, 1979 (D C Law 2-142, D C Official Code § 1-523 01(f)), is amended as follows

(a) Paragraph (49) is amended by strike the word "and"

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(b) Paragraph (50) is amended by striking the period and inserting the phrase ", and" in its place

(c) A new paragraph (51) is added to read as follows

"(51) Other Post-Employment Benefits Fund Advisory Committee, established by section 2151 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, passed on 2nd reading on July 14, 2014 (Enrolled Version of Bill 20-627) "

Sec 4 Fiscal impact statement

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 813, D C Official Code § 1-206 02(c)(3))

Sec 5 Effective date

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 813, D C Official Code § 1-206 02(c)(1)), and publication in the District of Columbia Register

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 19, 2014

ENROLLED ORIGINAL

AN ACT

D C ACT 20-422

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 21, 2014

To assist in the successful reintegration of previously incarcerated persons into the community by removing barriers to gainful employment, to prohibit the consideration of a job applicant's arrest record during the hiring process, to restrict an employer's inquiry into a job applicant's prior convictions until after a conditional offer of employment, to establish penalties, to give authority for enforcement to the Office of Human Rights, and to require the Office of the District of Columbia Auditor to report on the impact of this act on returning citizens and employers

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fair Criminal Record Screening Amendment Act of 2014"

Sec 2

Definitions

For the purposes of this act, the term

(1) "Applicant" means any person considered or who requests to be considered for employment by an employer

(2) "Arrest" means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that the person committed a crime

(3) "Conditional offer" means an offer that is conditional solely on

(A) The results of the employer's subsequent inquiring into or gathering information about the applicant's criminal record, or

(B) Some other employment-related contingency expressly communicated to the applicant at the time of the offer

(4) "Conviction" means any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge

(5) "Criminal accusation" means an existing accusation that an individual has committed a crime, lodged by a law enforcement agency through an indictment, information, complaint, or other formal charge

(6) "Employer" means any person, company, corporation, firm, labor organization, or association, including the District government, but not including the courts, that employs more than 10 employees in the District of Columbia

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(7) "Employment" means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency or any form of vocational or educational training with or without pay, where the physical location of the employment is in whole or substantial part within the District of Columbia

(8) "Inquiry" means any direct or indirect conduct intended to gather criminal history information from or about an applicant using any method, including application forms, interviews, and criminal history checks

(9) "Interview" means any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications

Sec 3 Inquiries into certain arrests, accusations, and convictions

(a) An employer may not make an inquiry about or require an applicant to disclose or reveal

(1) An arrest, or

(2) A criminal accusation made against the applicant, which

(A) Is not then pending against the applicant, or

(B) Did not result in a conviction

(b) An employer may not make an inquiry about or require an applicant to disclose or reveal a criminal conviction until after making a conditional offer of employment

(c) The prohibitions of this act shall not apply

(1) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment,

(2) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories, or

(3) To any facility or employer that provides programs, services, or direct care to minors or vulnerable adults

(d) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant or take an adverse action against an applicant for a legitimate business reason The employer's determination of a legitimate business reason must be reasonable in light of the following factors

(1) The specific duties and responsibilities necessarily related to the employment sought or held by the applicant,

(2) The bearing, if any, of the criminal offense for which the applicant was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities,

(3) The time which has elapsed since the occurrence of the criminal offense,

(4) The age of the applicant at the time of the occurrence of the criminal offense,

(5) The frequency and seriousness of the criminal offense, and

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(6) Any information produced by the applicant, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense

(e) If an applicant believes that a conditional offer was terminated or an adverse action was taken against the applicant on the basis of a criminal conviction, the applicant may request, within 30 days after the termination or adverse action, that the employer provide the applicant within 30 days after the receipt of the request

(1) A copy of any and all records procured by the employer in consideration of the applicant, including criminal records, and

(2) A notice that advises the applicant of his or her opportunity to file an administrative complaint with the Office of Human Rights

Sec 4 Filing a complaint with the Office of Human Rights, exclusive remedy

(a) A person claiming to be aggrieved by a violation of this act may file an administrative complaint with the Office of Human Rights, in accordance with the procedures set forth in Title III of the Human Rights Act of 1977, effective December 13, 1977 (D C Law 2-38, D C Official Code § 2-1403 01 *et seq*)

(b) Notwithstanding section 316 of the Human Rights Act of 1977, effective December 13, 1977 (D C Law 2-38, D C Official Code § 2-1403 16), the administrative remedies referenced in subsection (a) of this section are exclusive A person claiming to be aggrieved by a violation of this act shall have no private cause of action in any court based on a violation of this act

Sec 5 Penalties

If the Commission on Human Rights finds that a violation of this act has occurred, the commission shall impose the following penalties, of which half shall be awarded to the complainant

(1) For employers that employ 11 to 30 employees, a fine of up to $1,000,

(2) For employers that employ 31 to 99 employees, a fine of up to $2,500, or

(3) For employers that employ 100 or more employees, a fine of up to $5,000

Sec 6 Reporting requirements

(a) The Office of Human Rights shall maintain data on the number of complaints filed pursuant to this act, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation

(b) Data maintained by the Office of Human Rights pursuant to subsection (a) of this section shall be submitted to the Council annually, beginning one year from the effective date of this act

(c) Eighteen months after the effective date of this act, the Office of the District of Columbia Auditor ('ODCA") shall provide the Council with a report, using information that ODCA may request from relevant government agencies, nonprofit organizations, and employers that are willing to voluntarily provide data, on the hiring of applicants with criminal backgrounds by employers and the impact of this act on employers

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Sec 7 Fiscal impact statement

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 813, D C Official Code § 1-206 02(c)(3))

Sec 8 Effective date

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat 813, D C Official Code § 1-206 02(c)(1)), and publication in the District of Columbia Register

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
August 21,2014

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A CEREMONIAL RESOLUTION

20-206

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To recognize the Mays-Powell Family Reunion as a traditional biennial event in Washington, D.C. and to declare the first weekend after the 4th of July 2014, as the "Mays-Powell Family Reunion Weekend" in the District of Columbia.

WHEREAS, July 10, 2014, through July 13, 2014, marks the 22nd anniversary of the Mays-Powell Family Reunion;

WHEREAS, siblings James and Nettie Powell introduced the idea of merging the Mays and Powell families, in Staunton, Virginia in 1980;

WHEREAS, the official merging of the 2 families occurred in Columbia, South Carolina in 1982;

WHEREAS, the Mays-Powell Family reunion has grown as a highly anticipated biennial event, attended by family members and friends from all over the country;

WHEREAS, the theme of the 2014 Mays-Powell Family Reunion is "Embracing Family;"

WHEREAS, the Mays-Powell Family Reunion has proudly served as a role model for other families who wish to begin family reunions;

WHEREAS, the Mays-Powell Family Reunion has encouraged and supported through traditions and stipends young students and aspiring entrepreneurs; and

WHEREAS, the Mays-Powell Family Reunion has steadfastly held to its policy of support and inclusiveness of all family members.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the importance of family, honors the traditions and contributions of the Mays-Powell Families, and declares the first weekend after the 4th of July 2014 as the "Mays-Powell Family Reunion Weekend" in the District of Columbia.

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Sec. 2. This resolution may be cited as the "Mays-Powell Family Reunion Weekend Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-207

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To honor the historic Langston Golf Course, on the occasion of its 75th anniversary and to recognize its activism in the District of Columbia and in professional and recreational golf.

WHEREAS, Langston Golf Course is significant for its development and desegregation of public and recreational facilities in the greater Washington, D.C. area;

WHEREAS, the Langston Golf Course advocated for the development of golfing facilities for African American players and ensured that courses operated by the National Park Service offered equal access and quality recreational facilities to African American players;

WHEREAS, Langston Golf Course is named after the abolitionist, attorney, educator, activist, and politician John Mercer Langston;

WHEREAS, John Mercer Langston was one of only 5 African Americans elected to Congress during the Post-Reconstruction Era;

WHEREAS, the Royal Golf Club and the Wake-Robin Golf Club petitioned Secretary of Interior Harold Ickes to build a course for African Americans to play;

WHEREAS, there were 5,209 golf facilities in the United States, with fewer than 20 open to African Americans in 1939 and the Acting Superintendent of the National Capital Parks officially opened Langston Golf Course on June 11, 1939;

WHEREAS, African American golfer Clyde Martin hit the first ball on the Langston Golf Course and became the first golf professional to play there;

WHEREAS, Langston Golf Course is the home course to the Royal Golf Club and the Wake-Robin Golf Club – 2 of the nation's oldest golf clubs for African American men and women;

WHEREAS, the Royal Golf Club and the Wake-Robin Golf Club advocated to expand golfing facilities for African Americans and in 1955 the federal government expanded Langston Golf Course into an 18-hole course;

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WHEREAS, the Wake-Robin Golf Club, Earl Woods, and Langston Golf Course were inducted into the National Black Golf Hall of Fame on March 23, 2013, in Tampa, Florida;

WHEREAS, Langston Golf Course is listed on the National Park Services' National Register of Historic Places; and

WHEREAS, three junior golf programs currently call Langston Golf Course home, and over 500 boys and girls participate in the program each year.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the Historic Langston Golf Course and its unwavering commitment to the growth of golf as a popular recreational and professional sport for African Americans and its determination to breakdown racial barriers in the District.

Sec. 2. This resolution may be cited as the "Historic Langston Golf Course 75th Anniversary Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-208

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To posthumously honor the life of Medric "Cecil" Mills Jr. for his exceptional commitment and service to his family, his church, his community, and the District of Columbia.

WHEREAS, Cecil Mills was born in Canton, Ohio on June 10, 1936, to Reverend Medric Cecil Mills, Sr., and Mrs. Alyce Alberta Mills;

WHEREAS, Cecil Mills was raised in the 1400 block of W Street N.W., in the District of Columbia, with his older sister Marian and his younger brother Thomas;

WHERAS, Cecil Mills graduated from Bruce Monroe Elementary, Benjamin Banneker Junior High School, and Dunbar High School;

WHEREAS, Cecil Mills joined the Navy and served for 4 years aboard the USS Hyman 732;

WHEREAS, Cecil Mills married Ms. Sandra Ann Johnson on June 13, 1959, at his father's church, Canaan Baptist Church, in Northwest Washington, D.C.;

WHEREAS, Cecil Mills worked in many District of Columbia institutions during his career, starting at Georgetown University as a maintenance worker, then as an usher at the Howard Theater, before beginning his career service of more than 40 years in federal and District government agencies;

WHEREAS, Cecil Mills was always a dedicated worker, a trusted and loyal employee, and never hesitated to act when called upon into duty, no matter how big or small the job;

WHEREAS, Cecil Mills was a proud member and flag bearer of the Drum and Bugle Corps of the Ancient Egyptian Arabic Order Nobles of the Mystic Shrine, and could always be found among his fellow Nobles at Mecca Temple #10;

WHEREAS, Cecil Mills performed extensive community service work through the church, as well as through his participation with the Shriners;

ENROLLED ORIGINAL

WHEREAS, Cecil Mills was known far and wide for his big cookouts where food and smiles would be shared with anyone in need;

WHEREAS, Cecil Mills would provide an annual display on the 4th of July that would light up the sky and the faces of the children who would come from the surrounding neighborhoods to watch;

WHEREAS, Cecil Mills touched the lives of thousands with his community service, his dedicated career in the District, his kind smile, and his selfless actions for others;

WHEREAS, Cecil Mills earned the respect and love of many as a champion for the people; and

WHEREAS, Cecil Mills is survived by his beloved wife Sandra Mills, his children Medric III and Marie, his grandchildren Kortnie, Medric IV, and Kayla Alyce, and the extensive network of friends, family, and fellow Nobles who will always remember Cecil as "Gaga," the grandfather of the neighborhood.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia posthumously honors the life of Medric "Cecil" Mills Jr., and recognizes his hard work and dedication to his family, his community, his church, his Nobles, and the residents of the District of Columbia.

Sec. 2. This resolution may be cited as the "Medric 'Cecil' Mills Jr. Posthumous Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-209

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To recognize and celebrate the Southwest Neighborhood Assembly ("SWNA") civic association for its 50th year anniversary.

WHEREAS, SWNA's award-winning free monthly newspaper, the Southwester, is also celebrating its 50th year of publication;

WHEREAS, SWNA has been continuously dedicated to maintaining the Southwest neighborhood as a multi-cultural, multi-racial, welcoming community with active parks such as the Southwest Duck Pond and Southwest Community Gardens;

WHEREAS, SWNA raised over $100,000 for the 1998 Urban Land Institute study that was instrumental in the redevelopment of the 4th Street Southwest corridor;

WHEREAS, SWNA has provided numerous services, including college aid for more than 200 students, 50,000 player-hours of supervised recreational activity at local schools and recreation centers, and summer jobs and training for 400 youth; and

WHEREAS, SWNA has assisted with the preservation of historically important urban landscaping design and architecturally significant housing complexes in the Southwest neighborhood.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and celebrates the Southwest Neighborhood Assembly civic association for its 50th year anniversary

Sec. 2. This resolution may be cited as the "Southwest Neighborhood Assembly ("SWNA") 50th Year Anniversary Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-210

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To celebrate and honor Ms. Frances Slaughter for her 35 years of teaching at the Capitol Hill Cooperative Nursery School.

WHEREAS, Frances Slaughter was born and raised in Washington, D.C..;

WHEREAS, Frances Slaughter joined the Capitol Hill Cooperative Nursery School as director and teacher 35 years ago and has been a fixture in the Capitol Hill community since the mid 1980's;

WHEREAS, Frances Slaughter has studied at Benedict College, Federal City College, and the University of the District of Columbia;

WHEREAS, Frances Slaughter is a member of the National Association for the Education of Young Children and Parent Cooperative Preschools International and a board member of St. Coletta of Greater Washington;

WHEREAS, Frances Slaughter was recently honored with the Robin Garthright Bunster Outstanding Achievement Award for 2014 by the Parent Cooperative Preschool International for her dedication to education and the cooperative movement; and

WHEREAS, current and alumni families, along with the Capitol Hill community, came together on May 31, 2014, to celebrate and honor Frances Slaughter's service and dedication.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia celebrates and honors Ms. Frances Slaughter for her 35 years of teaching at the Capitol Hill Cooperative Nursery School.

Sec. 2. This resolution may be cited as the "Frances Slaughter Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-211

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To recognize Barbara "BB" Brantley for her remarkable service to the District of Columbia.

WHEREAS, Barbara "BB" Brantley began working for the federal government with the Department of Agriculture on March 28, 1982;

WHEREAS, Ms. Brantley began working for the Metropolitan Police Department as a Police Officer on March 27, 1988;

WHEREAS, Ms. Brantley served 8 years at the Sixth District before her assignment to the Homicide Branch in 1996;

WHEREAS, Ms. Brantley was promoted to the rank of Sergeant and assigned to the First District in 2004; and

WHEREAS, on May 31, 2014, Ms. Brantley will retire from the Metropolitan Police Department Internal Affairs Division with 26 years of Metropolitan Police Department service and 32 years of total government service.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the significant contributions of Barbara "BB" Brantley, spanning the decades of her service in the District of Columbia, to its residents and visitors.

Sec. 2. This resolution may be cited as "Barbara "BB" Brantley Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 3, 2014

To recognize the 15-year anniversary of the Teen Alliance for Prepared Parenting program in the District of Columbia.

WHEREAS, Washington Hospital Center's Teen Alliance for Prepared Parenting ("TAPP") program was developed in August 1999 to prevent subsequent pregnancies for teen parents;

WHEREAS, over the past 15 years, TAPP has offered a competency-based approach grounded in positive youth development to young parents;

WHEREAS, participants in the TAPP program include pregnant and parenting youth 21 years of age and younger;

WHEREAS, they receive services until their child is 2 years of age or the teen parent is at least 18 years of age;

WHEREAS, program outreach targets Wards 1, 5, 7, and 8; however, participants reside throughout the District of Columbia;

WHEREAS, both teen mothers and fathers are eligible for services;

WHEREAS, TAPP's philosophy is that high-quality medical services, combined with intensive youth development services and increased social supports, builds development competencies that increase teen parents' motivation and ability to prevent subsequent pregnancies and move forward to live healthy, productive lives with their children;

WHEREAS, TAPP has been successful in preventing teen pregnancies and supporting contraceptive utilization among participants (Patchen, Berggren, LeTourneau 2013);

WHEREAS, 5.2% of program participants experienced subsequent births, which compares favorably to the 16% subsequent birth rate for the District of Columbia (Child Trends, 2011);

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WHEREAS, 94% of TAPP participants continued or completed a high school or GED program within one year of delivery, while only 40% of teen parents graduate, nationally; and

WHEREAS, TAPP attributes its success, in part, to its ability to initiate services early, during the prenatal period, and provide follow-up services until the child is 2 years of age or the mother is at least 18 years of age.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the importance of eliminating teen pregnancy and calls upon the residents of this great city to support the work of the Teen Alliance for Prepared Parenting Program.

Sec. 2. This resolution may be cited as the "15 Year Anniversary of the Teen Alliance for Prepared Parenting Program Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To recognize the wonderful achievements and contributions of Tom One in AA in the District of Columbia, and to declare June 7, 2014, as "Tom One Day" in the District of Columbia.

WHEREAS, Tom One celebrates 44 years, the majority of his life, of being clean and sober, on June 7, 2014;

WHEREAS, Tom One has been a key contributor in bringing the AA program to Clean and Sober Streets at 2nd and D;

WHEREAS, Tom One has been an outstanding example of being a regular attendee at the AA meetings;

WHEREAS, Tom One understands the importance of giving back what was so freely given to him and that's why he has always been available to guide and sponsor newcomers in AA;

WHEREAS, Tom One often speaks of Mr. Jimmy's wife, "Miss Mary", also known as Ms. Marie, who is always beside him at the meetings; and

WHEREAS, Tom's points of wisdom -- Turn off the lights and come down stairs, leave yourself alone, and you don't know anything – will always be remembered and repeated.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the ongoing contributions of Tom One and hereby declares June 7, 2014, as "Tom One Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Tom One Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To commemorate and celebrate the 150th anniversary of the Battle of Fort Stevens.

WHEREAS, Fort Stevens, originally named Fort Massachusetts for the home state of the soldiers who constructed it, was built to defend the District of Columbia against attacks from the Confederate army from the north along the 7th Street Pike now known as Georgia Avenue;

WHEREAS, Fort Massachusetts was renamed Fort Stevens after the death of Brigadier General Ingalls Stevens at the Battle of Chantilly on September 1st, 1862;

WHEREAS, in the summer of 1864, General Ulysses S. Grant moved most Union troops to the south, leaving only approximately 9,000 troops to defend the District of Columbia;

WHEREAS, on July 11th and 12th, 1864, the Battle of Fort Stevens occurred and was the only Civil War battle to take place in the District of Columbia;

WHEREAS, the Union Army's Sixth Corps brought reinforcements to Fort Stevens, where President Abraham Lincoln met them and became the only sitting President in United States history to come under hostile fire from an enemy combatant;

WHEREAS, on the evening of July 12th, 1864, Confederate troops began to withdraw from Fort Stevens and from the District of Columbia;

WHEREAS, this victory saved the nation's capital, helped ensure Lincoln's re-election, and aided in the preservation of the Union;

WHEREAS, following the battle of Fort Stevens, the Military Road School, one of the first schools to educate African American children, was established on the grounds of Fort Stevens;

WHEREAS, the Military Road School, although closed in 1954, remains an essential part of the history of Fort Stevens and of the Civil War for the District of Columbia; and

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WHEREAS, Fort Stevens Park now serves as one of many Civil War defenses operated and maintained by the National Park Service in the District of Columbia as a place of enjoyment and a memorial to all those who served to save our country.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia celebrates the Union victory at Fort Stevens on July 12th, 1864 and forever thanks the brave soldiers who held the fort and our city

Sec. 2. This resolution may be cited as the "Battle of Fort Stevens 150th Anniversary Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-215

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To posthumously honor the life of Ronald D. Palmer, and to declare June 6, 2014, as "Ronald D. Palmer Day" in the District of Columbia.

WHEREAS, Mr. Palmer was born in Uniontown, Pennsylvania in 1932 and moved to the District of Columbia to attend Howard University;

WHEREAS, Mr. Palmer lived in Ward 6 on 6th Street, S.W., and in Ward 3, on Connecticut Avenue, N.W.;

WHEREAS, Mr. Palmer was the first Howard University graduate to pass the oral and written exams to enter the US Foreign Service;

WHEREAS, Mr. Palmer served his country with distinction for over 30 years in the US Foreign Service, specializing in history, diplomacy, linguistics, and strategic geo-political affairs;

WHEREAS, Mr. Palmer served as Ambassador to Togo, Malaysia, and Mauritius.

WHEREAS, Mr. Palmer taught diplomacy and strategic international affairs at the George Washington University for 11 years and mentored students of color to enter the US Foreign Service;

WHEREAS, Mr. Palmer was Professor Emeritus at the George Washington University; a member of The Council on Foreign Relations, the American Academy of Diplomats, and the Association of Black American Ambassadors; and

WHEREAS, Mr. Palmer uncovered an Underground Railroad site on the George Washington University campus and led the effort to erect the first monument to the Underground Railroad in the District of Columbia.

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IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia posthumously recognizes and honors the life of Ronald D. Palmer and declares June 6, 2014, as "Ronald D. Palmer Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Ronald D. Palmer Posthumous Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-216

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To recognize the 30th annual Marvin Gaye Day celebration in the District of Columbia, and to declare June 14, 2014, as "Marvin Gaye Recognition Day" in the District of Columbia.

WHEREAS, Marvin Gaye was a singer-song writer whose hits, including *How Sweet It Is (To Be Loved By You)* and *I Heard It Through the Grapevine*, made people the world over smile and sing along;

WHEREAS, Marvin Gaye was born in the District of Columbia and attended Cardozo High School in Ward 1 and helped to establish Motown as a musical genre;

WHEREAS, his success continued to gain momentum through additional hits such as *What's Going On* and *Let's Get It On*; and

WHEREAS, the District of Columbia is committed to expanding cultural horizons, creative thinking, and the free exchange of ideas through its recognition of Marvin Gaye, a man whose musical genius forever changed the way we think, feel, and dance to the beat.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the legacy of Marvin Gaye's musical contributions, and declares June 14, 2014, as "Marvin Gaye Recognition Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Marvin Gaye Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-217

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To recognize and honor the 53rd Class of the District of Columbia National Guard Officer Candidate School.

WHEREAS, the Commissioning Ceremony for the 53rd Class of the District of Columbia National Guard Officer Candidate School will take place on June 28, 2014;

WHEREAS, the District of Columbia National Guard has a long history of dedicated service to the nation and local community;

WHEREAS, since 1802, the District of Columbia National Guard has held the vital responsibility of protecting the nation's capital, when activated by the President of the United States for natural and civil emergencies;

WHEREAS, in addition to providing forces to the United States Army and United States Air Force, the District of Columbia National Guard has many community programs in support of the District, including the Capital Guardian Youth ChalleNGe Academy, About Face!, and Youth Leaders Camp;

WHEREAS, specifically, since 1993, the District of Columbia National Guard has run the Capital Guardian Youth ChalleNGe Academy, a preventive, rather than remedial at-risk youth program, serving more than 120,000 District of Columbia youth who are unemployed, drug-free high-school dropouts, 16 to 18 years of age;

WHEREAS, from the beaches of Normandy during World War II, to the skies above our nation's capital during 9/11, the District of Columbia National Guard has proven it is ready and relevant to support and protect the District of Columbia and the nation;

WHEREAS, the District of Columbia National Guard's 53rd Officer Candidate graduating class includes: Officer Candidate Megan Aigner, Officer Candidate Vimal Deo, Officer Candidate Luke Dier, Officer Candidate Jesse Searls, Officer Candidate LeJuan Strickland, and Officer Candidate Michael Taylor; and

WHEREAS, the District of Columbia National Guard's 53rd Officer Candidate graduating class is led by Major General Errol R. Schwartz, Brigadier General Arthur Hinaman,

ENROLLED ORIGINAL

Colonel Tracey Trautman, Captain Kyle Madsen, Captain Jason Hansloven, Captain Scott Lewis, First Sergeant Brian Jones, and Sergeant First Class Derrick Ledford.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia commends and recognizes the 53rd Class of the District of Columbia National Guard Officer Candidate School.

Sec. 2. This resolution may be cited as the "53rd Class of the District of Columbia National Guard Officer Candidate School Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-218

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To recognize and honor Clifton Bernard Smith, Esq., for his long-standing commitment to the District of Columbia community.

WHEREAS, Clifton ("Clif") Bernard Smith was born in the District of Columbia's historic LeDroit Park to the late Honorable Elonzo Lee Smith and Irma J. Smith, received his primary education in the District of Columbia Public Schools and continued his education at Howard University, where he received a Bachelor of Fine Arts degree, and subsequently received his Juris Doctorate from American University;

WHEREAS, Clif was an accomplished executive administrator and manager with a long history of public service, was the Secretary of the District of Columbia (Secretary of State) with oversight authority for the City's Notary Public Office, the City's Office of Archives, Office of Documents, Ceremonial Services Office, and International Affairs, and was the Chief of Protocol and Custodian of the Great Seal of the District of Columbia;

WHEREAS, before accepting a position as Chief of Staff for Mayor Marion Barry, Clif was Chief of Staff for the Honorable Walter E. Fauntroy, and as Chief of Staff for the Congressman directed and coordinated all administrative, legislative, and political matters, as well as supervised staff and served as liaison to congressional committees and all District of Columbia government agencies;

WHEREAS, Clif's later career focused on international business development, government relations, education policy and program development, research, and writing; and

WHEREAS, Clif was a member of numerous organizations, including Phi Delta Phi International Legal Honor Society, National Education Association, Life Member of the National Association for the Advancement of Colored People, U.S. Commission on Human Rights, D.C. State Advisory Committee, Latin American Youth Center, Washington Arts Consortium, D.C./Dakar Capital Cities Friendship Council, Capital Cities Exchange (D.C./Moscow), D.C./Bangkok Sister Cities, and Thai-American Association.

ENROLLED ORIGINAL

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the tireless service of Clifton Bernard Smith, Esq., in the District of Columbia community.

Sec. 2. This resolution may be cited as the “Clifton Bernard Smith, Esq. Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-219

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

June 24, 2014

To recognize Chief Kenneth B. Ellerbe for his service in the District of Columbia Fire and Emergency Medical Service Department upon the occasion of his retirement.

WHEREAS, Chief Kenneth B. Ellerbe is a 31-year veteran of the District of Columbia Fire and Emergency Medical Service Department ("FEMS"), having started as a firefighter in 1982;

WHEREAS, Chief Kenneth B. Ellerbe earned a Bachelor of Science and Masters of Public Administration from the University of the District of Columbia;

WHEREAS, Chief Kenneth B. Ellerbe graduated from the George Washington University Center for Excellence in Municipal Management, receiving his certification in Public Management;

WHEREAS, Chief Kenneth B. Ellerbe completed Harvard University's Senior Executives in State and Local Government Executive Education Program at the Kennedy School of Government and the Naval Post Graduate School's Homeland Security Program for Executive Leaders;

WHEREAS, Chief Kenneth B. Ellerbe had a multifaceted career in FEMS, including experience managing the Operations Division, coordinating labor relations for the agency, managing the Fire Prevention Bureau, overseeing research and development and facilities management, and serving as Director of Training and briefly as Interim Fire Chief;

WHEREAS, Chief Kenneth B. Ellerbe led the Fire and EMS Department in Sarasota County, Florida before returning to FEMS;

WHEREAS, Chief Kenneth B. Ellerbe served the city as the Chief of the 2,200-member FEMS since January 2011;

WHEREAS, Chief Kenneth B. Ellerbe will retire from his duties as Chief of FEMS effective July 2, 2014; and

ENROLLED ORIGINAL

WHEREAS, Chief Kenneth B. Ellerbe credits his tenure as Chief for balancing FEMS' budget for 3 years, addressing issues with overtime, recruiting District of Columbia high school students and young veterans, bolstering the pipeline of paramedics and cadets, and upgrading fire stations.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and thanks Chief Kenneth B. Ellerbe for his years of service in the District of Columbia Fire and Emergency Medical Service Department, most recently as Chief, and congratulates him on his retirement

Sec. 2. This resolution may be cited as the "Chief Kenneth B. Ellerbe Retirement Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-220

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To recognize St. Mary's Court on the occasion of its 35th anniversary and declare July 10, 2014, as "St. Mary's Court Day" in the District of Columbia.

WHEREAS, St. Mary's Court, a residential facility for senior citizens in downtown Washington, D.C., opened its doors over 3 decades ago;

WHEREAS, St. Mary's Court was founded jointly by the Episcopal Diocese of Washington, the government of the District of Columbia, and the U.S. Department of Housing and Urban Development;

WHEREAS, over 1,200 persons have lived in this convenient, comfortable, and attractive building;

WHEREAS, St. Mary's Court has offered its residents affordable, safe, and secure housing during all the years of its operation;

WHEREAS, St. Mary's Court is dedicated to providing enriching and enjoyable activities for its residents; and

WHEREAS, St. Mary's Court serves as a haven for its residents and a gathering place and community asset of the Foggy Bottom/West End neighborhood and of the capital city of this nation.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia commends St. Mary's Court, its residents, and its staff, sends warm regards and wishes for many more years of continued commitment, and declares July 10, 2014, as "St. Mary's Court Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "St. Mary's Court 35th Anniversary Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-221

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To recognize acclaimed Chef David Guas and congratulate him on the future opening of his new Bayou Bakery, Coffee Bar & Eatery at Hill Center at the Old Naval Hospital.

WHEREAS, David Guas maintains an acclaimed career in pastry, authored a critically acclaimed cookbook *–DamGoodSweet; Desserts to Satisfy Your Sweet Tooth, New Orleans Style* -- and has extensive knowledge of all things savory;

WHEREAS, David Guas' cakes have garnered national attention from the Mardi Gras King Cake that was named one of the *"Top Three"* in the country by *The Washington Post*, to the 10th anniversary cake he was hand-selected to make, by and for Oprah Winfrey's *O Magazine*;

WHEREAS, David Guas has received personal recognition as the Restaurant Association of Metropolitan Washington's Pastry Chef of the Year and as one of the nation's 8 "Dessert Stars" by *Bon Appetit*;

WHEREAS, David Guas is poised to open his second Bayou Bakery, Coffee Bar & Eatery at Hill Center at the Old Naval Hospital in the fall of 2014, the first being located in Arlington, Virginia; and

WHEREAS, Bayou Bakery, Coffee Bar & Eatery features southern comfort food and desserts.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia congratulates Chef David Guas on his acclaimed career and welcomes Bayou Bakery, Coffee Bar & Eatery to the District of Columbia.

Sec. 2. This resolution may be cited as the "David Guas, Bayou Bakery, Coffee Bar & Grill, Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-222

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To declare September 22 through September 28, 2014, as "Adult Education and Family Literacy Week" in the District of Columbia.

WHEREAS, the week of September 22 through September 28, 2014, is "Adult Education and Family Literacy Week" in the District of Columbia;

WHEREAS, literacy is integral to the quality of life and necessary to create productive workers, family members, and citizens of all ages;

WHEREAS, the need for a highly literate community continues to grow rapidly as the District of Columbia's economy grows increasingly knowledge-based and technology-driven;

WHEREAS, 24% of District of Columbia residents without a high school diploma are unemployed – a rate that is 1½ times greater than that of residents with some college or an associates' degree, and 6 times greater than that of residents with a bachelor's degree;

WHEREAS, adults with at least some postsecondary education are more likely to find jobs that pay family-sustaining wages and are therefore better able to provide a stable home for themselves and their families;

WHEREAS, the most effective way to improve the academic success of a child is to improve the educational level of the child's parent; and

WHEREAS, literacy skills impact every aspect of an adult's life, including the ability to read to his or her child and be involved in the child's education, earn a family-supporting wage, make informed health-care decisions, and understand voting issues and other civic engagements.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia declares September 22 through September 28, 2014, as "Adult Education and Family Literacy Week" in the District of Columbia and encourages District residents to learn more about the importance of literacy at all ages and become involved with adult learners and literacy programs in our community.

ENROLLED ORIGINAL

Sec. 2. This resolution may be cited as the "Adult Education and Family Literacy Week Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-223

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To posthumously recognize the wonderful life and contributions of Effie A. Edwards in the District of Columbia, and to declare July 11, 2014, as "Effie A. Edwards Day" in the District of Columbia.

WHEREAS, Effie Alice Edwards, affectionately called Mah, Aunt Effie, and Miss Effie, was born in Johnson County, North Carolina on April 15, 1930, to the late Richard and Mary McKenzie;

WHEREAS, at a young age, Effie accepted the Lord as her personal savior, and began her journey as a devoted Christian, joining and remaining an active member of the Vermont Avenue Baptist Church until the time of her passing;

WHEREAS, Effie A. Edwards, after retirement from 28 years of professional service, took on the task of lending support to young mothers with raising their children, and by teaching them through maternal demonstration, she prepared the mothers for parenthood;

WHEREAS, Effie A. Edwards continued to work with the younger population by ministering and demonstrating excellence to many Howard University student residing in the Girard House, and showing the students patience and perseverance;

WHEREAS, Effie A. Edwards reached out to young men in her neighborhood, to mentor and teach them how to respect the elderly and their female counterparts;

WHEREAS, Effie A. Edwards, rallied her Ward 1 senior residents to get out to the polls, to continue to make a difference, and express the facts about the candidate;

WHEREAS, Effie A. Edwards loved District of Columbia politics, loved living in Ward 1, loved her neighborhood, loved her neighbors, loved her friends, and loved her Councilmember, and one of Effie's most famous statements, known to all her family and friends, was: "I love my Councilmember, that Little Man, Jim Graham".

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IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA that the Council of the District of Columbia recognizes and honors the many kindnesses and contributions of Effie A. Edwards to the residents of the District of Columbia and hereby declares July 11, 2014, as "Effie A. Edwards Day" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Effie A Edwards Posthumous Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-224

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To recognize and honor the Hillcrest Community Civic Association and its president, Karen Lee Williams, for celebrating its 25th anniversary, on September 27, 2014;

WHEREAS, Hillcrest is located in Southeast Washington, with official boundaries beginning at the intersection of 31st Street, S.E., and Pennsylvania Avenue, S.E., extending southeastward along Pennsylvania Avenue, S.E. to the intersection of Pennsylvania Avenue, S.E., and the District of Columbia boundary line (at Southern Avenue, S,E,); extending southwestward along that District boundary line to the intersection of that line with Naylor Road, S.E.; extending northward along Naylor Road, S.E., to the intersection of Naylor Road, S.E., with 27th Street, S.E.; from thence in a straight line running eastward through the park to reach the upper point of 31st Street, S.E. and then following 31st Street, S.E., northward to the original intersection of 31st Street, S.E., and Pennsylvania Avenue, S.E., and said boundary to include both sides of 31st Street, S.E., including Randle Highlands Elementary School;

WHEREAS, Hillcrest is an idyllic bedroom community with rolling hills, manicured lawns, red brick colonials and ramblers, tennis courts, community gardens, and a city park with an amphitheater;

WHEREAS, Hillcrest offers views of the Capitol and the Washington Monument;

WHEREAS, Hillcrest is one of the District's best-kept secrets;

WHEREAS, Hillcrest is full of civic-minded residents who love their community and give back to it;

WHEREAS, the Hillcrest Community Civic Association was established in 1989 with the intent to promote the welfare of the Hillcrest neighborhood in Ward 7;

WHEREAS, Hillcrest was the only Ward 7 community that did not have a sustainable neighborhood association at that time;

ENROLLED ORIGINAL

WHEREAS, on August 2, 1989, approximately 60 people met on the front lawn of Mr. and Mrs. Dennis Logan for Hillcrest's annual Neighborhood Watch "Night Out";

WHEREAS, on September 30, 1989, Hillcrest neighbors met at the Church of Holy Comforter at 10:00 a.m. to form the Hillcrest Community Civic Association;

WHEREAS, Belva Simmons was elected as the first President of the Hillcrest Community Civic Association;

WHEREAS, Friends of Twining Square, Flower Garden at Firehouse, Welcome to Washington, Flower Garden at Ft. Baker Drive & W Streets, S.E., Flower Garden at Branch Avenue and Erie Street, S.E., 6th District Metropolitan Police Substation, the Flower Garden at Hillcrest Drive, S.E., and the Penn Branch Beautification Project are community projects that enhance the already vibrant Hillcrest community;

WHEREAS, the Washington Post called Hillcrest, "The Answer to Cleveland Park;"

WHEREAS, the Hillcrest community is rich in history and culture, and serves as an important landmark to District history;

WHEREAS, 2 District mayors have lived in Hillcrest;

WHEREAS, the first homes in Hillcrest were built in 1928; and

WHEREAS, Chemical Company No. 2 was organized and placed in service on November 13, 1911, at 2813 Pennsylvania Avenue, S.E.; on January 1, 1921, the last of the chemical companies was converted to a regular engine company and equipped with a hose wagon and pumper; Chemical Company was then renumbered to Engine 19.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia commends and recognizes the Hillcrest Community Civic Association for its promotion of community welfare and civic engagement.

Sec. 2**.** This resolution may be cited as the "Hillcrest Community Civic Association Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-225

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To recognize and honor the Takoma Park DC All Stars for being a vital part of the Ward 4 community and altruistically changing the lives of youth swimmers for over 50 years.

WHEREAS, the Takoma Park DC All Stars ("TPDC") is a Division A competitive summer swim team that trains youth ages 5 to 18 years at their home pool located at the Takoma Aquatic Center in Ward 4;

WHEREAS, TPDC was one of the founding members of the Prince-Mont Swim League ("PMSL"), which was founded 55 years ago on June 14th, encompassing teams from the District and Montgomery, Prince George's, Anne Arundel, and Charles Counties in Maryland;

WHEREAS, the PMSL was founded to sponsor and coordinate age-group competitive swimming programs during the summer months among member teams with the intent to instill a love for swimming, advanced aquatic skill, patience, cooperation, and good sportsmanship.

WHEREAS, there have only been 12 coaches in the 55-year history of the TPDC, demonstrating the ardor and loyalty of the coaching staff to the organization's mission and youth;

WHEREAS, Jake Hinsler, Burt Sampson, Skip Grant, Vicki Baker, Yonnie Shambrough, Solomon Robinson, Mark Lewis, Roger Mccoy, Skip Grant, Rob Green, Sr., and Rob Green, Jr., have all served as head coaches of the TPDC family;

WHEREAS, the TPDC also holds the distinction of having a female head coach in 1974, when males dominated the coaching world in both men's and women's swimming;

WHEREAS, the TPDC still holds the distinction of maintaining Division A status for its entire 55-year history and consistently performs as one of the strongest teams in the PMSL, earning division titles in 1974, 1993, 2007, 2009, and 2010;

WHEREAS, the TPDC won the Saum-Hilton Award in 2003, 2004, 2005, and 2013, which is named in honor of George Saum and Brad Hilton and presented to one of the 2 smallest teams in Division A that is most improved relative to their initial seeding;

ENROLLED ORIGINAL

WHEREAS, TPDC's Fred Evans, Deryck Marks, and Bobby Murray have gone to the Olympic Trials;

WHEREAS, TPDC's Nnamse Ammons, Fred Evans, Marissa Gentry, Lynn Grant, Kimberly Green, Rory Lewis, Bobby Murray (100 Free Champion), Miguel Orellana, Delonte Stephens (100 Fly Champion), Joshua Tomlin, and Amina Wilson are nationally ranked junior athlete swimmers:

WHEREAS, approximately 50% of the TPDC have been members for over a decade, and half of those joined the team at the age of 8 years or younger;

WHEREAS, each year TPDC graduates swimmers who are 18 years of age and in their last year of eligibility, speaking to their love of the TPDC;

WHEREAS, the TPDC has introduced competitive swimming to thousands of youth in the Washington, D.C. area, the majority of year-round swimmers competing in USA Swimming started on summer swim teams, and most swimmers on DC WAVE began their love of the sport by first being a member of the Takoma Park DC All Stars; and

WHEREAS, the TPDC are a family and many swimmers that once participated with the TPDC are now parents who have introduced their children to swimming with the TPDC to foster the same skill, sportsmanship, and camaraderie they gained from the organization.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia commends and recognizes the Takoma Park DC All Stars for its exemplary swim instruction, youth mentoring, and community involvement for over 50 years in Ward 4.

Sec. 2. This resolution may be cited as the "Takoma Park DC All Stars Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-226

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To honor and remember those individuals who lost their lives in the mass shooting in the Washington Navy Yard on September 16, 2013, and to honor the first responders from numerous municipal and federal agencies who selflessly put themselves in harm's way to save lives and bring this tragic event to an end.

WHEREAS, on the occasion of the first anniversary of the Washington Navy Yard shooting, the Council of the District of Columbia honors the memory of the 12 individuals whose lives were lost that day;

WHEREAS, an exceptionally courageous force of first responders, including police, paramedics, rescue workers, and firefighters from numerous municipal and federal agencies, risked their lives that day to save the lives of others and end the killing; and

WHEREAS, it is fully right and just to honor the memory of those who lost their lives in the mass shooting in the Washington Navy Yard a year ago, and it is equally compelling to observe and pay our respects to the first responders of this city, including those from all agencies that responded, and their relentless bravery and selflessness in the face of trying circumstances.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia calls on all citizens to pause in their daily tasks on September 16th each and every year to remember the events of September 16, 2013, and honor the memory of those who perished as they went about their work in the Washington Navy Yard on that fateful day.

Sec. 2. This resolution may be cited as the "September 16th Navy Yard Shooting Victim and First Responders Remembrance and Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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A CEREMONIAL RESOLUTION

20-227

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To honor the District's Fire and Emergency Medical Services Department for its dedication to and protection of the citizens and visitors of Washington, D.C., and for its valiant and courageous service to the metropolitan area after the attacks of September 11, 2001.

WHEREAS, on the occasion of the 13th anniversary of the September 11, 2001, terrorist attacks on the United States, the Council of the District of Columbia honors the memory of the 2,977 Americans who perished that day, including 11 victims from the District;

WHEREAS, an exceptionally courageous force of first responders -- including more than 100,000 firefighters, paramedics, rescue and recovery workers, and police officers -- risked their lives that day to save the lives of others;

WHEREAS, the brave members of the District Fire and Emergency Medical Services Department, along with members of the Arlington County Fire Department and other local fire agencies, helped with the Pentagon recovery efforts on September 11, 2001;

WHEREAS, the men and women who serve as first responders in the District of Columbia carry out the extraordinary responsibility of protecting not only District residents, but also all who visit and work here, and have always done so with tremendous humility and respect;

WHEREAS, over the course of more than 2 centuries, emergency workers have bravely served citizens of the District and have educated residents and implemented measures to prevent future emergencies;

WHEREAS, men and women of the District's emergency services have fulfilled every duty to their city and country in honorable, courageous, and timely fashion, and they have demonstrated immense compassion for those who have suffered unforeseeable tragedies, while routinely considering the safety and well-being of others before their own; and

WHEREAS, it is fully right and just to honor the memory of those who lost their lives in the terrorist attacks a decade ago, it is equally compelling to observe and pay our respects to the first responders of this city and their unending bravery and selflessness in the face of

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extraordinarily trying circumstances.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia honors its first responders for their tremendous commitment to serving the District, and remembers emergency workers who dutifully served their country in the face of danger on September 11, 2001.

Sec. 2. This resolution may be cited as the "September 11th Emergency and First Responders Remembrance and Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-228

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To declare October of 2014 as "Domestic Violence Awareness Month" in the District of Columbia.

WHEREAS, domestic violence is a pattern of abusive behavior used to exert power and control over an intimate partner;

WHEREAS, the dignity, safety, and well-being of all residents is the foundation of a vibrant and healthy community and intimate partner violence is an epidemic in the District of Columbia that impedes the welfare of all;

WHEREAS, an estimated one out of every 4 women will experience domestic violence at some point in her lifetime, and, based on that information, there may be as many as 75,000 victims of domestic violence residing in the District;

WHEREAS, in 2013, there were 32,794 domestic violence related calls made to the Metropolitan Police Department, an increase of nearly 1,000 from 2012;

WHEREAS, as of July 2, 2014, 12 women and 3 children in the District of Columbia have been murdered in cases related to domestic violence this year, alone, compared to the 11 women in total in 2012;

WHEREAS, all forms of domestic violence, including physical, psychological, emotional, and economic abuse, have devastating long-term effects on victims, and place a strain on the District's legal and social services systems and overall resources;

WHEREAS, many victims are forced to remain in dangerous situations due to their inability to access long-term affordable housing; in 2013, local providers were unable to fulfill 52 service requests from victims seeking alternative living arrangements;

WHEREAS, nationally, domestic violence affects employment, resulting in 3 to 5 billion dollars' worth of lost wages and reduced productivity each year;

ENROLLED ORIGINAL

WHEREAS, domestic violence has a major effect on children and teens, and the building blocks of healthy relationships and consequences of abuse must be addressed both in schools and out;

WHEREAS, the District has taken important steps to help victims of domestic violence, by providing life-saving public emergency services, establishing 24-hour hotlines, and ensuring that high-quality services are available to every victim seeking help through the proactive efforts of the Office of Victim Services; and

WHEREAS, eradicating domestic violence requires the commitment and support of not only the government but continued public awareness, as well as acknowledgment and responsibility by and for all.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes the severity of the domestic violence crisis in the District of Columbia and continues to raise public awareness and bring this often hidden issue into the open, and declares October of 2014 as "Domestic Violence Awareness Month" in the District of Columbia.

Sec. 2. This resolution may be cited as the "Domestic Violence Awareness Month Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-229

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To declare the month of October as "Breast Cancer Awareness Month" in the District of Columbia.

WHEREAS, approximately 232,670 new cases of invasive breast cancer will be diagnosed in women before the end of 2014; of those cases, about 430 will occur in women of the District of Columbia.

WHEREAS, the American Cancer Society estimates that about 40,430 men and women will die from the disease in 2014;

WHEREAS, there are several types of breast cancer—divided into non-invasive and invasive types—which can be diagnosed at different stages of development and can grow at different rates;

WHEREAS, if cancer is detected at an early stage, it can be treated before it spreads to other parts of the body;

WHEREAS, death rates for breast cancer have steadily decreased in women since 1989;

WHEREAS, the exact cause of breast cancer is not fully understood, but many factors increase the likelihood of developing it, including age and family medical history;

WHEREAS, both sexes can get breast cancer but it is more than 100 times more common in women than it is in men;

WHEREAS, the American Cancer Society is a nearly 100-year-old, community-based, voluntary health organization, in both the District of Columbia and nationwide, which is dedicated to eliminating cancer as a major health problem;

WHEREAS, the American Cancer Society established Breast Cancer Awareness Month in 1985 to promote mammography as the most-effective weapon in the fight against breast cancer;

ENROLLED ORIGINAL

WHEREAS, the Capital Breast Care Center ("CBCC"), located in the District of Columbia, provides comprehensive, culturally appropriate breast cancer screening services and health education to women in the District of Columbia metropolitan area, regardless of their ability to pay;

WHEREAS, the CBCC offers onsite mammograms, ultrasound-guided biopsies, health education, clinical breast examinations, patient navigation services for women with abnormal screens or breast cancer symptoms, and transportation services to and from appointments;

WHEREAS, the CBCC has Spanish-English bilingual staff to ensure that no language barriers exist for those in need of care; and

WHEREAS, the District of Columbia anticipates the day when no woman or man has to be treated for this disease.

IT IS HEREBY RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia honors breast cancer patients, survivors, and their families and declares October as "Breast Cancer Awareness Month" in the District of Columbia to promote research for a cure.

Sec. 2. This resolution may be cited as the "Breast Cancer Awareness Month Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-230

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 14, 2014

To posthumously recognize Barbara Jean Drakeford as a mother and pillar in her community of Gault Place, N.E., in Washington, D.C.

WHEREAS, Ms. Barbara Jean Drakeford was born in Honolulu, Hawaii on December 19, 1944;

WHEREAS, Ms. Barbara Jean Drakeford was educated by the Hawaii school system;

WHEREAS, in 1962, Ms. Barbara Jean Drakeford moved from Hawaii to join Job Corps, which relocated her to Washington, D.C.;

WHEREAS, Ms. Barbara Jean Drakeford became involved in her community and became a mother figure to all in her neighborhood of Gault Place, N.E., and offered her home to those who needed a place to eat and or sleep;

WHEREAS, Ms. Barbara Jean Drakeford was referred to as Mrs. Drakeford, Ms. Barbara, Aunt Barbra, and Ma by those who lived in the community;

WHEREAS, Ms. Barbara Jean Drakeford was referred to by many as a blessing from God in being a mother figure to them in their time of need;

WHEREAS, Ms. Barbara Jean Drakeford resided in Washington, D.C. for over 50 years, of which 38 of those years she resided in Ward 7; and

WHEREAS, up to the time of her passing, Ms. Barbara Jean Drakeford continued to help others and contributed her time, love, and home to ensure those who were in need were helped.

IT IS HEREBY RESOLVED, BY THE COUNICL OF THE DISTRICT OF COLUMBIA, that the Council of the District of Columbia recognizes and honors the dedication and good work of Ms. Barbara Jean Drakeford for her community.

Sec. 2. This resolution may be cited as the "Barbara Jean Drakeford Posthumous Recognition Resolution of 2014".

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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

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

on

Bill 20-579, the "Youth Tanning Safety Act of 2013"

Thursday, September 18, 2014
12:00 p.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Councilmember Yvette M. Alexander, Chairperson of the Committee on Health, announces a public hearing on Bill 20-579, the "Youth Tanning Safety Act of 2013". The hearing will take place at 12:00 p.m. on Thursday, September 18, 2014 in Room 412 of the John A. Wilson Building.

The purpose of this bill is to amend Tittle 25, Subtitle F, of the District of Columbia Municipal Regulations to prohibit the use of ultraviolet tanning equipment by minors.

Those who wish to testify should contact Cory Davis, Legislative Assistant to the Committee on Health, at 202-724-8170 or via e-mail at cdavis@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business on Monday, September 16, 2014. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Monday, September 16, 2014, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses.

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

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

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

Councilmember Vincent B. Orange, Sr., Chairperson Committee on Business, Consumer, and Regulatory Affairs Announces a Public Oversight Roundtable

Review of District Agency Compliance with Fiscal Year 2014 Small Business Enterprise Expenditure Goals

FRIDAY, September 26, 2014, 2:00 P.M. JOHN A. WILSON BUILDING, ROOM 500 1350 PENNSYLVANIA AVENUE, N.W. Washington, DC 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public oversight roundtable by the Committee on Business, Consumer, and Regulatory Affairs to review the District of Columbia's agency compliance with fiscal year 2014 Small Business Enterprise expenditure goals through the 3rd quarter of Fiscal Year 2014. The public oversight roundtable is scheduled for Friday, September 26, 2014, at 2:00 p.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

The purpose of the public oversight roundtable is to review the level of compliance by District agencies regarding agency spending with District Small and Certified Business Enterprises, required under the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005." The Committee will also review the goals and objectives of the various agencies to achieve full compliance pursuant to the law.

Individuals and representatives of organizations who wish to testify at the public oversight roundtable are asked to contact Ms. Faye Caldwell, Special Assistant to the Committee on Business, Consumer, and Regulatory Affairs, at (202) 727-6683, or via e-mail at fcaldwell@dccouncil.us and furnish their names, addresses, telephone numbers, and organizational affiliation, if any, by the close of business Wednesday, September 24, 2014. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Friday, October 10, 2014. Copies of written statements should be submitted to the Committee on Small and Local Business Development, Council of the District of Columbia, Suite G-6 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 29, 2014
Petition Date: October 14, 2014
Hearing Date: October 27, 2014

License No.: ABRA-092990
Licensee: Darien DC LLC
Trade Name: Bidwell
License Class: Retailer's Class "C" Tavern
Address: 1309 5th Street NE
Contact: Paul L. Pascal, Esq., 202-544-2200

WARD 5 ANC 5D SMD 5D01

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

NATURE OF SUBSTANTIAL CHANGE
Request to alter the summer garden area to reflect the use of up to 50 seats adjacent to their leased space.

CURRENT HOURS OF OPERATION
Sunday through Thursday 7am-2am and Friday & Saturday 7am-3am

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: August 29, 2014
Petition Date: October 14, 2014
Hearing Date: October 27, 2014

License No.: ABRA- 091887
Licensee: Gebtri, Inc.
Trade Name: Cedar Hill Bar & Grill / Uniontown Bar & Grill
License Class: Retail Class "C" Tavern
Address: 2200 Martin Luther King Jr. Avenue, SE
Contact: Melake Gebre (571) 309-6899

WARD 8 ANC 8A SMD 8A06

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

Licensee requests the following substantial change to its nature of operation:

Request to expand to the second floor and increase capacity load from 61 to 144. Total Occupancy Load is 61. Total number of seats is 31.

CURRENT HOURS OF OPERATION/SALES/SERVICE/CONSUMPTION
Sunday through Thursday 11 am – 2 am
Friday and Saturday 11 am- 3 am

HOUS OF ENTERTAINMENT
Sunday through Thursday 11 am- 1 am
Friday and Saturday 11 am- 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

8/29/2014

Notice is hereby given that:
License Number: ABRA-074002
License Class/Type: B Retail - Groce
Applicant: Fa Ren Chen
Trade Name: China Hut
ANC: 4A02

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

7708 GEORGIA AVE NW, WASHINGTON, DC 20012

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

10/14/2014

HEARING WILL BE HELD ON

10/27/2014

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

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	
Sunday:	9 am - 10 pm	9 am -10 pm	-
Monday:	9 am - 10 pm	9 am - 10 pm	-
Tuesday:	9 am - 10 pm	9 am - 10 pm	-
Wednesday:	9 am - 10 pm	9 am - 10 pm	-
Thursday:	9 am - 10 pm	9 am - 10 pm	-
Friday:	9 am - 10 pm	9 am - 10 pm	-
Saturday:	9 am - 10 pm	9 am - 10 pm	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****Correction**

Posting Date:	August 22, 2014
Petition Date:	October 6, 2014
Hearing Date:	October 20, 2014
Protest Hearing Date:	December 17, 2014

License No.:	ABRA-096296
Licensee:	CMSA, LLC
Trade Name:	Convivial
License Class:	Retailer's Class "C" Restaurant
Address:	801 O Street, NW
Contact:	Chrissie Chang 703-992-3994

WARD 6 ANC 6E SMD 6E01

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such 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 December 17, 2014 at 1:30 pm.

NATURE OF OPERATION

This is new restaurant with a sidewalk café and summer garden serving modern American cuisine for all ages. Entertainment includes taped background music and occasional DJ and/or live band once a month. Total # of seats is 176** and the Occupancy Load is 199. ** Total # of summer garden seats is 54. Total # of sidewalk café seats is 10.

HOURS OF OPERATION/ SUMMER GARDEN/SIDEWALK CAFE

Sunday through Thursday 7:30 am – 2 am Friday through Saturday 7:30 am – 3 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/SUMMER GARDEN/SIDEWALK CAFE

Sunday 9:30 am – 2 am Monday through Thursday 10 am- 2 am Friday 10 am-3 am Saturday 9:30 am -3 am

HOURS OF ENTERTAINMENT

Sunday through Saturday 6 pm – 1 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	August 29, 2014
Petition Date:	October 14, 2014
Hearing Date:	October 27, 2014
Protest Hearing Date:	January 07, 2015

License No.:	ABRA-095396
Licensee:	DC Wheel Production, Inc.
Trade Name:	Dance Place
License Class:	Retailer's Class "C" Multipurpose Facility
Address:	3225 8th Street, NE
Contact.:	Carla Perlo 202 269-1601

WARD 5 ANC 5E SMD 5E01

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date. The Protest Hearing Date is scheduled for 1:30 pm on January 07, 2015.

NATURE OF OPERATION

New, Multipurpose Facility. A Studio/Theater for dance and ancillary art forms offering training and presentations of primarily contemporary and ethnically-specific dance forms. Food offered will include package snacks such as chips, nuts, dried fruit, granola bars, pretzels etc. Occupancy Load is 199.

HOURS OF OPERATION

Sunday 4 pm – 10 pm
Monday and Tuesday 10 am 10 pm
Wednesday 10 am – 12 am
Thursday 10 am – 11 pm
Friday and Saturday, 10 am- 12 am

HOURS OF SALES OF ALCOHOLIC BEVERAGES

Sunday 4 pm – 10 pm
Friday and Saturday 4 pm – 12 am

HOURS OF ENTERTAINMENT

Sunday 4 pm – 10 pm
Friday and Saturday 4 pm – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

8/29/2014

Notice is hereby given that:
License Number: ABRA-074927
License Class/Type: B Retail - Groce
Applicant: Mochi, Inc.
Trade Name: DC Supermarket
ANC: 6B03

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

539 8TH ST NE, Washington, DC 20002

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

10/14/2014

HEARING WILL BE HELD ON

10/27/2014

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

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	
Sunday:	7 am - 11 pm	7 am -11 pm	-
Monday:	7 am - 11 pm	7 am - 11 pm	-
Tuesday:	7am - 11 pm	7 am - 11 pm	-
Wednesday:	7 am - 11pm	7 am - 11 pm	-
Thursday:	7 am - 11 pm	7 am - 11 pm	-
Friday:	7 am - 11 pm	7 am - 11 pm	-
Saturday:	7 am - 11 pm	7 am - 11 pm	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

8/29/2014

Notice is hereby given that:
License Number: ABRA-003815
License Class/Type: B Retail - Groce
Applicant: Freedom Market, Inc.
Trade Name: Freedom Market
ANC: 2B09

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

1901 NEW HAMPSHIRE AVE NW, WASHINGTON, DC 20009

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

10/14/2014

HEARING WILL BE HELD ON

10/27/2014

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

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	
Sunday:	8 am - 12 am	9 am -12 am	-
Monday:	8 am - 12 am	9 am - 12 am	-
Tuesday:	8 am - 12 am	9 am - 12 am	-
Wednesday:	8 am - 12 am	9 am - 12 am	-
Thursday:	8 am - 12 am	9 am - 12 am	-
Friday:	8 am - 12 am	9 am - 12 am	-
Saturday:	8 am - 12 am	9 am - 12 am	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

8/29/2014

Notice is hereby given that:
License Number: ABRA-017772
License Class/Type: B Retail - Groce
Applicant: Manhattan Market, Inc.
Trade Name: Manhattan Market
ANC: 3C01

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

2647 CONNECTICUT AVE NW 200, WASHINGTON, DC 20008

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

10/14/2014

HEARING WILL BE HELD ON

10/27/2014

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

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	
Sunday:	7 am - 12 am	7 am -12 am	-
Monday:	7 am - 12 am	7 am - 12 am	-
Tuesday:	7 am - 12 am	7 am - 12 am	-
Wednesday:	7 am - 12 am	7 am - 12 am	-
Thursday:	7 am - 12 am	7 am - 12 am	-
Friday:	7 am - 12 am	7 am - 12 am	-
Saturday:	7 am - 12 am	7 am - 12 am	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

8/29/2014

Notice is hereby given that:
License Number: ABRA-014926
License Class/Type: B Retail - Groce
Applicant: Vace, Inc.
Trade Name: Vace Italian Deli
ANC: 3C04

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

3315 CONNECTICUT AVE NW, WASHINGTON, DC 20008

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

10/14/2014

HEARING WILL BE HELD ON

10/27/2014

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

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	
Sunday:	9 am - 9 pm	9 am -9 pm	-
Monday:	9 am - 9 pm	9 am - 9 pm	-
Tuesday:	9 am - 9 pm	9 am - 9 pm	-
Wednesday:	9 am - 9 pm	9 am - 9 pm	-
Thursday:	9 am - 9 pm	9 am - 9 pm	-
Friday:	9 am - 9 pm	9 am - 9 pm	-
Saturday:	9 am - 9 pm	9 am - 9 pm	-

FOR FURTHER INFORMATION CALL (202) 442-4423

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF PUBLIC HEARING FOR NEW SCHOOL APPLICATIONS

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of its intent to hold a Public Hearing on all new charter school applications received by the September 8, 2014 deadline at the regularly scheduled board meeting on October 15, 2014. Please contact Mikayla Lytton, Manager of Strategy and Analysis, at 202-328-2660 or email applications@dcpcsb.org. Please contact 202-328-2660 or email public.comment@dcpcsb.org to submit public comment.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

FORMAL CASE NO. 1116, IN THE MATTER OF APPLICATIONS FOR APPROVAL OF TRIENNIAL UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS PLANS

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code and in accordance with Section 2-505 of the District of Columbia Official Code,[1] of its final rulemaking action adopting a new section, Section 141 (Reconsideration of Order Issued Pursuant to Title III of the Electric Company Infrastructure Improvement Financing Act of 2014) to Chapter 1 (Public Service Commission Rules of Practice and Procedure) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations ("DCMR"). The Commission issued a Notice of Proposed Rulemaking ("NOPR") which was published in the *D.C. Register* on June 20, 2014, giving notice of the Commission's intent to adopt the new Section 141.[2] The Commission issued a second NOPR on August 1, 2014, addressing comments filed by the Potomac Electric Power Company, and amending Sections 141.2, 141.3, 141.6, 141.7, and 141.8 consistent with ECIIFA provisions and the Commission's current rules on reconsideration petitions codified at 15 DCMR § 140.[3] No comments were filed in response to the second NOPR.

2. The purposes of the new Section 141 is to expedite the reconsideration of any Commission order issued pursuant to Title III of the "Electric Company Infrastructure Improvement Financing Act of 2014" ("ECIIFA"). On May 3, 2014, the ECIIFA, which governs the Potomac Electric Power Company's and the District of Columbia Department of Transportation's public-private partnership to bury overhead primary power lines to improve electric service reliability in the District of Columbia, became effective. The ECIIFA requires the Commission to amend its rules to expedite the reconsideration of any Commission order issued on any matter before the Commission pursuant to Title III within one hundred and twenty (120) days of the effective date of ECIIFA.

3. On August 22, 2014, the Commission issued Order No. 17598 adopting the new Section 141, as final, effective upon publication of this notice of Final Rulemaking ("NOFR") in the *D.C. Register*.

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1 D.C. Official Code § 34-802 (2012 Repl.); D.C. Official Code § 2-505 (2012 Repl. & 2014 Supp.).

2 61 DCR 6228-29 (June 20, 2104).

3 61 DCR 7893-95 (August 1, 2014).

CHAPTER 1 PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE

141 RECONSIDERATION OF ORDERS ISSUED PURSUANT TO TITLE III OF THE ELECTRIC COMPANY INFRASTRUCTURE IMPROVEMENT FINANCING ACT OF 2014

141.1 Any party affected by any final order or decision issued pursuant to Title III of the "Electric Company Infrastructure Improvement Financing Act of 2014" ("ECIIFA") may within thirty (30) days after publication of the order or decision, file with the Commission an application in writing requesting a reconsideration or modification of the matters involved (*See* D.C. Official Code § 34-604(b)).

141.2 The parties shall identify with specificity in the application for reconsideration or modification error(s) of law or fact in the Commission's final order that they seek to have corrected. The application for reconsideration or modification is not a vehicle for losing parties to rehash arguments earlier considered and rejected by the Commission where there exists no error of law or fact.

141.3 Responses to applications for reconsideration or modification shall be filed with the Commission within five (5) business days after receipt of the application.

141.4 The Commission may, in its discretion, permit or require oral argument or briefs or both upon application for reconsideration or modification. The Commission shall proceed to hear and determine the reconsideration application as expeditiously as practicable.

141.5 The Commission shall, within thirty (30) days after the filing of the application, either grant or deny the application for reconsideration or modification. Failure by the Commission to act within that period shall be considered a denial of the, application. An application for reconsideration filed pursuant to this section will be given priority and acted upon by the Commission as expeditiously as practicable.

141.6 If the Commission determines that more time is needed to address the issues in the application for reconsideration or modification and any responses thereto, the Commission may issue a tolling order extending the deadline for reconsideration or modification by no more than ten (10) days.

141.7 If the application for reconsideration or modification is granted, the Commission shall, after notice to all parties, either with or without a hearing, rescind, modify, clarify or affirm its order or decision.

141.8 The filing of an application for reconsideration or modification shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application for reconsideration or

modification; provided, that upon written consent of the affected utility such order or decision shall not be stayed unless otherwise ordered by the Commission.

141.9 Any application for reconsideration or modification filed on the thirtieth (30th) day after the publication of the order or decision which the application seeks to have reconsidered or modified, shall be filed on or before the close of business of that day.

OFFICE ON AGING

NOTICE OF PROPOSED RULEMAKING

The Executive Director of the Office on Aging (Director), pursuant to Section 303(8) of the District of Columbia Act on the Aging, effective October 29, 1975 (D.C. Law 1-24; D.C. Official Code § 7-503.03(8) (2012 Repl.)), has been delegated the authority and responsibility to assure necessary control on programs funded through the Office. To carry out this responsibility the Director proposes to establish a policy to govern conduct of customers, guests, and other permitted users. The establishment of such a policy constitutes the making of a "rule" as defined in Section 3(6)(A) of the District of Columbia Administrative Procedures Act (DCAPA), approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(6)(A) (2012 Repl.)) and such rulemaking requires public notice and comment as required by Section 6(a) of the DCAPA. Therefore, the Director hereby gives notice of his intent to adopt the following new Chapter 110 (Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by the District of Columbia Office on Aging) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this proposed rulemaking is to set forth a Code of Conduct is to ensure that all programs and services operated pursuant to funding through the District of Columbia Office on Aging ("DCOA") are provided in a safe, healthy, inclusive, friendly, respectful, and productive environment for seniors and persons living with disabilities who participate in these activities. The proposed rules will also establish that a violation of this "Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by the District of Columbia Office on Aging" may result in disciplinary action up to, and including, permanent expulsion from DCOA programs, services, and facilities.

A new Chapter 110 (Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by the District of Columbia Office on Aging) of Title 29 (Public Welfare) of the DCMR is added to read as follows:

CHAPTER 110 CUSTOMER CODE OF CONDUCT FOR PARTICIPATION IN PROGRAMS, SERVICES, AND FACILITIES FUNDED BY THE DISTRICT OF COLUMBIA OFFICE ON AGING

11000 SCOPE

11000.1 These rules apply to:

(a) All organizations and partners that receive funding from the District of Columbia Office on Aging (DCOA) in order to deliver programs and services.

(b) All DCOA facilities and senior services network locations.

(c) All DCOA customers, guests, and other permitted users.

11001 GENERAL CONDUCT

11001.1 Acceptable hygiene and personal cleanliness are required from all customers, guests, and other permitted users at all times. Customers, guests, and other permitted guests must be fully clothed, including shoes.

11001.2 All customers, guests, and other permitted users of DCOA facilities, including fitness centers and meal services, are expected to strictly adhere to the center's safety policies and procedures.

11001.3 All customers, guests, and other permitted users who visit or use DCOA programs and services are entitled to be treated with dignity and respect. Please be respectful and comply with all federal and District of Columbia laws and DCOA policies and regulations.

11001.4 DCOA and its designees are responsible for the daily operation of DCOA facilities, programs, and services, and for ensuring that these activities are conducted in a safe and appropriate manner. It is expected that DCOA customers and guests will respect these responsible individuals and cooperate with them to carry out their responsibilities efficiently.

11001.4 Disrespectful, rude, or abusive behavior will not be tolerated. Examples of such behavior includes, but is not limited to, use of profanity, threats, harassment, bullying, intimidating or disruptive behavior, or violence toward others.

11001.5 Fighting or any attempt to inflict bodily harm to any individual is prohibited and will be reported to appropriate law enforcement agencies.

11001.6 In accordance with the federal and District of Columbia laws, discrimination or harassment is prohibited on the basis of race, color, national origin, ethnicity, religion, gender, sexual orientation, age, disability or handicapped status, or any other status that is prohibited under applicable federal and District of Columbia requirements.

11002 MAINTAINING A SAFE, CLEAN, AND PRODUCTIVE ENVIRONMENT

11002.1 DCOA strives to maintain a safe, clean, and healthy environment for DCOA's customers, employees, volunteers, grantees and contractors. Everyone is responsible for ensuring that DCOA's facilities, programs, and services are properly maintained for the use and enjoyment of all participants.

11002.2 The possession, use, distribution, and/or sale of alcohol or illegal drugs is prohibited at DCOA facilities, programs, and services.

11002.3 Smoking in DCOA facilities is prohibited.

11002.4 Any person smoking must be located at least 25 feet away from DCOA premises in a designated area.

11002.5 The possession, use, distribution, and/or sale of controlled substances at DCOA facilities, programs, and services is strictly prohibited, with the exception of controlled substances that are used by a person pursuant to a prescription issued to that person by a health care provider for medical reasons, and the person is able to participate in DCOA programs and services in accordance with the terms of the Code of Conduct.

11002.6 Gambling is not permitted in DCOA facilities, programs, and services.

11002.7 Weapons including, but not limited to, firearms, pellet guns, stun guns, tasers, knives, and clubs, are not permitted in DCOA facilities, programs, and services.

11002.8 Pets are not permitted on the premises of DCOA facilities, except for service animals that provide assistance to DCOA customers and are authorized by DCOA or its designee. Service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work, or the individual's disability prevents the use of such devices, in accordance with the provisions of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq*.

11002.9 Monetary collections, solicitations, and other commercial activities are not permitted on the premises of DCOA facilities unless specifically authorized by DCOA or its authorized designee.

11002.10 DCOA facilities, equipment, services, and programs must be used in accordance with established safety policies and procedures. Improper use of DCOA facilities, equipment, or materials, in a manner that is likely to cause personal injury to themselves or others is prohibited, and the intentional and/or negligent damage or misuse of DCOA facilities, equipment, or property is strictly prohibited.

11002.11 The use of DCOA computers and equipment to view and/or download pornographic materials is prohibited.

11002.12 No person may deface, destroy, injure, misuse, or remove any DCOA property.

11002.13 Littering, theft, and vandalism are not permitted on DCOA facilities.

11002.14 Urinating or defecating on DCOA property other than in places officially posted is prohibited.

11002.15 No person shall engage in lewd or indecent acts, sexual harassment, sexual intercourse, or other sexual acts at DCOA facilities, programs, and services.

11002.16 Violations of federal or District of Columbia laws are prohibited. Criminal activity will be reported to law enforcement authorities for prosecution.

11002.17 In order to promote the health and safety of DCOA staff, customers, guests, and other permitted users, and to prevent the unauthorized removal of DCOA property and equipment, DCOA reserves the right to inspect property brought to DCOA facilities, including purses, backpacks, bags, parcels, shopping bags, briefcases, and other items.

11002.18 Meals served at DCOA congregate meal sites are intended for consumption on the premises, and no food products served shall be removed or otherwise taken away from the premises by customers, guests, and other permitted users, with the exception of beverages and desert.

11003 ENFORCEMENT

11003.1 DCOA, its designees, Metropolitan Police Department, Security Guards, or Special Police officers, may intervene to stop prohibited behavior under these rules or under the laws of the District of Columbia.

11003.2 In addition to arrest and/or prosecution and fines, failure to follow these rules may result in penalties or being barred from DCOA programs and services.

11003.3 Customers, guests or other permitted users who witness or are victims of prohibited behavior under this Code of Conduct shall report the violation either verbally or in writing to the Program Director. Customers or guests who engage in actions that are prohibited under this Code of Conduct are subject to the penalties provided in the Table of Penalties set forth below. The Program Director will prepare an incident report to be submitted to DCOA, and will investigate and confer with DCOA to determine appropriate actions that are necessary to address alleged violations of this Code of Conduct. If barring is appropriate, DCOA will issue a barring notice to the customer or guest. The customer or guest will be barred from DCOA programs and services for the length of time indicated in the barring notice.

11003.4 The behaviors identified in the "DCOA Prohibited Conduct and Table of Penalties," as set forth below, are prohibited in all DCOA facilities, programs and services and DCOA shall implement the corresponding penalties that are provided.

DCOA PROHIBITED CONDUCT AND TABLE OF PENALTIES

VIOLATION	PENALTY FOR 1ST OFFENSE	PENALTY FOR 2ND OFFENSE
1. Disruptive Behavior	written warning	up to 60-day bar
a. use of profanity or spitting	written warning	up to 60-day bar
b. arguing	written warning	up to 60-day bar
c. bullying or taunting	written warning and mandatory mediation	up to one-year bar
d. threatening language	up to 60-day bar	up to one-year bar
e. intimidation	up to 60-day bar	up to one-year bar
f. physical fighting	up to 6-month bar	up to one-year bar
g. emanating odor	counseling or verbal warning and immediate one-day bar if not corrected	up to 60-day bar
h. bare feet or bare chest	counseling or verbal warning and immediate one-day bar if not corrected	up to 60-day bar
i. sexual misconduct	up to 60-day bar	up to one-year bar
j. under the influence of alcohol and/or drugs	up to 60-day bar	up to one-year bar
2. Unauthorized Entrance or Presence	up to 60-day bar	up to one-year bar
3. Allowing Unauthorized Pets into Facilities	written warning	up to 60-day bar
4. Possession of Weapons	up to one-year bar	permanent bar
5. Gambling	written warning	up to one-year bar
6. Possession and/or Use of Alcohol or Drugs	up to one-year bar	up to three-year bar
7. Improper Distribution or Sale of Controlled Substances	up to one-year bar	up to three-year bar
8. Smoking in DCOA Facilities	up to 30-day bar	up to one-year bar
9. Conviction of a Crime at DCOA Facility	up to three-year bar	permanent bar
10. Damage or Vandalism to DCOA Facility or Equipment	up to one-year bar	up to three-year bar
11. Creating a Dangerous Situation to Self or Others	up to 6 month bar	up to one year bar
12. Discrimination or Harassment on basis of race, color, national origin, ethnicity, religion, gender, sexual orientation, age, disability or handicapped status, or any other status that is prohibited under applicable	up to one year bar	permanent bar

Federal and District of Columbia Requirements		
13. Violations of Other Federal or District of Columbia laws	up to one year bar	permanent bar
14. Collection of Money, Solicitation, or Unauthorized Commercial Activity	up to one year bar	permanent bar

11003.5 Customers, guests, or other permitted users of DCOA programs, services, and facilities are required to sign the "Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by District of Columbia Office on Aging Receipt and Acknowledgement Form," as set forth below, to acknowledge receipt of the "Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by District of Columbia Office on Aging," and to establish the willingness of DCOA customers, guests or other permitted users to comply with these requirements.

DCOA CODE OF CONDUCT RECEIPT AND ACKNOWLEDGMENT FORM

I, _____, acknowledge that I have received a copy of DCOA's "Customer Code of Conduct for Participation in Programs, Services and Facilities Funded by District of Columbia Office on Aging." I understand that it is my responsibility to read and comply with policies contained in this document, as well as any revisions made to it. I also understand that if I need additional information, or if there is anything that I do not understand in the "Customer Code of Conduct for Participation in Programs, Services, and Facilities Funded by District of Columbia Office on Aging," I should contact DCOA.

Signature _____ Date _____

11004 ADMINISTRATIVE REVIEW OF NOTICES OF BARRING

110005.1 A customer, guest, or other permitted user who receives a notice of barring, may submit a "Request for Reconsideration" to the Executive Director of DCOA. The request shall be submitted in writing no later than 7 business days after the notice is issued to the individual who is barred. DCOA will convene a three-member panel to review the request and issue a decision in writing no later than 10 business days following the request.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Deborah M. Royster, Esq., General Counsel.,

District of Columbia Office on Aging, 500 K Street, N.E., Washington, D.C. 20002 or at deborah.royster@dc.gov. Questions may be directed to (202) 727-6603. Copies of these proposed rules may be obtained at the same address.

DEPARTMENT OF MOTOR VEHICLES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Sections 1825 and 1826 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code §§ 50-904 and 50-905 (2012 Repl.)), Sections 6 and 7 of the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03 and 50-1401.01 (2012 Repl. & 2014 Supp.)), Section 3 of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-402 (2012 Repl.)) and Mayor's Order 91-161, dated October 15, 1991, hereby gives notice of the intent to adopt the following rulemaking that will amend Chapters 13 (Classification and Issuance of Commercial Driver's Licenses) and 99 (Definitions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR").

In compliance with 49 C.F.R. § 390.5, the proposed rulemaking will exempt an operator of a DC Streetcar from needing a commercial driver's license while operating a DC Streetcar and will conform the definition of "DC Streetcar" with the definition set forth in the Department of Transportation Establishment Act, effective April 20, 2013 (D.C. Law 19-268; D.C. Official Code § 50-921.71(1) (2014 Supp.)).

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

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

Chapter 13, CLASSIFICATION AND ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, is amended as follows:

Section 1329, EXEMPTIONS TO THE COMMERCIAL DRIVER'S LICENSE REQUIREMENTS, is amended by adding a new subsection 1329.4 to read as follows:

1329.4 A driver of a DC Streetcar, as defined in 18 DCMR 9901, shall be exempt from this chapter.

Chapter 99, DEFINITIONS, is amended as follows:

Section 9901, DEFINITIONS, is amended by adding a definition for DC Streetcar and repealing the definition of Streetcar as follows:

DC Streetcar - means a local fixed guideway transit network offering rail passenger service operated by the District government or its agent.

"Streetcar - a car other than a railroad train for transporting persons or property and operated upon rails" is repealed.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to David Glasser, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Suite 300, Washington, D.C. 20024 or online at www.dcregs.dc.gov. Comments must be received not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

OFFICE OF TAX AND REVENUE

NOTICE OF PROPOSED RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR) of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code § 47-2023 (2012 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019; Pub. L. 109-356; D.C. Official Code § 1-204.24d (2012 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of its intent to amend Chapter 4 (Sales And Use Taxes) of Title 9 (Taxation and Assessment) of the District of Columbia Municipal Regulations (DCMR), by adding Sections 423-429.

The newly proposed Sections 423-429 provide guidance regarding the collection of tax on the newly taxable services of bottled water delivery, bowling alleys and billiard parlors, car washing, carpet and upholstery cleaning, health-clubs, the storage of household goods, and tanning.

The guidance set forth in this rulemaking is necessary to provide clarity to taxpayers attempting to comply with District sales and use tax statutes and would aid in the fair and efficient administration of District laws.

OTR gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 4, SALES AND USE TAXES, of Title 9, TAXATION AND ASSESSMENT, of the DCMR is amended to add the following new sections to read as follows:

423 BOTTLED WATER DELIVERY SERVICE

423.1 The sale by a bottled water delivery service of bottled water by the gallon generally for use with and to be dispensed from a water cooler or similar type of water dispenser is subject to sales tax.

423.2 Persons operating a bottled water delivery service business must report and pay the sales tax on the gross proceeds derived from that business. A security deposit is not part of the taxable purchase price.

424 BOWLING ALLEY OR A BILLIARD PARLOR SERVICE

424.1 The sale of or charge for the service of a bowling alley or a billiard parlor is subject to sales tax.

424.2 The total amount charged for bowling is subject to tax. Taxable receipts for bowling shall include all fees or charges, including entry fees and league fees.

424.3 Bowling balls, shoes and other equipment are exempt from tax when sold as sales for resale to the provider of the service of a bowling alley. The tax applies to sales at retail and rentals of such property to customers and must be collected and remitted by the provider.

424.4 The total amount charged for billiards is subject to tax, including charges for coin-operated pool tables. Taxable receipts for participation in billiards shall include all fees or charges for billiards, whether by the game, by the hour, or by other measure.

424.5 The entire bundled charge for both taxable bowling alley or a billiard parlor services and nontaxable services will be presumed taxable if a primary purpose of the transaction is the sale of the taxable bowling alley or a billiard parlor services. The presumption may be overcome by the services provider at the time of the transaction by separately stating to the customer a reasonable charge for the taxable services. The service provider's books must support the apportionment between taxable and nontaxable services based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for nontaxable services is unreasonable when considering the cost of providing the service or a comparable charge made in the industry for each service, the DCFO will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

424.6 For purposes of this section:

(a) "Billiards" means the game of striking balls on a cloth-covered table with a cue stick, whether by the game or by the hour.

(b) "Bowling" means the game of rolling a ball down an alley to knock down pins, including candle-pin, duck-pin, five-pin, and ten-pin bowling.

(c) "Service of a billiard parlor" means participation in billiards.

(d) "Service of a bowling alley" means participation in bowling, as an individual or as part of a league.

425 CAR WASHING SERVICES

425.1 The sale of or charge for the service of car washing, including cleaning, washing, waxing, polishing, or detailing an automotive vehicle is subject to sales tax.

425.2 The sale of or charge for self-service car washing is not subject to sales tax.

425.3 Persons operating places of business for the purpose of car washing must report and pay the sales tax measured by the gross proceeds derived from these services.

425.4 Materials such as cleaning fluids, wax, and other consumable supplies used in connection with the services of car washing are subject to the sales tax and the tax should be paid by the car wash purchasing such items. If the tax was not paid at the time of purchase of the items, those purchases must be reported to the District and a use tax paid on the amount of the purchases.

426 CARPET AND UPHOLSTERY CLEANING SERIVCES

426.1 The sale of or charge for the service of carpet and upholstery cleaning, including the cleaning or dyeing of used rugs, carpets, or upholstery, or for rug repair is subject to sales tax.

426.2 Persons operating places of business for the purpose of carpet and upholstery cleaning must report and pay the sales tax measured by the gross proceeds derived from these services.

426.3 Materials such as thread and yarn which become an integral part of the rug, carpet, or upholstery subject to cleaning are exempt from tax when sold to the carpet and upholstery cleaners as sales for resale.

426.4 Materials such as detergents, cleaning fluids, and other consumable supplies used in connection with the services of carpet and upholstery cleaning are subject to the sales tax, and the tax should be paid by the cleaners purchasing such items. If the tax was not paid at the time of purchase of the items, those purchases must be reported to the District and a use tax paid on the amount of the purchases.

426.5 For purposes of this section, "carpet and upholstery cleaning" includes, but is not limited to:

(a) Dry cleaning services for rugs;

(b) Carpet, rug, or upholstery cleaning, dying, and repairing services, including carpet cleaning and repairing performed in commercial or residential structures;

(c) Treating or applying protective chemicals to carpet, upholstery, or rugs; and

(d) Binding and serging of area rugs.

427 HEALTH-CLUB SERVICES

427.1 The sale of or charge for the services of a health club is subject to sales and use tax.

427.2 Health-club means a fitness club, fitness center, or gym the purpose of which is physical exercise, includes the use of, access to, or membership to, an athletic club, fitness center, gym, recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities including swimming, skating, or racquet sports, or other facility for the purpose of physical exercise.

427.3 Charges for sale of or charge for the services of a health club include any amounts paid to participate, enter, use, or access the health club, including but not limited to membership dues, drop-in fees, and entrance fees.

427.4 Charges for the use of facilities for non-fitness-related purposes, including room rentals, or for other services or charges covered by a separate contract with the user, such as a lease or occupancy agreement, are not subject to tax.

427.5 As sales by nonprofit organizations are not granted a general sales tax exemption, sales by nonprofit organizations of the services of a health club will be subject to tax unless the purchaser holds a valid exemption or resale certificate.

427.6 Examples of taxable charges for health-club services include, but are not limited to:

(a) A monthly membership to a fitness center to use and access the fitness center's strength training equipment.

(b) A daily entrance fee to a tennis club for access to the club's tennis courts.

(c) A charge for a multi-lesson pass to a yoga studio for access to classes with the studio's yoga instructors.

(d) A gate charge to recreational center for use of the recreation center's rock climbing area.

(e) A drop-in charge at gymnasium for participation in a group fitness class.

(f) A charge by a fitness center for personal training services performed at the fitness center by an employee of the fitness center.

427.7 Charges which do not constitute health-club services are not subject to sales tax. For example, if:

(a) A business organizes a 'Get Fit Challenge' for its employees, charging each participating employee dues, the fees collected will not be subject to tax.

(b) A gym charges a fee for a lounge pool membership, where the lounge pool membership is not for physical exercise, such fee will not be subject to tax.

(c) A personal trainer is hired by an individual to perform fitness related services at the customer's home or at a fitness center, the fees collected will not be subject to tax.

(d) A spa charges clients for services which are not fitness-related, such fees will not be subject to tax.

427.8 The entire bundled charge for both taxable health-club services and nontaxable services will be presumed taxable if a primary purpose of the transaction is the sale of the taxable health-club services.

(a) This presumption may be overcome by the health-club services provider at the time of the transaction by separately stating to the customer a reasonable charge for the taxable services.

(b) The service provider's books must support the apportionment between taxable and nontaxable services based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone.

(c) If the charge for nontaxable services is unreasonable when considering the cost of providing the service or a comparable charge made in the industry for each service, the Deputy Chief Financial Officer will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

428 SERVICE OF STORAGE OF HOUSEHOLD GOODS

428.1 The sale of or charge for the service of the storage of household goods through renting or leasing space for self-storage, including rooms, compartments, lockers, containers, or outdoor space, except general merchandise warehousing and storage and coin-operated lockers, are subject to sales and use tax.

428.2 The total amount charged for providing service of the storage of household goods is subject to tax. Charges associated with the cost of service of the storage of household goods, such as utilities, insurance, pick-up, delivery, locks or keys, are part of the taxable purchase price. Charges that the facility incurs as a result of a tenant who fails to pay including, but not limited to, auction fees and cut-lock fees are not part of the taxable purchase price. A security deposit is not part of the taxable purchase price unless it is converted into a rental payment.

428.3 "Household goods" means tangible personal property, including goods and products, used within households. "Household goods" include, but are not limited to, consumer electronics, appliances, tools, housewares, and home furnishings.

428.4 The following are examples of taxable storage of household goods:

(a) Rental of storage lockers or storage units in apartment complexes if the locker or unit is utilized at the option of a tenant upon payment of a fee in addition to the apartment rental; and

(b) Rental of a storage unit for the purpose of storing household goods in which the consumer customarily stores and removes the consumer's household goods on a self-service basis.

428.5 The following are examples of services which are not taxable storage of household goods:

(a) General warehousing and storage, where the warehouse is engaged in the operation of receiving, handling, and storing property for others using the warehouse's staff and equipment, and does not allow the consumer of the service separate access to the storage area used to hold the property; and

(b) Monthly rental amounts for indoor storage of a boat during the winter months.

429 TANNING SERVICES

429.1 The sale of or charge for tanning services are subject to sales and use tax.

429.2 Tanning services means providing individuals a manmade tan, including sun tanning and spray tanning, whether or not assisted by an employee of the tanning business.

429.3 Charges for tanning services include any amounts paid to for the tanning service, including but not limited to monthly membership fees and appointment fees.

Comments on this proposed rulemaking should be submitted to Jessica Brown, Assistant General Counsel, Office of Tax and Revenue, no later than thirty (30) days after publication of this notice in the *D.C. Register*. Jessica Brown may be contacted by: mail at DC Office of Tax and Revenue, 1101 4th Street, SW, Suite 750, Washington, DC 20024; telephone at (202) 442-6462; or, email at jessica.brown@dc.gov. Copies of this rulemaking and related information may be obtained by contacting Jessica Brown as stated herein.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation ("DDOT"), pursuant to the authority set forth in Sections 5(2)(N) and 11r of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.04(2)(N) and 50-921.76 (2012 Repl. & 2014 Supp.)), and Mayor's Order 2013-198, dated October 24, 2013, hereby gives notice of the intent to adopt the following rulemaking to amend Chapter 16 (DC Streetcar) and Chapter 22 (Moving Violations) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR").

The purpose of this rulemaking is to establish routes and hours of operations for the DC Streetcar system, prohibit actions that impede the operation of the DC Streetcar system, and allow vehicles to safely pass streetcars on the left side when a travel lane on that side is available.

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

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

Chapter 16, DC STREETCAR, is amended to read as follows:

1600 GENERAL PROVISIONS

1600.1 This chapter applies to the passenger light rail transit service operated by the District Department of Transportation ("DDOT"), known as the DC Streetcar.

1601 IMPEDING THE STREETCAR SYSTEM

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

(a) On a streetcar guideway; or

(b) Adjacent to a streetcar platform.

1601.2 A vehicle in violation of this section shall be subject to removal or impoundment at the vehicle owner's expense, pursuant to 18 DCMR § 2421.

1602 ROUTES AND HOURS OF OPERATION

1602.1 The following routes are established for the DC Streetcar:

(a) H Street – Hopscotch Bridge to the intersection of Benning Road and Oklahoma Avenue., N.E.

1602.2 The standard operating hours for the routes established in Section 1602.1 may operate seven (7) days a week during the hours listed below are:

(a) Monday through Thursday – 6:00 a.m. to 12:00 midnight;

(b) Friday – 6:00 a.m. to 2:00 a.m.;

(c) Saturday – 8:00 a.m. to 2:00 a.m.; and

(d) Sunday and holidays – 8:00 a.m. to 10:00 p.m.

1602.3 The director of DDOT ("DDOT Director"), or the operator of the DC Streetcar system with the consent of the DDOT Director, may expand or reduce the hours of operation of the DC Streetcar on specific days due to special events or unusual circumstances.

1603 RESERVED

1604 DAMAGING OR TAMPERING WITH THE STREETCAR SYSTEM

1604.1 The following acts are prohibited:

(a) Breaking, damaging, defacing, tampering with, or removing any part of a streetcar, streetcar guideway, or streetcar platform; or

(b) Interfering with or preventing the operation of a streetcar, streetcar platform, or streetcar guideway.

1604.2 Except as provided in Section 1604.3, only a person authorized by DDOT may manipulate any of the levers, buttons, cranks, brakes, or other mechanisms of a streetcar, including the emergency stop device, or to set a streetcar into motion.

1604.3 An act that is otherwise prohibited under Section 1604.2 may be taken:

(a) To respond to an emergency or in furtherance of public safety; but only to the extent a reasonable person would perform the act in such a situation, or

(b) By or under the direction of a person authorized as part of his or her official duties to take or direct such action.

1605 CONDUCT IN THE STREETCAR SYSTEM

1605.1 While on a streetcar, the following acts are prohibited:

(a) Transporting any item that blocks the aisle or the areas of the streetcar reserved for passengers in wheelchairs or who use mobility aids;

(b) Transporting a bicycle on a streetcar between 7:00 a.m. and 10:00 a.m. or between 4:00 p.m. and 7:00 p.m. Monday through Friday, except holidays;

(c) Transporting a bicycle on a streetcar in a manner that blocks access to any seats;

(d) Bringing or carrying food or beverages in open containers;

(e) Consuming food or beverages;

(f) Bringing or carrying any animal upon the streetcar, except in the case of a guide or service animal, including a service animal in training, that has been individually trained to assist persons with disabilities and is under the control of its handler, housebroken and restrained by leash, harness, or other device made for the purpose of controlling the movement of an animal;

(g) Soliciting signatures or circulating petitions; and

(h) Distributing with or without charge any goods, wares, merchandise, books, magazines, newspapers, bills, or other literature of a commercial or non-commercial nature.

1605.2 While on a streetcar or a streetcar platform, the following acts are prohibited:

(a) Operating a sound-emitting device, unless the only sound produced by such item is emitted by a personal listening attachment (earphone) audible only to the person carrying the device producing the sound;

(b) Riding a skateboard, in-line skates, roller-skates, or a bicycle;

(c) Smoking tobacco, an electronic cigarette, or any other substance, or carrying any lighted or smoldering substance, in any form;

(d) Engaging in commercial activity, including selling or offering to sell any goods, wares, merchandise, books, magazines, newspapers, or any article of value, or taking orders for or selling subscriptions to same for future delivery, or distributing commercial advertising matter; and

(e) Soliciting donations.

1605.3 The following acts are prohibited at any time:

(a) Hanging onto or attaching oneself to any exterior part of a streetcar or touching a moving streetcar vehicle from outside the vehicle;

(b) Walking between coupled streetcar vehicles;

(c) Throwing an object at or from any streetcar or at any person or thing on or in any streetcar or streetcar platform;

(d) Posting signs or notices on a streetcar vehicle, streetcar platform, or streetcar guideway; and

(e) Riding a bicycle within a streetcar guideway, except to cross the street.

1699 DEFINITIONS

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

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

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

Valid fare media – a printed slip of paper or other official means of indicating purchase of a transit fare.

Chapter 22, MOVING VIOLATIONS, is amended as follows:

Section 2211 is amended as follows:

Subsection 2211.1 is amended by amending paragraph (c) to read as follows:

(c) When there are other travel lanes to the left of the streetcar tracks for vehicles to proceed in the same direction.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Samuel D. Zimbabwe, Associate Director, District Department of Transportation, 55 M Street, S.E., 5th Floor, Washington, D.C. 20003. An interested person may also send comments electronically to publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at www.ddot.dc.gov.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CONSTRUCTION CODES COORDINATING BOARD

NOTICE OF SECOND EMERGENCY RULEMAKING

The Chairperson of the Construction Codes Coordinating Board (Chairperson), pursuant to the authority set forth in Section 10 of the Construction Codes Approval and Amendments Act of 1986 (Act), effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1409 (2012 Repl. & 2014 Supp.)) and Mayor's Order 2009-22, dated February 25, 2009; and the Director of the Department of Consumer and Regulatory Affairs (Director), pursuant to the authority set forth in Section 12 of the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.11 (2012 Repl. & 2014 Supp.)) (Green Building Act), Mayor's Order 2007-206, dated September 21, 2007, and Mayor's Order 2010-1, dated January 5, 2010, hereby give notice of the adoption of the following emergency rulemaking amending Title 12 of the District of Columbia Municipal Regulations (DCMR), (the "2013 D.C. Construction Codes").

This emergency rulemaking is necessitated by the immediate need to correct errata and to address various matters that were not fully resolved, or identified, prior to adoption of the 2013 D.C. Construction Codes. This emergency extends the Notice of Emergency and Proposed Rulemaking published on May 9, 2014 at61 DCR 4760, which would otherwise expire on September 4, 2014.

This second emergency rulemaking was adopted August 29, 2014, will become effective immediately, and extends the emergency rules that took effect on May 9, 2014. The rules will remain in effect for up to one hundred twenty (120) days from the date of adoption, expiring December 27, 2014, or upon publication of a Notice of Final Rulemaking.

The Chairperson and Director also hereby give notice of the intent to take final rulemaking action to adopt this amendment. Pursuant to Section 10(a) of the Act, the proposed amendment will be submitted to the Council of the District of Columbia for a forty-five (45) day period of review, and final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of this notice in the *D.C. Register* or Council approval of the amendment.

In the proposed amendments below, insertion of new language is indicated by <u>underlining,</u> while deletion of existing language is indicated by ~~strikethrough.~~

Chapter 1 (Administration and Enforcement) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

106 SUBMITTAL DOCUMENTS

106.1 General. Submittal documents shall consist of *construction documents* (as specified in this Section 106 or as may be required by the *code official*), a statement of *special inspections*, a geotechnical report and other data. The *construction documents* shall be prepared by a *registered design professional* where required by the *Construction Codes*. Where special conditions exist,

the *code official* is authorized to require additional *construction documents* to be prepared by a registered design professional.

Where one or more submittal documents are required based on the permit(s) applied for, submittal documents shall be submitted with the permit application and shall include four sets, or an electronic submission, of drawings and one set of all other supporting documents unless otherwise specified below. Notwithstanding the foregoing, all submittal documents, the permit application and all other supporting documents shall be submitted electronically, based on the following schedule:

1. Projects of 100,000 square feet or more: June 28, 2014 ~~January 1, 2014: Projects of 100,000 square feet or more.~~

2. Projects of 75,000 square feet and up to, but less than, 100,000 square feet: September 28, 2014 ~~April 1, 2014: Projects of 75,000 square feet or more.~~

3. Projects of 50,000 square feet and up to, but less than, 75,000 square feet: December 28, 2014 ~~July, 1, 2014: Projects of 50,000 square feet or more.~~

4. Projects of less than 50,000 square feet, with the exception of projects exempted from seal requirements by Section 105.3.10.1: March 28, 2015 ~~October 1, 2014: All projects with the exception of projects exempted from seal requirements by Section 105.3.10.1.~~

The *code official* is authorized to modify the requirements for submittal documents when the application for permit is for *alteration* or repair or when otherwise warranted.

Exception: The *code official* is authorized to accept and process permit applications without submissions of *construction documents* and other supporting data not required to be prepared by a registered design professional, where the *code official* finds that the nature of the work applied for is such that review of *construction documents* is not necessary to obtain compliance with the *Construction Codes*.

Chapter 1 (Administration and Enforcement) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

106.1.1 Architectural and Engineering Details. The *code official* shall require adequate details of structural, accessibility, fire protection, electrical, fuel gas, mechanical, plumbing, energy conservation, and green building provisions to be filed, including computations, stress diagrams, sound transmission details and

other technical data essential to assess compliance with the *Construction Codes*, as further specified in this Section 106. ~~All engineering plans and computations shall bear the signature of the District licensed professional engineer responsible for the design, as required by Section 106.3.4.~~

Chapter 1 (Administration and Enforcement) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

110.1.6 Certificate Issued. After the *code official* inspects the *building* or other *structure* and finds no violations of the provisions of the *Construction Codes*, the *Zoning Regulations* or other laws that are enforced by the *Department*, the *code official* shall issue a certificate of occupancy containing the following:

1. The building permit number (if applicable);

2. The address of the *structure*;

3. The name and address of the property or business *owner*, as applicable;

4. A description of that portion of the *structure* for which the certificate is issued;

5. The name of the *code official*;

6. The use and occupancy, in accordance with the provisions of Chapter 3 of the *Building Code*;

7. The use and occupancy in accordance with the *Zoning Regulations*;

8. The design occupant load;

9. Any special stipulations and conditions of the building permit; ~~and~~

10. Date of issuance;

11. If an *automatic sprinkler system* is provided, whether the sprinkler system is required;

12. The edition of the code under which the permit was issued; and

13. The type of construction as defined in Chapter 6.

Chapter 4 (Special Detailed Requirements Based on Use and Occupancy) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 403.4.5 of the International Building Code in its entirety and insert new Section 403.4.5 in the Building Code in its place to read as follows:

403.4.5 Emergency responder radio coverage. Emergency responder radio coverage shall be provided in accordance with Section 510 of the *Fire Code*.

Chapter 32 (Encroachments into the Public Right-of-Way) of Subtitle A (Building Code Supplement) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

3202.7 General restrictions. All projections shall comply with the provisions of Sections 3202.7.1 through 3202.7.6.

3202.7.1 Limitations based on street width. Except as otherwise permitted by this chapter, projections shall not be allowed on any *street* less than 60 feet (18 288 mm) in width.

Exception: Projecting cornices, bases, *water tables*, pilasters or uncovered steps.

3202.7.1.1 Minimum clearance to curb line. A minimum clear space from the outer edge of the curb to the outer face of all projections and steps shall be preserved, as follows:

1. Six feet (1829 mm) on *streets* 40 feet (12 192 mm), but less than 50 feet (15 250 mm) wide;

2. Eight feet (2438 mm) on *streets* 50 feet (15 240 mm), but less than 60 feet (18 288 mm) wide;

3. Ten feet (3048 mm) on *streets* 60 feet (18 288 mm) to and including 80 feet (24 384 mm) wide;

4. Twelve feet (3658 mm) on *streets* more than 80 feet (24 384 mm) to and including 90 feet (27 432 mm) wide; and

5. Fifteen feet (4572 mm) on *streets* more than 90 feet (27 432 mm) wide.

For purposes of Section 3202.7.1.1, the term "*street*" shall include the public thoroughfare and any adjoining *building restriction areas*.

****

3202.10.2.2 Projection. Balcony projections shall be limited as follows:

1. Three feet (914 mm) beyond the *lot line* or *building restriction*

line, if one exists, on *streets* more than 60 feet (18 288 mm) and less than 70 feet (21 336 mm) wide.

2. Four feet (1219 mm) beyond the *lot line* or *building restriction line*, if one exists, on *streets* 70 feet (21 336 mm) or more in width.

For purposes of Section 3202.10.2.2, the term "*street*" shall include the public thoroughfare and any adjoining *building restriction areas*.

****

3202.10.3.3 Projection. The projection of bay windows shall be limited as follows:

1. Three feet (914 mm) on *streets* 60 feet (18 288 mm) to 70 feet (21 336 mm) wide.

2. Four feet (1219 mm) on *streets* more than 70 feet (21 336 mm) wide.

For purposes of Section 3202.10.3.3, the term "*street*" shall include the public thoroughfare and any adjoining *building restriction areas*.

****

3202.11.2.3 Projection. Projection of one-story high porches shall be limited as follows:

1. Three feet (914 mm) on *streets* without *public parking*, 60 feet (18 288 mm) to 70 feet (21 336 mm) wide.

2. Four feet (1219 mm) on *streets* without *public parking*, more than 70 feet (21 336 mm) wide.

3. Five feet (1524 mm) on *streets w*ith *public parking*. Porches more than one story in height shall conform to the provisions for bay windows in Section 3202.10.3.3 as to the extent of projection beyond the *building line*.

For purposes of Section 3202.11.2.3, the term "*street*" shall include the public thoroughfare and any adjoining *building restriction areas*.

****

3202.11.3.2 Projection. Step and ramp projections shall be limited as follows:

1. Three feet (914 mm) on *streets* without *public parking*, 40 feet (12 192 mm) or more in width, but less than 45 feet (13 716 mm) wide.

2. Four feet (12 192 mm) on *streets* without *public parking*, 45 feet (13 716 mm) or more in width, but less than 70 feet (21 336 mm) wide.

3. Five feet (1524 mm) on *streets* without *public parking*, 70 feet (21 336 mm) or more in width, but less than 80 feet (24 384 mm) wide.

4. Six feet (1829 mm) on *streets* without *public parking*, 80 feet (24 384 mm) or more in width.

5. Ten feet (3048 mm) on *streets* with *public parking*, 80 feet (24 384 mm) or more in width.

For purposes of Section 3202.11.3.2, the term "*street*" shall include the public thoroughfare and any adjoining *building restriction areas*.

Appendix N (Signs) of Subtitle A (Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

N101.18.2a.6 The Gallery Place Project Graphic in the private alley shall be subject to the permit requirements of Sections N101.18.4 ~~3107.18.4~~ through N101.18.8 ~~3107.18.8~~; provided, that the permit fee for the Gallery Place Project Graphic digital displays shall be three dollars ($3) per square foot of each of the digital displays; provided further, that the reviews for the initial permit by the District Department of Transportation and the Office of Planning under Section N101.18.5 ~~3107.18.5~~ (Permit Application Referrals) shall be conducted within fourteen (14) days of the referral date; and provided further, that the initial permit shall be valid for three (3) years from date of issuance and shall be renewable annually thereafter. Each application for renewal shall be submitted on or before the anniversary of the permit's original issuance and shall be subject to review for compliance with Sections N101.18.4 ~~3107.18.4~~ (Gallery Place Project Graphics Permit Application), N101.18.5 ~~3107.18.5~~ (Permit Applications Referrals), N101.18.6 ~~3107.18.6~~ (Effect of Adverse Report), N101.18.7 ~~3107.18.7~~ (Review, Approval, and Denial of Permit Applications), and other applicable laws or regulations.

Chapter 3 (General Regulations) of Subtitle F (Plumbing Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 305.4.1 of the International Plumbing Code in its entirety and insert new Section 305.4.1 in the Plumbing Code to read as follows:

305.4.1 Sewer depth.
Building sewers shall be installed not less than 30 inches (762 mm) below grade. Building sewers that connect to *approved* private sewage disposal systems shall be installed not less than 30 inches (762 mm) below finished grade at the point of septic tank connection.

Chapter 6 (Water Supply and Distribution) of Subtitle F (Plumbing Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Table 603.3.1 Water Service Backflow Prevention

Domestic Backflow Prevention Device

Facility type	Service Size	Type	Location Note [a]
Residential or non-residential	1", 1 1/2" and 2"	Dual Check Valve Type (ASSE 1024-compliant)	On the discharge side of meter yoke Note [b]
Non-residential	3" and larger	Double Check BFP Assembly (ASSE 1015-compliant)	Inside facility, within 10 feet of water service point of entry
High Risk Non-residential	Any	Reduced Pressure Principle BF Preventer (ASSE 1013-compliant)	

Fire Protection Backflow Prevention Device

Water Treatment	Type	Location Note [a]
No chemical additives	Double Check Fire Protection BFP Assembly (ASSE 1015 – compliant) Double Check Detector Fire Protection BFP Assembly (ASSE 1048 –compliant)	Inside facility, within 10 feet of water service point of entry
Treated with chemical additives	Reduced Pressure Principle Fire Protection BF Preventer (ASSE 1013-compliant) Reduced Pressure Detector Fire Protection BFP Assembly	

	(ASSE 1047-compliant)	

For SI: 1 inch = 25.4 mm, 1 ft = 304.8 mm, 1 pound per square inch = 6.895 kPa.

a - Backflow prevention device shall always be located upstream from any water outlet.
b - Where inlet pressure to meter yoke is less than 42 psi, it is acceptable to locate the domestic backflow prevention device inside the facility, within 10 feet of water service point of entry.

Chapter 7 (Sanitary Drainage) of Subtitle F (Plumbing Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 701.2 of the International Plumbing Code in its entirety and insert new Section 701.2 in the Plumbing Code to read as follows:

701.2 Sewer required.
Buildings in which plumbing fixtures are installed and premises having drainage piping shall be connected to a *public sewer* where available, or an *approved* private sewage disposal system.

Chapter 3 (Requirements) of Subtitle G (Property Maintenance Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

310.1 Carbon monoxide alarms. Effective 36 months ~~one year~~ from the date the 2013 edition of the *Construction Codes* is adopted pursuant to Section 122 of the *Building Code*, an *approved* carbon monoxide alarm shall be installed, in Group I and R occupancies and buildings regulated by the *Residential Code*, in the immediate vicinity of the *bedrooms* in *dwelling units* located in a building containing a fuel-burning appliance or a building which has an attached garage. Only one alarm shall be required outside each separate sleeping area or grouping of *bedrooms*. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions. An *open parking garage*, as defined by Chapter 2 of the *Building Code*, or an enclosed parking garage ventilated in accordance with section 404 of the *Mechanical Code*, shall not be considered an attached garage.

Exception: A *sleeping unit* or *dwelling unit* which does not itself contain a fuel-burning appliance or have an attached garage, but which is located in a building with a fuel-burning appliance or an attached garage, need not be equipped with a carbon monoxide alarm provided that:

1. The *sleeping unit* or *dwelling unit* is located more than one story above or below any story which contains a fuel-burning appliance or attached garage;

2. The *sleeping unit* or *dwelling unit* is not connected by ductwork or ventilation shafts to any room containing a fuel-burning appliance or to an attached garage; and

3. The building is equipped with a common area carbon monoxide alarm system.

Chapter 7 (Fire Safety Requirements) of Subtitle G (Property Maintenance Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 704.2 of the International Property Maintenance Code in its entirety and insert new Sections 704.2 and 704.2.1 in the Property Maintenance Code in its place to read as follows:

704.2 Smoke alarms. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, and R-4, and dwellings not regulated as Group R occupancies, ~~R or I-1 occupancies~~ regardless of *occupant* load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of *bedrooms.*

2. In each room used for sleeping purposes.

3. In each story within a *dwelling unit,* including *basements* and cellars but not including crawl spaces and uninhabitable attics. In dwellings or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

Single or multiple-station smoke alarms shall be installed and maintained in other groups in accordance with the *Fire Code*.

704.2.1 Transition period for certain existing occupancies. Existing Group ~~I-1 and R~~ R-2 and R-3 occupancies, and dwellings not regulated as Group R occupancies, that contain smoke alarms in locations that comply with Section 704.2(1) or (2) shall have a 36-month period, commencing on the date of adoption of the 2013 edition of the *D.C. Construction Codes* in accordance with Section 122 of the *Building Code*, ~~shall have a 36 month period, commencing on~~ to install smoke alarms in the additional locations specified in Section 704.2(1), (2) and (3). ~~that comply with the requirements of Section 704.2.~~

Insert a new Section 704.5 in the Property Maintenance Code to read as follows:

704.5 Fire alarm systems. Fire alarm systems shall be continuously maintained in accordance with applicable NFPA requirements or as otherwise directed by the *code official.*

704.5.1 Manual fire alarm boxes. All manual fire alarm boxes shall be operational and unobstructed.

704.5.2 Fire alarm signage. Where fire alarm systems are not monitored by a supervising station, an approved permanent sign shall be installed adjacent to each manual fire alarm box that reads: "**WHEN ALARM SOUNDS CALL FIRE DEPARTMENT**".

Exception: When the manufacturer has permanently provided this information on the manual fire alarm box.

704.5.3 Fire alarm notice. ~~In accordance with the requirements of the Fire Alarm Notice and Tenant Fire Safety Amendment Act of 2009, effective March 11, 2010 (D.C. Law 18-116; D.C. Official Code § 6-751.11 (2012 Repl.),~~ T~~t~~he *owner* of a *building* containing four or more *dwelling units, rooming units* or *sleeping units*, including a *building* containing four or more residential condominium or cooperative units, shall post in conspicuous places in the *common spaces* of the *building*, and distribute to each *tenant* or unit *owner*, a written notice that provides information about fire alarm systems in the *building*. The notice shall be on a form developed and published by the *code official* in English and in the languages required under section 4 of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933 (2012 Repl.). The notice shall include the following information:

1. Instructions on the operation of manual fire alarm boxes of the building fire alarm system;

2. Instructions on what to do when the *dwelling unit*'s smoke detectors activate, including abandoning the *dwelling unit* immediately, closing the door of the unit, and actuating the nearest manual fire alarm box;

3. Whether the building fire alarm system is monitored by a supervising station; and

4. Instructions to report any fire event by immediately calling 911.

For purposes of this section, the owner of a *building* containing condominium or cooperative units shall be the unit owners' association, the cooperative housing association, or other entity having responsibility for managing the condominium or cooperative on behalf of the unit owners.

704.5.4 Housing Business. Where the *owner* or *operator* of a *housing business* has failed to comply with the smoke alarm provisions of Section 704.2, the *tenant* is authorized to purchase, install and maintain battery-operated smoke alarm(s) as a temporary safeguard at the *owner*'s expense, subject to the following: (a) the *tenant* must notify the *owner* or *operator* in writing that installation, replacement or repair of a smoke alarm is required by Section 704.2 and request that the *owner* or *operator* take appropriate action, and the *owner* or *operator* fails to take the

requested action within 10 days after such request or such later date as mutually agreed; and (b) the *tenant* must provide the *owner* or authorized agent of the *owner* with access to the *dwelling unit* to correct any smoke alarm deficiencies which have been reported.

Reasonable costs incurred by the *tenant* may be deducted from the rent for the *dwelling unit* pursuant to procedures governing landlord tenant relationships set forth in 14 DCMR. No *tenant* shall be charged, evicted, or penalized in any fashion for failure to pay the reasonable costs deducted from the rent for the *dwelling unit* for purchase, installation or maintenance of smoke alarms under this section.

704.5.4.1 Emergency measures. The failure of an *owner* or *operator* of a *housing business* to comply with Section 704.2 shall be deemed an imminent danger pursuant to Section 109 of the *Property Maintenance Code* and Section 111.2 of the *Fire Code.*

704.5.4.2 Owner responsibility. Except as provided in Section 704.5.4.4, no act or omission by a *tenant* under this section 704.5.4 shall relieve the *owner* of responsibility to ensure full and continuing compliance with Section 704.

704.5.4.3 Tenant responsibility. Except as provided in Section 704.5.4.4**,** nothing in this Section 704.5.4 shall be construed: (a) to impose a penalty or other liability on a *tenant* for failure to install or maintain a smoke alarm; or (b) to mean that a *tenant* who fails to install or maintain a smoke alarm is contributorily negligent.

704.5.4.4 Disabling of smoke alarms. Tampering with, removing, destroying, disconnecting, or removing the batteries from any installed smoke alarm, except in the course of authorized inspection, maintenance or replacement of the alarm, is prohibited.

704.5.4.5 Other penalties. Nothing in this Section shall be deemed to negate the obligation of the *owner* or *operator* to comply with the requirements of Section 704.2, or to preclude the *code official* from pursuing other penalties and remedies under this code where the *owner* or *operator* fails to comply with Section 704.2.

Chapter 1 (Administration and Enforcement) of Subtitle H (Fire Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

TABLE 105.6.20

PERMIT AMOUNTS FOR HAZARDOUS MATERIALS

TYPE OF MATERIAL	AMOUNT
Oxidizing materials	
Gases	See Section ~~106.6.8~~ 105.6.8
Liquids	

Chapter 3 (General Requirements) of Subtitle H (Fire Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 304.1.2 of the International Fire Code in its entirety and insert new Section 304.1.2 in the Fire Code in its place to read as follows:

304.1.2 Vegetation.
Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed by the *owner* or occupant of the premises.

Chapter 5 (Fire Service Features) of Subtitle H (Fire Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

CHAPTER 5 FIRE SERVICE FEATURES

507 Fire Protection Water Supplies
508 Fire Command Center
510 Emergency Responder Radio Coverage

510 EMERGENCY RESPONDER RADIO COVERAGE

Strike Section 510.1 of the International Fire Code in its entirety and insert new Section 510.1 in the Fire Code in its place to read as follows:

510.1 Emergency responder radio coverage in new buildings.
All new buildings shall have *approved* radio coverage for emergency responders within the building, based upon the existing coverage levels of the public safety communication systems of the District of Columbia at the exterior of the building. This section shall not require improvement of the existing public safety communication systems.

Exceptions:

1. Where *approved* by the building official and the *fire code official*, a wired communication system in accordance with Section 907.2.13.2 shall be

permitted to be installed or maintained in lieu of an *approved* radio coverage system.

2. Where it is determined by the District of Columbia Office of Unified Communications (OUC) and the *fire code official* that the radio coverage system is not needed based on procedures and criteria set forth in Section 510 and in OUC guidelines.

3. In facilities where emergency responder radio coverage is required and such systems, components or equipment could have a negative impact on the normal operations of that facility, the *fire code official* shall have the authority to accept an automatically activated emergency responder radio coverage system.

4. Buildings covered by the *Residential Code*.

5. Group R-2 buildings with four or fewer *dwelling units* per floor up to three floors above grade.

6. Group R-3 buildings.

Strike Section 510.3 of the International Fire Code in its entirety and insert new Section 510.3 in the Fire Code in its place to read as follows:

510.3 Permits required.
No emergency responder radio coverage system or related equipment shall be installed or modified without a building permit and any required electrical permit issued by the *building code official*. An operational permit issued by the *fire code official* pursuant to Section 105.6.47 shall be required to use any emergency responder radio coverage system or related equipment. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

Insert new Section 510.7 in the Fire Code to read as follows:

510.7 Office of Unified Communications Requirements. Emergency responder radio coverage systems and related equipment shall comply with all additional requirements, specifications and criteria established by the District of Columbia Office of Unified Communications to satisfy the operational needs of emergency responders and to prevent adverse impact on the District of Columbia's public safety communications.

Chapter 11 (Construction Requirements for Existing Buildings) of Subtitle H (Fire Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

Strike Section 1103.2 of the International Fire Code in its entirety and insert new Section 1103.2 in the Fire Code in its place to read as follows:

1103.2 Emergency responder radio coverage in existing buildings.
Existing buildings that do not have *approved* radio coverage for emergency responders within the building, based upon the existing coverage levels of the public safety communication systems of the District of Columbia at the exterior of the building, shall be equipped with such coverage according to one of the following:

1. Whenever an existing wired communication system cannot be repaired or is being replaced, or where not *approved* in accordance with Section 510.1, Exception 1; or

2. Within a time frame established by the District of Columbia Office of United Communications (OUC) and the *fire code official*.

Exception: Where it is determined by OUC and the *fire code official* that the radio coverage system is not needed.

Strike Sections 1103.8 and 1103.8.1 of the International Fire Code (with no change to Sections 1103.8.2 and 1103.8.3) and insert new Sections 1103.8 and 1103.8.1 in the Fire Code in their place to read as follows:

1103.8 Single and multiple-station smoke alarms. Single- or multiple-station smoke alarms shall be installed and maintained in existing Group I-1 and R occupancies, in accordance with Sections 1103.8.1 through 1103.8.3. ~~regardless of *occupant* load at all of the following locations:~~

~~1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of *bedrooms*.~~

~~2. In each room used for sleeping purposes.~~

~~3. In each story within a *dwelling unit*, including *basements* and cellars but not including crawl spaces and uninhabitable attics. In dwellings or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.~~

~~Single- or multiple-station smoke alarms shall be installed in other groups in accordance with the *Fire Code*.~~

~~**1103.8.1 Existing occupancies** Existing Group I-1 and R occupancies shall have a 36 month period, commencing on the date of adoption of the 2013 edition of the *D.C. Construction Codes* in accordance with Section 122 of the *Building Code* to~~

~~install smoke alarms that comply with the requirements of Section 1103.8.~~

1103.8.1 Where required. Existing Group I-1 and R occupancies shall be provided with single- or multiple-station smoke alarms in accordance with Section 907.2.11, except as provided in Sections 1103.8.2 and 1103.8.3.

Insert new Section 1103.8.4 in the Fire Code to read as follows:

1103.8.4 Transition period for certain occupancies. Existing Group R-2 and R-3 occupancies that contain smoke alarms in locations that comply with Section 907.2.11.2 (1) or (2) shall have a 36-month period, commencing on the date of adoption of the 2013 edition of the *D.C. Construction Codes* in accordance with Section 122 of the *Building Code*, to install smoke alarms in the additional locations specified in Section 907.2.11.2.

Strike Section 1103.~~2~~3 of the International Fire Code in its entirety and insert new Section 1103.~~2~~3 in the Fire Code in its place to read as follows:

1103.~~2~~3 Elevator operation. *Existing* elevators with a travel distance of 25 feet (7620 mm) or more above or below the main floor or other level of a building, and intended to serve the needs of emergency personnel for fire-fighting or rescue purposes, shall be provided with emergency operation when required by the *Existing Building Code*.

Chapter 3 (Green Building Act and ASHRAE 189.1) of Subtitle K (Green Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

302.3.3 Interior construction of mixed use space in a residential project. Where *residential occupancies* exceed 50 percent of *the gross floor area* of the *project*, including allocable area of common space, and the *project* contains at least 50,000 contiguous square feet (4645 m^2) of *gross floor area*, exclusive of common space, that is or would be occupied for ~~of the~~ non-residential use~~occupancies~~, then the space designated for non-residential occupancies shall be designed and constructed to meet or exceed one or more of the applicable LEED standards listed in Section 302.4 at the Certified Level. The applicant shall provide plans and supporting documents in sufficient detail and clarity to enable the *code official* to verify compliance with this section.

Chapter 5 (Material Resource Conservation and Efficiency) of Subtitle K (Green Building Code Supplement of 2013) of Title 12 (D.C. Construction Codes of 2013) of the District of Columbia Municipal Regulations is amended as follows:

CHAPTER 5 MATERIAL RESOURCE CONSERVATION AND EFFICIENCY

503 Construction Waste Management

504 Waste Management and Recycling
505 Material Selection
507 Building Envelope Moisture Control

SECTION 507 BUILDING ENVELOPE MOISTURE CONTROL

Strike Section 507.1 of the International Green Construction Code in its entirety and insert new Section 507.1 in the Green Construction Code in its place to read as follows:

507.1 Moisture control preventative measures.
Moisture preventative measures shall be inspected in accordance with Section 109 of 12 DCMR A and applicable *Administrative Bulletins* ~~Sections 902 and 903~~ for the categories listed in Items 1 through 7. ~~Inspections shall be executed in a method and at a frequency as listed in Table 903.1.~~

1. Foundation sub-soil drainage system.
2. Foundation waterproofing.
3. Foundation dampproofing.
4. Under slab water vapor protection.
5. Flashings: Windows, exterior doors, skylights, wall flashing and drainage systems.
6. Exterior wall coverings.
7. Roof coverings, roof drainage, and flashings.

All persons desiring to comment on these proposed regulations should submit comments in writing to Paul Waters, Construction Codes Coordinating Board Chairperson, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, Room 5100, Washington, D.C. 20024, or via e-mail at paul.waters@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-4400. Copies of the proposed rules can be obtained from the address listed above. A copy fee of one dollar ($1.00) will be charged for each copy of the proposed rulemaking requested. Free copies are available on the DCRA website at http://dcra.dc.gov by going to the "About DCRA" tab, clicking on "News Room", and then clicking on "Rulemaking".

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in Title 25, D.C. Code Enactment and Related Amendments Act of 2001, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a) (2012 Repl.)) and Section 304 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the adoption of amendments to Section 304 (Adams Morgan Moratorium Zone) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules extend the existing Adams Morgan Moratorium Zone (AMMZ) with certain modifications for a period of three (3) years.

By way of background, the existing moratorium expired on April 16, 2014. On March 12, 2014, the Board voted, seven (7) to zero (0), on an emergency basis to keep the existing moratorium temporarily in place. The Board required additional time to consider two (2) proposals submitted by Advisory Neighborhood Commission (ANC) 1C and the Kalorama Citizens Association (KCA) regarding the future of AMMZ.

On February 28, 2014, ANC 1C filed a Petition for Renewal of and Modification to the Adams Morgan Moratorium Zone (ANC Petition). The ANC Petition resulted from a series of public meetings that were held from September 2013 through December 2013. The ANC held the public meetings to receive input from stakeholders and constituents in order to formulate a recommendation for the Board.

In summary, the ANC seeks renewal of the existing AMMZ for a five (5) year period with certain modifications. The ANC's proposal includes: maintaining the prohibition on Retailer Class CN/DN; prohibiting new or conversions to Retailer Class CT/DT licenses; permitting new licenses for Retailer Class CR/DR; prohibiting new Entertainment Endorsements of the kind that characterizes nightclub activity, specifically cover charges and live music; and prohibiting pub crawls and the use of promoters. The proposal does not seek to change the boundaries of the current moratorium zone.

The second proposal was submitted by the Kalorama Citizens Association (KCA) on March 4, 2014. The KCA requests that the Board renew the existing moratorium zone for another five (5) years with no modifications to the current restrictions.

The Board found that both proposals merited further evaluation and thus held a hearing on May 7, 2014, pursuant to D.C. Official Code § 25-354 (2012 Repl.), to receive public comment on the written proposals. At the public hearing, the Board received testimony from over fifty (50) people, including business owners and residents, from the Adams Morgan neighborhood. Following is a synopsis of the testimony presented at the hearing.

ANC 1C

William Simpson, Commissioner of ANC 1C, testified that Adams Morgan has been subject to a moratorium in one form or another since 2000. The ANC would now like to see the moratorium taken in a new direction with modifications that are based on the standards pursuant to D.C. Official Code § 25-313(b) (2012 Repl. & 2014 Supp.).

Commissioner Simpson stated that the ANC voted to continue the prohibition on nightclub licenses and new tavern licenses. Unlike the existing moratorium, there would no longer be a cap on the number of new restaurant licenses. Commissioner Simpson testified that the decision to allow new restaurants in the moratorium zone was not taken lightly by the ANC.

There is a recognition by the ANC that the concerns raised by the Board at the renewal of the moratorium in 2009 still exist; criminal activity, noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety. The ANC believes that the existing moratorium has not made the neighborhood better, but it can be credited with not exacerbating the problems. The ANC's rationale for lifting the cap on new restaurants is to encourage the forces of competition that allow good licensees to thrive while driving out the bad licensees. This will result in a revitalized Business Improvement District, and will encourage entrepreneurs to offer fresh ideas and menu options.

Commissioner Simpson testified that the ANC's position has broad support from within the community. The ANC undertook extensive outreach over the last year and one half. The public was put on early notice that the moratorium would expire in 2014. The ANC held a series of meetings and reached out to constituents via email as well. Individual ANC commissioners contacted their respective constituents. The ANC's ABC Committee dedicated a meeting on just the topic of the moratorium and the neighborhood was encouraged to attend a subsequent meeting of the full Commission when the ANC proposal was scheduled for consideration. The ANC received hundreds of comments, verbally and electronically. The Reed-Cooke Neighborhood Association also supports the ANC position.

The consensus of the neighborhood was to continue the prohibition on nightclubs and to discourage establishments that are focused solely on serving alcohol. The ANC seeks a balance that protects the community from the more egregious nightclub type activity, but allows bona fide restaurants to thrive and flourish.

In this vein, the ANC requests that the Board consider the difference between bona fide restaurants that successfully sell food versus de facto nightclubs that have restaurant licenses, but whose operations are driven by alcohol and entertainment. The bona fide restaurants tend not to stay open until the legally permitted hours, and the ones that do, continue to serve food. It is the de facto nightclubs, on the other hand, that over-serve their already intoxicated clientele who become boisterous and unruly. It is the ANC's opinion that the Board has not always made that distinction in the past, resulting in decisions that are harmful to the neighborhood.

To that end, the ANC seeks the Board's aggressive enforcement to protect the community by ensuring licensee's compliance with the laws. The ANC requests that the Board specifically prohibit new entertainment endorsements for any licensee whose business model is akin to nightclub activity. Specifically, the ANC seeks the prohibition of cover charges, live bands, dancing, promoters and pub crawls.

Jimmy R. Rock, ANC Commissioner for Single Member District (SMD) for 1C08, echoed Commissioner Simpson. He testified that allowing new restaurants with certain conditions was a far better approach to improving the neighborhood than banning new restaurants altogether. He said that the hardcore nightlife scene has shifted away from Adams Morgan to other parts of the District, thus allowing the neighborhood to take a different approach to addressing the problems that remain. The existing moratorium is too focused on the past nightlife experiences and does not look to the future. There is an influx of new residents to the Adams Morgan neighborhood and those new residents will help to transition the neighborhood away from the old nightlife and toward vibrant restaurants and fine dining. He also asked the Board to be intentional about its enforcement efforts.

Brain Hart is an ANC Commissioner for 1C01, and he chairs the ANC's ABC and Public Safety Committee. He shared with the Board the time, effort and energy the ANC committed to educating the community to reach a solution that was in the best interests of the neighborhood and small businesses. The ANC undertook a great deal of internal work and six of seven members voted to support the proposal. The ANC created a public hearing schedule and received feedback from the community throughout the year. He noted that there were two polarized views; one that sought a complete moratorium on all classes of retailers, and another that sought to lift the moratorium on all classes.

The ANC also studied the conditions contained in other neighborhood moratoriums throughout the District. Commissioner Hart noted that the Adams Morgan neighborhood is unique and cannot be compared to the other communities. Notably, Adams Morgan has a greater density of licensed establishments, and secondly, the neighborhood has a historic preservation quality to it. This naturally requires a tailored solution to address the unique concerns of Adams Morgan.

Commissioner Hart reiterated the ANC Chair's statement that the allowance of nightclubs would be harmful to the neighborhood and would foster crime and nuisance. Additionally, the ANC concludes it would be a risk to lift the cap on taverns, such that without proper enforcement by ABRA, might become de facto nightclubs. On the other hand, new restaurants would contribute to the business and foot traffic, thereby enriching the neighborhood.

Gabriela Mossi represents ANC 1C04, which is the Lanier Heights neighborhood in Adams Morgan. Commissioner Mossi testified that more restaurants bring more choice and diversity. However, new restaurants will not cure all social ills and thus better enforcement of regulations and laws is required.

Ted Guthrie is an ANC Commissioner whose SMD, 1C03, is the heart of Adams Morgan. He represents five blocks between 18th and 19th streets from Wyoming Avenue to Biltmore Street

NW. His SMD has seventeen (17) restaurants, and six (6) tavern licenses. Three more restaurant licenses are held in Safekeeping with ABRA.

Commissioner Guthrie is the lone dissenter on the ANC proposal. His constituents strongly support the continuation of the existing Adams Morgan Moratorium for the following reasons: they are regularly disturbed in the early morning hours by the hordes of drunk people who stream into the neighborhood, there is litter and property damage, and patrons urinate and vomit wherever it is convenient for them to do so. The singular source of this antisocial behavior according to Commissioner Guthrie is the over concentration of alcohol purveyors in Adams Morgan.

The quality of life for his constituents is overwhelmed by the nightlife establishments and the existing infrastructure cannot accommodate it. There are no roads, public parking, or Metro access to handle the number of patrons who see Adams Morgan as an entertainment destination.

Commissioner Guthrie believes that ABRA has been unable or unwilling to prevent the restaurants from morphing into nightclubs. This is due in part because the agency only counts seats to enforce the food sales requirement. Restaurants have turned into nightclubs and exceed their permitted occupancy. The excess capacity and the overconcentration make the policing efforts random and palliative. The Metropolitan Police Department (MPD) places twenty (20) officers in Adams Morgan on the weekends, yet the limited resources only serve to contain the problems, not prevent them.

Finally, Commissioner Guthrie argues that the neighborhood does not need more licenses; they need better licenses. There are both storefronts and licenses for anybody who wants to open a restaurant today. The licenses currently held in Safekeeping can be used by new restaurants without lifting the moratorium restrictions. He stated that the ANC proposal will not work because more bars just means more noise, more problems, and fewer regulatory resources. Unfettered commercial competition is not the answer.

KCA

Denis James, President of the KCA, testified that the ANC has gone too far in lifting the restrictions from the existing moratorium. Many of the most challenged establishments in the neighborhood are licensed as restaurants. Mr. James believes that too many licenses were issued prior to the imposition of the original moratorium in 2000, and that the best terms of the moratorium are the ones in existence now. Those terms are no new licenses except for hotels and no existing licensed establishment can change its retailer class.

Mr. James believes that the current moratorium has succeeded on two fronts. It has prevented new licensees from taking over commercial space, and it has prevented nightlife conditions from worsening. Mr. James argues that, notwithstanding the moratorium, problems continue to exist; large trucks unload in the middle of the street, unclosed dumpsters attract vermin, alcohol products litter the streets, and illegal advertising is posted to public light and utility poles.

Mr. James further argues that adding an unlimited number of new licenses to the existing problems would be irrational and nonsensical. He is also concerned that the mere availability of new licenses will not necessarily attract high-end restaurants. Rather, he believes that "hole-in-the-wall" businesses and "hookah joints" that are currently succeeding without an alcohol license will apply for an ABC license.

Mr. James noted that recent business arrivals have brought about a shopping diversity to the neighborhood. Bakeries, barber shops, record stores and vintage clothing stores now flourish in the south end of Adams Morgan. Mr. James requests the Board to maintain the moratorium for another five (5) years, and allow the community to benefit from non-alcohol driven businesses.

Fiscal Policy Institute

Ed Lazere is Director of the DC Fiscal Policy Institute (Institute). The Institute is a policy research and advocacy organization that focuses on issues related to the fiscal and economic health of the District of Columbia. The Institute undertook a study, researched available data and literature, and conducted numerous interviews with businesses and stakeholders in Adams Morgan. The central focus of the study was to determine the best manner to achieve the goal of a vital, dynamic, thriving commercial corridor that meets the needs of the residents while protecting their interests through peace, order and quiet. Mr. Lazere testified that the Institute concluded that the existing moratorium is a blunt instrument that has resulted in negative and unintended consequences.

One unintended consequence is the high cost of a license, which serves as a barrier to entry in the marketplace. Several of the stakeholders who were interviewed by the Institute indicated that had the moratorium been in place when they first opened for business, they would either not have opened or they would have located to another neighborhood. As Mr. Lazere testified, an entrepreneur might have the resources to launch a new business, but not the resources to purchase the artificially high cost of a license. He states further that is harder for a dining establishment to succeed without an alcohol license.

A second unintended consequence, related to the first, is that the barrier to entry has allowed other neighborhoods to flourish with new restaurants. The Adams Morgan moratorium is driving development on the H Street NE corridor and the City Centre NW because of the ability to obtain a relatively low cost license.

Thirdly, the moratorium serves to protect the bad businesses that are already located there. Basic economics dictates that the harder it is for good licensees to enter the market, the easier it is for bad actors to stay. This has a direct effect on Adams Morgan. The issues of peace, order and quiet will continue to be a problem if the moratorium serves to protect the problem establishments.

The important issue, according to Mr. Lazere, is how the community responds to the pressures that are created by growth. Other neighborhoods are growing and expanding, and part of that success is due to exciting new entertainment, dining and drinking opportunities. Yet, in Adams

Morgan, the moratorium is creating vacancies or longer vacancy, and it becomes harder to fill those spaces. Vacant spaces create blight and tend to be the area where people loiter. A community that does not allow dynamic change to happen will be left behind.

Mr. Lazere argues that it is shortsighted to merely count the number of licenses to determine if there is an over concentration, rather than to look at the quality of the number of licenses. A concentration of high quality establishments may not be a problem at all.

He states that the better approach is to loosen the moratorium, if not eliminate it altogether, let the competition into the marketplace, and allow the city's dynamic profile come to Adams Morgan. This approach, coupled with greater enforcement from ABRA and DCRA, will help to encourage the best behavior for those establishments who want to attract patrons and capture the growth. The Adams Morgan community needs to take steps to support the growth, rather than adopt proposals that hinder it.

Adams Morgan Residents

Ms. Delagran is an economist who has lived on the 1800 block of Wyoming Street NW for twenty (20) years. As an economist, she has performed a number of analysis and cost benefit studies. She disagrees with the Institute's conclusion that allowing unlimited restaurant licenses will lead to positive development on the 18th Street corridor. Rather, commercial values will rise if ABC licenses are freely available and with that rise, rents will also increase. Rising commercial rents will feed the vicious cycle of alcohol sales to pay for the rents where other non-alcohol businesses have been squeezed out. In other words, higher rents will add pressure for ABC licensed businesses to increase alcohol sales volume and the expansion of premises.

Ms. Delagran further testified that currently too many bars are disguised as restaurants and this will not be abated by lifting the moratorium and allowing for new licenses. Existing problems will be further compounded; criminal activity, noise, litter and a lack of available parking. Ms. Delagran has little confidence that ABRA's enforcement measures will improve. Adams Morgan has a negative reputation and the people who patronize the neighborhood are more of a "partying crowd", rather than a "dining crowd."

The Board also received written testimony from numerous Adams Morgan residents who agreed with the KCA proposal and requested the Board to hold firm on retaining the existing moratorium. These residents remain concerned about the disruption to peace, order and quiet in the neighborhood and believe that allowing for more licenses will only exacerbate the problem. Another frequent complaint is the lack of parking for those who reside there due to the absence of a nearby metro stop. Additionally, some residents argued that new ABC licensees will occupy real estate limiting the introduction of other types of businesses that would better serve the neighborhood. Lastly, a number of residents testified that the moratorium must remain in effect until ABRA and the Board strengthen their enforcement efforts.

Conversely, the Board also heard from residents who believe that the moratorium serves no useful purpose and it should be allowed to expire. Alan Roth is the former Chair of the Adams

Morgan ANC. He believes the Board should reject both proposals and that the Board should develop a new approach by broadening public policy based on existing regulations. Josh Gibson is the founder of the Adams Morgan Partnership Business Improvement District (AMPBID). He opposes the moratorium and believes that it does not adequately address the social ills and challenges faced by the community. Lisa Duperier is a Ward One resident and she believes that the moratorium serves to perpetuate the status quo and protect the bad operators. It is her opinion that the concerns raised by others regarding residential parking and vehicular safety are made worse by the effects of the moratorium. Charles Brodsky is a resident of Adams Morgan and is a former Chair of the Board. He is opposed to the moratorium and believes that it has had a negative economic impact and discourages new business development.

Business Owners

The Board also heard from members of the business community who support retaining the moratorium. Bardia Ferdowski is the owner of New Orleans Café. He believes the moratorium ensures safety for those who live and work in the neighborhood. He purposely closes his business early because he does not feel safe after closing hours. He has witnessed gang activity, loitering and drug dealing near his establishment.

James Nixon is a local business owner who supports the moratorium. He does not believe that AMPBID represent the views of all of the Adams Morgan business owners and resident. He is concerned that new licensees will operate as nightclubs and that ABRA investigators will not adequately address the behavior.

The Board also received comments from Adams Morgan business owners who oppose the moratorium. They believe that eliminating the moratorium altogether will promote growth and diversity in the neighborhood. They are concerned that prohibiting the issuance of new restaurant licenses will thwart the effort to truly diversify the eateries in the neighborhood.

Additionally, proponents of the elimination of the moratorium in its entirety state that it will create new possibilities for existing retail vacancies and any vacancies that may arise in the future. They also argued that any increase in patron-related problems or issues concerning peace, order, and quiet if the moratorium were to expire, should be mitigated by the operators of ABC-licensed establishments, with enhanced enforcement by ABRA.

Steven Greenleigh has been involved in the Adams Morgan community for thirty (30) years as a commercial property owner and as a leader in the business community. He opposes the moratorium because it fosters stagnation as businesses locate to neighborhoods that are not encumbered by a moratorium. The moratorium has also contributed to the placement of unused licenses in Safekeeping rather than allowing those licenses to cancel. The licenses in Safekeeping are only available to those who are willing to pay the inflated price for them.

Lynn Skynear has owned Skynear Designs and Gallery since 1988. She opposed the moratorium and stated that one of the unintended consequences of the moratorium is the proliferation of fast food and convenience type eateries. These types of establishments generate the vast majority of

the trash and litter on the streets. Lifting the moratorium will create an incentive for transforming the neighborhood and will help to attract a more sophisticated clientele to the dining establishments.

Office of the Mayor

Lastly, while the Board did not hear from members of the Council or the District Commander of the MPD, the Board did receive written correspondence from the Office of the Deputy Mayor for Planning and Economic Development. Specifically, Deputy Mayor Victor Hoskins commented that fourteen (14) years of moratoria appears to have led to systemic long-term vacancies with commercial development lagging behind the robust residential building market in Adams Morgan. The Deputy Mayor's Office encouraged the Board to lift the moratorium, or at a minimum, allow for new Retailer Class CR and DR licenses.

Decision of the Board

The Board took the views of ANC 1C, the KCA, the Mayor's Office and all other witnesses and written testimony into consideration. The Board did not find that the testimony supported the renewing of the existing moratorium for another five (5) years. Rather, the Board determined that the ANC proposal to continue the moratorium while allowing for modifications to lift certain restrictions constitutes a reasonable, measured, and appropriate solution for the Adams Morgan neighborhood. However, the Board did not adopt the entirety of the ANC proposal and modified the moratorium described more fully below.

In reaching its decision, the Board gave great weight to the written recommendations of ANC 1C as required by Section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3) (2012 Repl. & 2014 Supp.), and D.C. Official Code § 25-609 (2012 Repl. & 2014 Supp.)).

The Board also based its decision upon the appropriateness standards. Pursuant to D.C. Official Code § 25-351 (2012 Repl. & 2014 Supp.), the Board determined that it was in the public interest to renew the moratorium with certain modifications, and in doing so, the Board based its decision upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2012 Repl. & 2014 Supp.). In reviewing a moratorium request, the Board must "consider the extent to which the testimony and comments show that the requested moratorium is appropriate under at least two of the appropriateness standards set forth in subchapter II of this chapter." D.C. Official Code § 25-354(d) (2012 Repl.); *see also* D.C. Official Code § 25-351(a) (2012 Repl. & 2014 Supp.).

The appropriateness standards listed in Subchapter II include: (1) "[t]he effect of the establishment[s] on real property values"; (2) "[t]he effect of the establishment[s] on peace, order, and quiet, including the noise and litter provisions set forth in D.C. Official Code §§ 25-725 and 25-726 (2012 Repl. & 2014 Supp.); (3) "[t]he effect of the establishment[s] upon residential parking needs and vehicular and pedestrian safety"; (4) "[t]he proximity of the establishment[s] to schools, recreation centers, day care centers, public libraries, or other similar

facilities"; (5) "[t]he effect of the establishment[s] on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities"; (6) "[w]hether school-age children using facilities in proximity to the establishment[s] will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue"; and (7) "[w]hether issuance of [additional] licenses would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment[s] [are] located." D.C. Official Code §§ 25-313(b)(1)-(3), 25-314(a)(1)-(4) (Supp. 2013).

Specifically, under D.C. Official Code § 25-313(b) (2012 Repl. & 2014 Supp.), the testimony presented at the hearing as well as written comments and the proposals submitted by ANC 1C and the KCA revealed that problems still exist in the Adams Morgan Moratorium Zone with regard to peace, order, and quiet, justifying the need for the renewal of the moratorium zone. However, the Board concluded that a modified moratorium is in the public interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2012 Repl. & 2014 Supp.). In essence, while there are many licensed establishments in the Adams Morgan neighborhood, the Board does not find that the neighborhood suffers from an overconcentration of licensed establishments or that additional restaurants will adversely affect this area. Rather, testimony bears out that an increase in economic development and new construction is attracting businesses and residents alike to Adams Morgan.

Additionally, the Board finds that the limited renewal of the moratorium is warranted due to the effect of the establishments upon residential parking needs and vehicular and pedestrian traffic. Testimony from residents indicated that one of the more significant problems resulting from the night life destination in Adams Morgan is the shortage of residential parking because demand outstrips supply. The problem is further compounded by the absence of a metro stop. And while the Board agrees that the multi-million dollar street scape has improved pedestrian safety, it recognizes that the pilot program using taxicab stands to relieve congestion was not successful. Thus, the Board finds that the continuation of the moratorium helps the neighborhood to address the abundance of cars by reducing the loss of available residential parking.

The Board agrees with certain provisions of the ANC proposal. Specifically, the Board agrees to: (1) renew a modified moratorium; (2) lift the restrictions on the number of Retailer Class CR/DR licenses; (3) maintain the cap on Retailer Class CT/DT and CX/DX licenses; (4) retain the prohibition on Retailer Class CN/DN licenses; (5) retain the current exemptions for Retailer Class CH/DH licenses; (6) retain the existing language pertaining to the transfer of ownership; (7) retain the prohibition on the transfer of Retailer Class CT/DT, CX/DX or CN/DN from outside the moratorium zone to inside the moratorium zone; and (8) retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

There were a couple of provisions in the ANC proposal with which the Board did not agree. Rather than a five (5) year renewal period, the Board will instead approve the renewal of the modified moratorium for three (3) years. This shorter renewal period will allow the Board, the ANC, and the community to assess the effectiveness of the proposed changes. Additionally, a shorter timeframe allows the community the greatest degree of flexibility to adapt and adjust the

moratorium to respond to the changing needs of the Adams Morgan neighborhood. The Board too, will have an opportunity to reevaluate the effectiveness of the limited moratorium, and to explore solutions that will balance, not inhibit, the neighborhood's ability to pursue economic opportunities.

Likewise, the Board does not agree with the provision of the ANC proposal to prohibit the issuance of Entertainment Endorsements to those licensees whose operations share similar characteristics of those who operate nightclubs. Like the ANC, the Board encourages food centric restaurants rather than those that are driven by the sale of alcoholic beverages, but the Board will not adopt a blanket prohibition against the issuing of endorsements. This is especially true where there are currently licensees in Adams Morgan who already enjoy the privilege of an Entertainment Endorsement, and whose privilege will be grandfathered. To prohibit Entertainment Endorsements to new licensees only contributes to the disparity of the have and have-nots currently experienced by retailers who are licensed as taverns and restaurants.

The ANC's proposal with regard to the Entertainment Endorsement raises two economic concerns. First, the prohibition may contribute to the artificial pricing of those licenses that already have the privilege attached. Secondly, licensees who do not have an Entertainment Endorsement and who otherwise would operate with an endorsement in accordance with the appropriateness standards would be competitively disadvantaged. The Board is not inclined to exacerbate the problem of ABC licenses being sold for extortionate prices, but instead to diminish this phenomenon while protecting the peace, order and quiet of the Adams Morgan community.

The Board is of the view that it is best to consider requests for an Entertainment Endorsement on a case by case basis. Additionally, as the Board held in its moratorium decision for the U and 14th Streets NW corridor in 2013, there exist already tools available to the community, such as Settlement Agreements, to limit the use of cover charges, or to prohibit promoters and pub crawls. Furthermore, the Board has the regulatory authority to strip a licensee of its Entertainment Endorsement if the licensee is not compliant with the food sales requirements pursuant to 23 DCMR § 2101.5(a).

It should be understood that the Board will not tolerate licensees who seek an Entertainment Endorsement for purposes of creating a nightclub atmosphere when food service ends. It cautions licensees who seek an Entertainment Endorsement to do so with an understanding that Adams Morgan is a unique neighborhood. As such, the Board will give great scrutiny to any request that profoundly changes the nature and character of the neighborhood.

Additionally, the Board recognizes that enforcement and compliance efforts both safeguard and enhance neighborhoods. In any regulatory environment, some licensees will comply voluntarily, some will not comply, and some will comply only if they see that others receive a sanction for non-compliance. The Board's adoption in 2013 of the new Civil Penalty Schedule rules gives greater discretion to the Board and to ABRA investigators with regard to enforcing laws and regulations. Investigators can now issue Warnings for a greater range of offenses, thus ensuring that their response to violations is immediate and predictable. The new penalty rules also grant

the Board more appropriate sanctions that are commensurate with the offense. So where Warnings put licensees on notice for a first offense, the Board can now levy a heavier penalty for second and third offenses.

Furthermore, with two (2) Board Members who reside in the community, the Board itself is a witness to the forthcoming surge of new residents in the greater Adams Morgan neighborhood. With the construction of thirty eight (38) condominiums at the AdamO located at Lanier and Adams Mill Road NW, eighty (80) condominiums at the Ontario17 at Columbia Road and 17th Street NW, and the new hotel at Columbia Road and Euclid Street NW, there will be a large influx of new residents and guests adding to the vitality and energy of a revitalized Adams Morgan neighborhood. This population will help to curb the late night, antisocial antics because it is in their best interests and investment to do so. As Commissioner Guthrie pointed out in his testimony, the destination patrons do not care about their behavior because they do not live there.

Lest it gets lost in the greater discussion, the Board makes clear that it appreciates the balance that must be struck between the interests of the residents in the neighborhood, and the interests that promote a nightlife economy. The Board recognizes that a diverse, dynamic and safe dining and entertainment environment is part of the fabric of the District, and yet, nightlife activity needs to be carefully managed in order to reduce antisocial behavior, noise, public disturbance and other problems.

The Board applauds the ANC's outreach and educational efforts that brought licensees, residents and representatives from the Business Improvement District to share their perspectives and their focus on positive steps to transform the Adams Morgan's neighborhood and improve urban vibrancy. Like the ANC, the Board believes that if managed properly, a thriving and safe nightlife can act as an economic engine by attracting new businesses and restaurants, diversifying the range of cultural offerings, creating employment opportunities, and increasing tourism. To this end, the Board is in agreement with the ANC that a new direction for the Adams Morgan moratorium that allows for responsible growth is warranted.

The statements set forth above reflect the written reasons for the Board's decision as required by 23 DCMR § 303.1.

Emergency rulemakings are used only for the immediate preservation of the public peace, health, safety, welfare, or morals, pursuant to 1 DCMR § 311.4(e). The existing AMMZ expires on July 12, 2014, requiring the Board to make a determination regarding the future of the AMMZ. The emergency action is necessary for the preservation of the health, safety and welfare of the District residents in order to: (1) ensure that the prohibitions placed on the issuance of new retailer's licenses Class CT, CN, CX, DT, DN or DX are maintained; and (2) keep the AMMZ in place until the Board can adopt final rules regarding its renewal.

These emergency and proposed rules were adopted by the Board on July 9, 2014, by a six (6) to zero (0) vote and became effective on that date. The rules will remain in effect for up to one hundred twenty (120) days, expiring October 9, 2014, unless earlier superseded by proposed and

final rulemakings or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl. & 2014 Supp.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

The Board also gives notice of its intent to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 304, ADAMS MORGAN MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

304.1 No new Retailer's License Class CN, CT, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of this section in the area that extends approximately fourteen hundred (1400) feet in all directions from the intersection of 18th Street and Belmont Road, N.W., Washington D.C. This area shall be known as the Adams Morgan Moratorium Zone.

304.2 The Adams Morgan Moratorium Zone is more specifically described as beginning at 18th Street and Vernon Street, NW; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19th Street; Northwest on 19th Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20th Street; Northwest on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Northwest on 19th Street to Biltmore Street; East on Biltmore Street to Cliffbourne Street; North on Cliffbourne Street to Calvert Street; East on Calvert Street to Lanier Place; Northeast on Lanier Place to Adams Mill Road; Southeast on Adams Mill Road to Columbia Road; Northeast on Columbia Road to Ontario Road; South on Ontario Road to Euclid Street; East on Euclid Street to 17th Street; South on 17th Street to Kalorama Road; Southwest on Kalorama Road to Ontario Road; South on Ontario Road to Florida Avenue; Southwest on Florida Avenue to U Street; West on U Street (North side only); across 18th Street to the South corner of 18th and Vernon Streets, N.W., Washington D.C.

304.3 The following license classes shall be exempt from the Adams Morgan Moratorium Zone:

(a) All restaurants, whether present or future;

(b) All hotels, whether present or future; and

(c) Retailer's licenses Class A and B.

304.4 The number of Retailer's licenses Class CT, CX, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed ten (10). The number of Retailer's licenses Class CN or DN shall not exceed zero (0). The holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class except when the number of Retailer's licenses Class CT, CX, DT, or DX in the Adams Morgan Moratorium Zone is fewer than ten (10). Nothing in this subsection shall prohibit the Board from approving a change of license class application that was filed with the Board by the holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone prior to August 2, 2006.

304.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class CR, CT, CX, DR, DT, and DX within the Adams Morgan Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

304.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Adams Morgan Moratorium Zone to a new location within the Adams Morgan Moratorium Zone.

304.7 A license holder outside the Adams Morgan Moratorium Zone shall not be permitted to transfer its license to a location within the Adams Morgan Moratorium Zone, unless exempt by section 304.3.

304.8 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.

304.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.

304.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

Copies of the emergency and proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) 2012 Repl. & 2014 Supp.), hereby gives notice of the adoption of emergency and proposed rules to amend existing Subsection 718.2 of Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking would increase the number of days covered by the Reimbursable Detail Subsidy Program (Program) from two (2) to seven (7) days a week. The rules would also allow reimbursement under the Program for certain Board approved outdoor Special Events where alcohol is to be sold or served.

By way of background, these rules were modified by the Board in September 2013 to allow for reimbursement under the Program for hours worked on District or Federal holidays in addition to Friday and Saturday nights. The expansion of the Program resulted from the Board's implementation of the Fiscal Year 2013 Budget Support Act of 2012, which allowed eligible on-premise licensees to sell and serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day on District or Federal holidays and certain holiday weekends. As a result of this additional hour of alcohol sales on District or Federal holidays and certain holiday weekends, the Board also made the subsidy available to on-premise licensees until 5:00 a.m.

Given the importance of this Program to public safety, the Board regularly monitors the Program's funding to make adjustments for the distribution of subsidies to cover the costs incurred by Alcoholic Beverage Control (ABC) licensees for Metropolitan Police Department (MPD) officers working reimbursable details under the Program.

The rules were modified again on June 11, 2014. The Board voted seven (7) to zero (0) to amend the existing subsidy coverage because adequate funding was available in ABRA's Fiscal Year 2014 budget to expand the distribution of subsidies paid by ABRA to MPD under the Program from two days a week to seven days. The expansion of the Program also allowed for reimbursable detail coverage for certain Special Events. Special Events are deemed to be those events sponsored by a Licensee who has received approval from the Board for a One Day Substantial Change License or a Temporary License. The hours per day covered by the Program under existing rules remained the same for the modified rules.

On August 13, 2014, the Board held a hearing to receive public comment on the emergency and proposed rules. The Board heard testimony from Kristen Barden, Executive Director of the Adams Morgan Partnership Business Improvement District (BID). Ms. Barden stated that the BID has participated in the Program since 2007, and that the Program is necessary and essential to maintain public safety in the Adams Morgan neighborhood. Ms. Barden further testified that her organization supports the expansion of the Program as long as funds are available, and she

encouraged the agency to ensure adequate funding throughout the budget cycle. Ms. Barden also indicated that if sufficient funding exists, the Board should consider covering events such as the Adams Morgan Day Festival.

The Board also heard from Skip Coburn, Executive Director of the DC Nightlife Association. Mr. Coburn praised the Board and the agency for the implementation of the Program for purposes of aiding MPD and licensees in public safety situations. He also suggested that the Program could be expanded to assist with Special Events held during daytime hours.

The Board took the testimony into consideration, and determined that further expansion of the Program is warranted to meet the public safety needs of outdoor Special Events where alcohol is to be sold or served regardless of the hours of the event. Two factors were relevant to this conclusion: (1) Special Events are generally held during the day and on public streets, and (2) Special Events are attended by crowds in excess of hundreds of people.

To this end, the Board modifies its emergency and proposed rules, initially adopted on June 11, 2014, to allow for the distribution of subsidies for all outdoor Special Events operating under a One Day Substantial Change License or Temporary License. Under these emergency and proposed rules there are no longer any reimbursement restrictions on the time of day, or the number of hours worked by MPD for an outdoor Special Event.

This emergency action is necessary to immediately expand the Program for the remainder of fiscal year 2014, most notably the summer months where public safety is at greater risk. This subsidy assists licensed establishments to defray the costs of retaining off-duty MPD officers to patrol the surrounding area of an establishment or an outdoor Special Event for the purpose of maintaining public safety, including the remediation of traffic congestion and the safety of public patrons, during their approach and departure from the establishment or Special Event.
These revised emergency rules were adopted by the Board on August 15, 2014, by a five (5) to zero (0) vote. The rules will become effective on September 1, 2014. The emergency rules will expire one hundred twenty (120) days from the date these rules were adopted, December 20, 2014, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl. & 2014 Supp.), these emergency and proposed rules are also being transmitted to the Council of the District of Columbia (Council) for a ninety (90) day period of review. The final rules shall not become effective absent approval by the Council. The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not fewer than thirty (30) days after the date of publication of this notice in the *D.C. Register.*

Subsections 718.2 through 718.5 of Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR are amended and renumbered to read as follows:

718.2 ABRA will reimburse MPD fifty percent (50%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD fifty percent (50%) of the total costs of invoices submitted by MPD to cover the costs incurred for outdoor Special Events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours eligible for an outdoor Special Event operating under a One Day Substantial Change License or a Temporary License shall be 24 hours a day.

718.3 MPD shall submit to ABRA on a monthly basis invoices documenting the fifty percent (50%) amount owed by each licensee. Invoices will be paid by ABRA to MPD within thirty (30) days of receipt in the order that they are received until the subsidy program's funds are depleted.

718.4 ABRA shall notify MPD when funds in the subsidy program fall below two hundred and fifty thousand dollars ($250,000).

718.5 Any invoices unpaid by ABRA either for good cause or a lack of sufficient funds left in the subsidy program shall remain the responsibility of the licensee.

718.6 ABRA shall not be involved in determining the number of MPD officers needed to work a reimbursable detail.

Copies of the emergency and proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the emergency and proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to martha.jenkins@dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-198
August 14, 2014

SUBJECT: Reappointments – Interagency Council on Homelessness

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 4 of the Homeless Services Reform Act of 2005, effective October 22, 2005, D.C. Law 16-35, D.C. Official Code § 4-752.01 (2014 Supp.), it is hereby **ORDERED** that:

1. **KELLY SWEENEY MCSHANE**, who was nominated by the Mayor on May 20, 2014, and approved by the Council pursuant to Resolution 20-549 on July 14, 2014, is reappointed as a member of the Interagency Council on Homelessness ("Council") serving as a representative from organizations that provide services within the Continuum of Care, for a term to end three years from the date of appointment.

2. **LUIS ANTONIO VASQUEZ**, who was nominated by the Mayor on May 20, 2014, and approved by the Council pursuant to Resolution 20-548 on July 14, 2014, is reappointed as a member of the Council serving as a representative from organizations that provide services within the Continuum of Care, for a term to end three years from the date of appointment.

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

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-199
August 15, 2014

SUBJECT: Appointment – District of Columbia Developmental Disabilities Fatality Review Committee

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act of 1973, 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 2009-225, dated December 22, 2009, as amended by Mayor's Order 2013-154, dated August 26, 2013, it is hereby **ORDERED** that:

1. **LAURA L. NUSS** is appointed to the District of Columbia Developmental Disabilities Fatality Review Committee as the designee representative for the Department on Disability Services, Developmental Disabilities Administration, and shall serve only while employed in her official position at the pleasure of the Mayor.

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 2014-200
August 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. **ROBERT BRANNUM** 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 2014-201
August 15, 2014

SUBJECT: Appointment – District of Columbia Emergency Medical Services 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. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and pursuant to section 23 of the Emergency Medical Services Act of 2008, effective March 25, 2009, D.C. Law 17-357, D.C. Official Code § 7-2341.22 (2012 Repl.), it is hereby **ORDERED** that:

1. **KEVIN O'BRIEN, Ed.D.** is appointed as an *ex officio* member to District of Columbia Emergency Medical Services Advisory Committee as the designee representative for the Department of Behavioral Health, and shall serve in that capacity at the pleasure of the Mayor so long as he continues in his official capacity with the District.

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 2014-202
August 15, 2014

SUBJECT: Appointments – Commission for Women

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Repl.), and in accordance with section 3 of the District of Columbia Commission for Women Act of 1978, effective September 22, 1978, D.C. Law 2-109, D.C. Official Code § 3-702 (2012 Repl. and 2014 Supp.), it is hereby **ORDERED** that:

1. **KAREN WILLIAMSON** is appointed as a member of the Commission for Women ("Commission"), replacing Ferial S. Bishop, to complete the remainder of an unexpired term to end April 20, 2015.

2. **KELLEY GILBERT** is appointed as a member of the Commission, replacing Angela L. Knudson, to complete the remainder of an unexpired term to end April 20, 2015.

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

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2014-203
August 18, 2014

SUBJECT: Designation of Special Event Area – 20th Street, N.E., between Hamlin Street, N.E., and Franklin Street, N.E.

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Repl.), and pursuant to 19 DCMR § 1301.8, it is hereby **ORDERED** that:

1. The following public space area shall be designated as a Special Event Area to accommodate activities associated with the Chuck Brown Park Ribbon Cutting:

   a. Commencing Friday, August 22, 2014 at 8:30 a.m. and continuing until 5:00 p.m., 20th Street, N.E., between Hamlin Street, N.E., and Franklin Street, N.E., shall be closed to vehicular traffic.

2. The designated area shall be operated and overseen by the Office of the Deputy Mayor for Public Safety and Justice.

3. This Order is authorization for the use of the designated streets and curb lanes only, and the named operator shall secure and maintain all other licenses and permits applicable to the activities associated with the operation of the event. All building, health, life, safety, and use of public space requirements shall remain applicable to the Special Event Area designated by this Order.

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 2014-204
August 18, 2014

SUBJECT: Appointments – Interstate Commission on the Potomac River Basin

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 Article I of the Potomac River Basin Compact, approved September 25, 1970, 84 Stat. 856, Pub. L. 97-407, D.C. Official Code § 8-1602 (2013 Repl.), it is hereby **ORDERED** that:

1. **MERRIT DRUCKER** is appointed as a member of the Interstate Commission on the Potomac River Basin ("Commission") and shall serve in that capacity at the pleasure of the Mayor.

2. **DR. WILLEM BRAKEL** is appointed as a member of the Commission and shall serve in that capacity at the pleasure of the Mayor.

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

Vincent C. Gray
VINCENT C. GRAY
MAYOR

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

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

Board of Accountancy
1100 4th Street SW, Room E300
Washington, DC 20024

AGENDA

September 5, 2014
9:00 A.M.

1) Meeting Call to Order

2) Attendees

3) Comments from the Public

4) Minutes: Review draft of 1 August 2014

5) Old Business

   a) NASBA Annual Meeting

6) New Business

7) Pursuant to § 2-575(4)(a), (9) and (13) the Board will enter executive session to receive advice from counsel, review application(s) for licensure and discuss disciplinary matters.

8) Action on applications discussed in executive session

9) Adjournment

Next Scheduled Meeting – Friday, 3 October 2014
Location: 1100 4th Street SW, Conference Room E300

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Architecture and Interior Design
1100 4th Street, S.W., Room 300B Washington, D.C. 20024

AGENDA
September 12, 2014

1. Meeting Call to Order - 9:30 a.m.

2. Attendees

3. Comments from the Public

4. Executive Session (Closed to the Public) – Roll Call of Board Members

   A. Review of Complaints
   B. Legal Counsel Report
   C. Review – Proposed Legislation (Chapter 28 of Title 47 of the DC Code)

5. Minutes – Review Draft, September 6, 2013

6. Review of Applications

7. Review of Complaints/Legal Matters

8. Review of Interior Design Continuing Education Provider Submissions

9. Proposed Legislation

10. Old Business

11. New Business

12. Review of Correspondence

13. Adjourn

Next Scheduled Regular Meeting, October 31, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Barber and Cosmetology
1100 4th Street SW, Room E300
Washington, DC 20024

Meeting Agenda

September 8, 2014
10:00 a.m.

1. Call to Order – 10:00 a.m.
2. ATTENDANCE & ROLL CALL
3. Comments from the Public
4. Acceptance of Meeting Minutes
5. Review of Correspondence
6. Old Business
7. Executive Session (Closed to the Public)
   Applications for Licensure
   Complaints and Investigations
8. New Business
9. Adjourn

Next Scheduled Board Meeting – October 6, 2014.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

Board of Funeral Directors
1100 4th Street SW, Room E300
Washington, DC 20024

Meeting Agenda

September 4, 2014
10:00 A.M.

1. Call to Order – 10:00 a.m.
2. Members Present
3. Staff Present
4. Comments from the Public
5. Executive Session (Closed to the Public)
    - Applications
6. Review of Correspondence
7. Draft Minutes, October 2, 2014
8. New Business
9. Old Business
10. Adjourn
11. Next Scheduled Board Meeting – October 2, 2014 at 11:00 a.m.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

Board of Industrial Trades
1100 4th Street SW, Room 300 A/B
Washington, DC 20024

AGENDA

September 16, 2014
1:00 P.M -3:30 P.M.

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of the Agenda

IV. Acknowledgment of Adoption of the Minutes

V. Report from the Chairperson
a) DCMR updates
b) New Board Member

VI. New Business

VII. Old Business
Correspondence
a) Reciprocity with other Jurisdictions
Code Change
b) Development of new examinations

VIII. Opportunity for Public Comments

IX. Executive Session
Executive Session (non-public) to Discuss Ongoing, Confidential Preliminary Investigations pursuant to D.C. Official Code § 2-575(b)(14), to deliberate on a decision in which the Industrial Trades Board will exercise quasi-judicial functions pursuant to D.C. Official Code § 2-575(b)(13)

a) Review of applications

X. Resumption of Public Meeting
XI. Adjournment

Next Scheduled Board Meeting: October 21, 2014 @ 1:00 PM – 3:30 PM, Room 300A/B
1100 4th Street, Washington, DC 20024

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

Board of Professional Engineering
1100 4th Street SW, Room E300
Washington, DC 20024

AGENDA

September 25, 2014
11:00 A.M.

1) Meeting Call to Order

2) Attendees

3) Comments from the Public

4) Minutes: Review draft of 28 August 2014

5) Old Business

6) New Business

7) Executive Session

   a) Pursuant to § 2-575(13) the Board will enter executive session to review application(s) for licensure
   b) Pursuant to § 2-575(9) the Board will enter executive session to discuss a possible disciplinary action

8) Application Committee Report

9) Adjournment

Next Scheduled Meeting – Thursday, 23 October 2014
Location: 1100 4th Street SW, Conference Room E300

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Board of Real Estate Appraisers
1100 4th Street SW, Room 300 B
Washington, DC 20024

AGENDA

.

September 17, 2014
10:00 A.M.

1. Call to Order – 10:00 a.m.

2. Attendance (Start of Public Session) – 10:30 a.m.

3. Executive Session (Closed to the Public) – 10:00 – 10:30 a.m.

   A. Legal Committee Recommendations
   B. Legal Counsel Report
   C. Application Review

4. Comments from the Public

5. Minutes - Draft, July 16, 2014

6. Recommendations

   A. Review - Applications for Licensure
   B. Legal Committee Report
   C. Education Committee Report
   D. Budget Report
   E. 2014 Calendar
   F. Correspondence

7. Old Business

8. New Business

9. Adjourn

Next Scheduled Regular Meeting, October 15, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

September 2014

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	5	8:30 am-12:00pm
Lisa Branscomb	Board of Appraisers	17	8:30 am-4:00 pm
Jason Sockwell	Board Architects and Interior Designers	12	8:30 am-1:00 pm
Cynthia Briggs	Board of Barber and Cosmetology	8	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	9	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	4	8:00am-4:00 pm
Daniel Burton	Board of Professional Engineering	25	9:00 am-1:30 pm
Leon Lewis	Real Estate Commission	9	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	16	1:00pm-3:30 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th St., SW, Suite E-300 A-B Washington, DC 20024. For further information on this schedule, please contact the front desk at 202-442-4320.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OCCUPATIONAL AND PROFESSIONAL LICENSING DIVISION

NOTICE OF PUBLIC MEETING

District of Columbia Real Estate Commission
1100 4th Street, S.W., Room 4302 (4th Floor)
Washington, D.C. 20024

AGENDA
September 9, 2014

1. Call to Order - 9:30 a.m.

2. Executive Session (Closed to the Public) – 9:30 am-10:30 am

   A. Legal Committee Recommendations
   B. Review – Applications for Licensure
   C. Legal Counsel Report

3. Attendance (Start of Public Session) – 10:30 a.m.

4. Comments from the Public

5. Minutes - Draft, July 8, 2014

6. Recommendations

   A. Review - Applications for Licensure
   B. Legal Committee Report
   C. Education Committee Report
   D. Budget Report
   E. 2014 Calendar
   F. Correspondence

7. Old Business

8. New Business

   A. Report - Commission-sponsored Seminars – July 24, 2014
   B. Report – Examination Reviews August 20 and 21, 2014

9. Adjourn

Next Scheduled Regular Meeting, October 14, 2014
1100 4th Street, SW, Room 300B, Washington, DC 20024

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6921 to Atlantic Residential B, L.L.C. to construct and operate one (1) 175 kW emergency generator set with a 279 HP diesel-fired engine at the property located at 2030 8th Street NW, Washington DC. The contact person for the facility is Brad Koch, Construction Manager, at (301) 741-0600.

The proposed emission limits are as follows:

a. Emissions shall not exceed those found in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.0	3.5	0.20

b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the emergency generator are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.17
Oxides of Nitrogen (NO_x)	0.47
Total Particulate Matter , (PM Total)	0.0115
Oxides of Sulfur (SOx)	0.0770
Volatile Organic Compounds (VOCs)	0.027

The application to operate the emergency generator and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after September 29, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permit #6922 to Atlantic Residential A, L.L.C. (the Permittee) to construct and operate one (1) 350 kW emergency generator set with a 530 HP diesel-fired engine at the property located at 2112 8th Street NW, Washington DC NW. The contact person for the facility is Brad Koch, Construction Manager, at (301) 741-0600.

The proposed emission limits are as follows:

a. Emissions shall not exceed those found in the following table, as measured according to the procedures set forth in 40 CFR 89, Subpart E. [40 CFR 60.4205(b), 40 CFR 60.4202(a)(2) and 40 CFR 89.112(a)]

Pollutant Emission Limits (g/kW-hr)		
NMHC+NOx	CO	PM
4.0	3.5	0.20

b. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the Emergency Generator are as follows:

Pollutant	**Maximum Annual Emissions (tons/yr)**
Carbon Monoxide (CO)	0.22
Oxides of Nitrogen (NO_x)	0.89
Total Particulate Matter , (PM Total)	0.0463
Oxides of Sulfur (SOx)	0.270
Volatile Organic Compounds (VOCs)	0.15

The application to operate the emergency generator and the draft permit and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after September 29, 2014 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2014

PUBLIC NOTICE

AIR QUALITY TITLE V OPERATING PERMIT AND GENERAL PERMIT FOR SMITHSONIAN INSTITUTION NATIONAL MUSEUM OF THE AMERICAN INDIAN

Notice is hereby given that the Smithsonian Institution, Board of Regents has applied for a Title V air quality permit pursuant to the requirements of Title 20 of the District of Columbia Municipal Regulations, Chapters 2 and 3 (20 DCMR Chapters 2 and 3) to operate three 8.165 million BTU per hour boilers, one paint booth, one emergency generator, and miscellaneous other smaller equipment at the National Museum of the American Indian facility located at 4th Street & Independence Avenue SW, Washington, DC. The contact person for the facility is John Michael Bixler, Facility Zone Manager at (202) 633-2573.

The Smithsonian Institution National Museum of the American Indian has the potential to emit 22.24 tons per year (TPY) of nitrogen oxides (NOx), 7.81 TPY of sulfur dioxide (SO2), 1.83 TPY of particulate matter (PM), 1.94 TPY of volatile organic compounds (VOC), and 13.21 TPY of carbon monoxide.

Under normal maximum operating conditions for determination of the potential emissions of the facility, the facility would have the potential to emit more than 25 TPYof NOx (the District's major source threshold) if each of the three 8.165 million BTU per hour boilers were to operate 8,760 hours per year firing No. 2 fuel oil or diesel fuel. However, in order to avoid Non-Attainment New Source Review (NNSR) program applicability, the Smithsonian Institution requested a permit limit of 144 hours of operation per 12-month rolling period using No. 2 fuel oil or diesel fuel (with unlimited hours of operation using natural gas) for each of the three 8.165 million BTU per hour boilers at the time the Chapter 2 permits were issued. The Chapter 3 permitting process is being used in this case to make these limits federally enforceable and enforceable as a practical matter.

Description and Emission Information for Unit being Permitted for the First Time:

One Cross-draft Paint Booth (SSB-1), used primarily for painting and finishing museum exhibits**:**

Maximum annual potential emissions from the unit are expected to be as follows:

	PB-1
Pollutant	**(tons/yr)**
Particulate Matter (PM) (Total)[1]	0.02
Volatile Organic Compounds (VOC)	0.92

The proposed emission limits for the paint booth are as follows:

A. No person shall discharge into the atmosphere more than fifteen (15) pounds of volatile organic compound (VOC) emissions in any one (1) day, nor more than three pounds (3 lb.) in any one (1) hour, from any combination of articles, machines, units, equipment, or other contrivances at a facility, unless the uncontrolled VOC emissions are reduced by at least ninety percent (90%) overall capture and control efficiency. [20 DCMR 700.2]

B. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

C. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booth. [20 DCMR 107 and 606]

D. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201]

The District Department of the Environment (DDOE) has reviewed the permit application and related documents and has made a preliminary determination that the applicant meets all applicable air quality requirements promulgated by the U.S. Environmental Protection Agency (EPA) and the District. Therefore, draft Title V permit #040 has been prepared.

The application, the draft Title V permit, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the District Department of the Environment, 1200 First Street NE, 5th Floor, Washington DC 20002. Copies of the draft permit and related fact sheet are available at http://ddoe.dc.gov.

A public hearing on this permitting action will not be held unless DDOE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. Hearing requests or comments should be directed to Stephen S. Ours, DDOE Air Quality Division, 1200 First Street NE, 5th Floor, Washington DC 20002. Questions about this permitting action should be directed to Abraham T. Hagos at (202) 535-1354 or abraham.hagos@dc.gov. Comments or hearing requests submitted after September 29, 2014 will not be accepted.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY

Office of Government Ethics

BEGA – Advisory Opinion – 1209-001

VIA EMAIL TO:

August 13, 2014

Kaya Henderson
Chancellor, D.C. Public Schools
kaya.henderson@dc.gov

Dear Chancellor Henderson:

This responds to your request for advice concerning whether you may, consistent with your ethical obligations as a District government employee, serve on the Board of Directors of Georgetown University, your *alma mater*. Based upon my telephone conversation with you today and the information your staff has provided in several related emails, I conclude that your service on the Board is permissible.

I understand that you will be serving on the Board without compensation and in your personal capacity. I also understand that D.C. Public Schools ("DCPS") currently has two contracts with Georgetown. The one is Contract GAGA-2012-C-0099 (Street Law Services), which requires Georgetown to select, train, and supervise law students or equally qualified individuals to teach pre-law classes to high school students. Learning objectives for the students are to be developed to correspond directly to DCPS content standards and Common Core State Standards for Reading and Writing in Social Studies. The other is Contract GAGA-2013-C-0009 (Executive Master's Leadership Program), which requires Georgetown to offer an Executive Master's Leadership Degree Program to DCPS principals. The program is to integrate practical management skills and advanced leadership theory to enable participants to effect change at their respective schools and to help achieve DCPS's 5-year Capital Commitment Goals. The principals are selected on an annual basis by DCPS to participate in the program, at the successful conclusion of which they earn a Master's in Leadership degree at a deeply subsidized cost to them.

Within certain limitations, District government employees[1] can have an outside job or pursue other outside activities. One of those limitations is, generally, refraining from "engag[ing] in any

[1] As Chancellor, you are a District government employee, and, as such, you are subject to the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics

outside employment or other activity incompatible with the full and proper discharge of [the employee's] duties and responsibilities." 6B DCMR § 1807.1. More specifically, an employee may not engage "in any outside employment, private business activity, or other interest that is reasonably likely to interfere with the employee's ability to perform his or her job, or which may impair the efficient operation of the District government." 6B DCMR § 1807.1(a). Here, your service on the Board would be part-time, and I otherwise find nothing to suggest that that service would conflict significantly with the performance of your duties[2] or impair the efficient operation of DCPS.

Another specific limitation is avoiding "serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee." 6B DCMR § 1807.1(d). Here, I understand that several steps have been, or will be, taken in an effort to resolve any concerns about conflicts of interest. First, Georgetown has been advised that you will recuse yourself from discussing or voting on any DCPS-related matters while serving on the Board. Second, you will, as Chancellor, recuse yourself from discussing or voting on any Georgetown-related matters during your Board tenure. Those matters include the two existing contracts, for which a separate contract administrator will be appointed (without input from you) to monitor contract performance. In addition, with respect to the Executive Master's Leadership Program contract, in particular, you will not be involved in the selection of the principals who will be candidates for program admission. The DCPS General Counsel will ensure that these measures are enforced.

You also should keep in mind two other DCMR provisions while serving on the Board. The first is 6B DCMR § 1807.1(f), which prohibits a District government employee from "[d]ivulging any official government information to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of or permitting others to make use of information not available to the general public[.]"

The second is 6B DCMR § 1803.2(a), which prohibits a government employee from accepting a gift from a prohibited source. Even though you will not have a role in either of the two existing contracts noted above or in any others entered into with Georgetown during your Board service, the University still will be considered a "prohibited source," as that term is defined in both the Ethics Act and the DCMR.[3] This is important because it means that you cannot accept gifts or anything of value from Georgetown for your service or otherwise as long as you are DCPS Chancellor.

In sum, I conclude that your service on the Georgetown Board of Directors is permissible.

Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01 *et seq.*), and Chapter 18, Title 6B of the D.C. Municipal Regulations ("DCMR").

[2] *See* D.C. Official Code § 38-174(c) (setting out Chancellor's duties).

[3] *See, e.g.*, 6B DCMR § 1803.4(b)(2) (defining "prohibited source" as any person or entity who "[d]oes business or seeks to do business with the employee's agency").

Chancellor Kaya Henderson
August 13, 2014
Advisory Opinion

Please be advised that this advice is provided to you pursuant to section 219 of the Ethics Act (D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for violation of the District's Code of Conduct may be taken against you in this context, provided that you (and others for you) have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You also are advised that the Ethics Act requires this opinion to be published in the *D.C. Register* within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

Please let me know if you have any questions or wish to discuss this matter further. I may be reached at 202-481-3411, or by email at darrin.sobin@dc.gov.

Sincerely,

_____

DARRIN P. SOBIN
Director of Government Ethics
Board of Ethics and Government Accountability

cc: Robert Utiger, General Counsel, D.C. Public Schools

#1209-001

IDEAL ACADEMY PUBLIC CHARTER SCHOOL

Notice of Intent

Ideal Academy Public Charter School would like to notify their intent to use services or contract with the following:

Washington Gas: Gas
Pepco: Electricity
DC Water and Sewer Authority: Water and Sewer

Feel free to contract Zuella Evans at zuella.evans@iapcs.com with any questions.

IDEAL ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS

School Bus Services

The Ideal Academy Public Charter School (IAPCS) is soliciting bids from qualified companies for School Bus Services.

The General Scope of Work for this project consists of, but, is not limited to the pickup and drop off of students on school days at specified locations, 6:45am and 4:00pm.

bids will be received at Ideal Academy Public Charter School until Tuesday 9/08/14 at 5pm.

The successful provider must be bonded, licensed and insured.

Send proposals to:

Ideal Academy Public Charter School
6130 North Capitol Street, NW
Washington, DC 20011
(202) 729-6660

IDEAL ACADEMY PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Related Services

The Ideal Academy Public Charter School will receive Bids until Friday 9/08/2014 for the following:

1. Delivery of special education related services to include:
    a. *Occupational Therapy
    b. *Physical Therapy
    c. *Speech Therapy
    d. *Behavior and Social Therapy/Counseling

Specific proposal for bids and all necessary criteria obtained from:

Antonia Reynolds
Special Education Coordinator
Ideal Academy PCS
a.reynolds@iapcs.com

PERRY STREET PREP PUBLIC CHARTER SCHOOL

NOTICE: FOR PROPOSALS FOR MULTIPLE SERVICES

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- Trash Services
- Transportation

Please go to www.pspdc.org/bids to view a full RFP offering, with more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Monday, September 8, 2014.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
psp_bids@pspdc.org

Please include the bid category for which you are submitting as the subject line in your e-mail (e.g. Food Service). Respondents should specify in their proposal whether the services they are proposing are only for a single year or will include a renewal option.

OFFICE OF THE DEPUTY MAYOR
FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

GREAT STREETS SMALL BUSINESS CAPITAL IMPROVEMENT GRANTS

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the Great Streets Small Business Capital Improvement Grants. Funding for this program is authorized from the Economic Development Special Account pursuant to DC Official Code §2-1225.21 and also pursuant to the Great Streets Neighborhood Retail Priority Area Amendment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 2-1217.71 *et seq.*).

Grant funds purpose and availability
The purpose of the Great Streets Small Business Capital Improvement Grants is to support existing small businesses, attract new businesses, increase the District's tax base, create new job opportunities for District residents, and transform emerging commercial corridors into thriving and inviting neighborhood centers. DMPED will award individual grants of up to a maximum of $85,000 each to foster growth among small businesses. Grant funds will be utilized to reimburse grantees for capital expenditures to improve their place of business or for the purchase and installation of heavy equipment that will be used onsite at the business location.

Eligible applicants
Eligible applicants for the grant are owners of small retail and service-oriented businesses. The following types of businesses are ***ineligible*** to receive this grant funding: ***adult entertainment establishments, liquor stores, nightclubs, bars, banks, phone stores, hotels, and home-based businesses.***

Eligible applicants must meet the following minimum requirements to be considered for the grant**:**

1. Be located within a Great Streets corridor. Prospective applicants can verify their location eligibility by using the interactive mapping tool at greatstreets.dc.gov.
2. Be a registered business in Good Standing with the DC Department of Consumer and Regulatory Affairs (DCRA), the DC Office of Tax and Revenue (OTR), the DC Department of Employment Services (DOES), and the federal Internal Revenue Service (IRS).
3. Retain site control of the business property either through fee simple ownership or an executed contract or lease with the property owner with a minimum unexpired term of at least two (2) years.
4. Provide proof of property and liability insurance (an insurance quote is permitted for new businesses) compliant with the requirements set forth in the grant application.

Prior to the execution of a grant agreement with the District, the grantee must enter into a First Source Agreement with DOES. More information about the First Source Employment Program can be found at does.dc.gov.

Application process
The grant application will be released on **Tuesday, September 9th, 2014**. The grant application will be available on the Great Streets website at greatstreets.dc.gov. **PLEASE NOTE:** this is a rolling application. Submitted applications will be reviewed on a monthly basis commencing on Monday, September 29th, 2014. DMPED reserves the right to close the application at any time.

DMPED will host multiple informational sessions on the Great Streets corridors to provide an overview of the grant process and to answer questions from potential applicants. Once confirmed, details about the informational sessions will be posted on the Great Streets website at greatstreets.dc.gov.

Please direct all inquiries to:
LaToyia Hampton**,** Grants Manager
Office of the Deputy Mayor for Planning and Economic Development
1100 4th Street SW, Suite E500
Washington, DC 20024
Telephone: (202) 724-7648
Email: LaToyia.Hampton@dc.gov

OFFICE OF THE DEPUTY MAYOR
FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

H STREET NE SMALL BUSINESS CAPITAL IMPROVEMENT GRANTS

The Office of the Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of applications for the H Street NE Small Business Capital Improvement Grants. Funding for this program is authorized under the "H Street NE Retail Priority Area Incentive Act of 2010," effective April 8, 2011 (D.C. Law 18-354; D.C. Official Code § 1-325.171 et seq.), and as amended by the "H Street NE Retail Priority Area Incentive Amendment Act of 2012," effective September 20, 2012 (D.C. Law 19-168).

Grant funds purpose and availability
The purpose of the H Street NE Small Business Capital Improvement Grants is to support existing small businesses, attract new businesses, increase the District's tax base, create new job opportunities for District residents, and transform the H Street NE commercial corridor into a thriving and inviting neighborhood center. DMPED will award individual grants of up to a maximum of $85,000 each to foster growth among small businesses. Grant funds will be utilized to reimburse grantees for capital expenditures to improve their place of business or for the purchase and installation of heavy equipment that will be used onsite at the business location.

Eligible applicants
Eligible applicants for the grant are owners of small retail and service-oriented businesses. The following types of businesses are ***ineligible*** to receive this grant funding: ***adult entertainment establishments, liquor stores, restaurants, nightclubs, bars, banks, phone stores, hotels, home-based businesses, and businesses with 20 or more locations in the United States.***

Eligible applicants must meet the following minimum requirements to be considered for the grant**:**

1. Have direct frontage on the H Street NE corridor from 3rd Street NE to 15th Street NE. Prospective applicants can verify their location eligibility by using the interactive mapping tool at greatstreets.dc.gov.
2. Be a registered business in Good Standing with the DC Department of Consumer and Regulatory Affairs (DCRA), the DC Office of Tax and Revenue (OTR), the DC Department of Employment Services (DOES), and the federal Internal Revenue Service (IRS).
3. Retain site control of the business property either through fee simple ownership or an executed contract or lease with the property owner with a minimum unexpired term of at least two (2) years.
4. Provide proof of property and liability insurance (an insurance quote is permitted for new businesses) compliant with the requirements set forth in the grant application.

Prior to the execution of a grant agreement with the District, the grantee must enter into a First Source Agreement with DOES. More information about the First Source Employment Program can be found at does.dc.gov.

Application process
The grant application will be released on **Tuesday, September 9th, 2014**. The grant application will be available on the Great Streets website at greatstreets.dc.gov. **PLEASE NOTE:** this is a rolling application. Submitted applications will be reviewed on a monthly basis commencing on Monday, September 29th, 2014. DMPED reserves the right to close the application at any time.

DMPED will host at least one informational session on the H Street NE corridor to provide an overview of the grant process and to answer questions from potential applicants. Once confirmed, details about the informational session will be posted on the Great Streets website at greatstreets.dc.gov.

Please direct all inquiries to:
LaToyia Hampton**,** Grants Manager
Office of the Deputy Mayor for Planning and Economic Development
1100 4th Street SW, Suite E500
Washington, DC 20024
Telephone: (202) 724-7648
Email: LaToyia.Hampton@dc.gov

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Bridges Public Charter School's intent to amend its goals by adopting the Early Childhood Performance Management Framework in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Briya Public Charter School's intent to amend its goals in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Creative Minds Public Charter School's intent to amend its goals in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Latin America Career Academy's intent to amend its goals in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Next Steps Public Charter School's intent to amend its goals in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Shining Stars Public Charter School's intent to amend its goals by adopting the Early Childhood Performance Management Framework in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of William E. Doar Jr. Public Charter School's intent to amend its goals in school year 2014-2015. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF REQUEST TO AMEND BYLAWS

The District of Columbia Public Charter School Board ("PCSB") hereby gives notice, dated Tuesday, August 26, 2014 of Carlos Rosario Public Charter School's request to amend its bylaws. PCSB will hold a public hearing during the regularly scheduled board meeting on October 15, 2014. Subsequently, the board will hold a vote on the matter during the regularly scheduled board meeting on November 17, 2014. For further information, please contact Laterica Quinn, Equity and Fidelity Specialist, at 202-328-2660. Please call 202-328-2660 to submit public comment or email public.comment@dcpcsb.org.

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 Nos. 11-U-38
v.	Opinion No. 1479
District of Columbia Metropolitan Police Department,	**Motions for Reconsideration**
Respondent.	

DECISION AND ORDER

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") and Respondent District of Columbia Metropolitan Police Department ("MPD") separately moved for reconsideration of a decision and order, *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 60 D.C. Reg. 5312, Slip Op. No. 1370, PERB Case No. 11-U-38 (2013) ("Opinion No. 1370"), that the Board issued in the above-captioned matter. The two motions for reconsideration are before the Board for disposition.

I. Statement of the Case

FOP's Complaint alleges that on March 15, 2011, Sgt. Yvonne Tidline ("Tidline") sent an e-mail on MPD's e-mail system encouraging FOP members to vote against a dues increase at an upcoming FOP meeting and to forward the e-mail to other members of the union. Inspector Dierdre Porter was a recipient of the e-mail. That same day, the chairman of FOP, Kristopher Baumann, forwarded Tidline's e-mail to the acting director of MPD's Labor and Employee Relations Unit, Mark Viehmeyer. (Complaint ¶ 4.) Baumann asked if MPD had authorized the e-mail or any others regarding FOP and requested permission to send an e-mail on MPD's e-mail system to FOP members regarding the dues assessment vote. (Complaint ¶¶ 4, 6.) Viehmeyer responded that the Department had not authorized the e-mail and that he was aware of no other e-mails related to FOP being disseminated via MPD's e-mail system. He stated that the incidents

would be investigated. He denied Chairman Baumann's request to send an e-mail because the message would solely concern internal union issues. (Complaint ¶¶ 5, 7.)

The Complaint named as respondents MPD, Tidline, Inspector Porter, and Chief Cathy Lanier. The individual respondents have since been removed from the case, leaving only MPD.[1] The Complaint alleges that by permitting Tidline to send her e-mail on MPD's e-mail system while prohibiting FOP from using that system to respond as well as taking action against union members who had used the system for legitimate communications, the respondents showed anti-union animus and violated section 1-617.04(a) of the D.C. Official Code by interfering, restraining, coercing, or retaliating against the exercise of rights that the CMPA guarantees to FOP members (Complaint ¶ 12), violated section 1-617.04(a)(2) by interfering with the existence or administration of the FOP (Complaint ¶ 13), and violated the exclusivity provision of the CMPA, section 1-617.10, by sanctioning the conduct of a rival organization. (Complaint ¶¶ 14-16.)

The Board's Order in Opinion No. 1370 stated, "FOP's Complaint, regarding Sergeant Tidline's email, is dismissed with prejudice." Opinion No. 1370 at p. 5, ¶ 1. The Order referred to a hearing examiner "[t]he unfair labor practice claim by FOP, regarding MPD's denial of the use of MPD's email system. . . ." *Id.* ¶ 3. Both FOP and MPD moved for reconsideration. For the reasons set forth below, FOP's motion is granted and MPD's motion is denied.

II. Discussion

A. FOP's Motion for Reconsideration

Opinion No. 1370 erroneously stated that FOP alleged two unfair labor practices: (1) MPD violated the CMPA "when Sergeant Tidline sent the March 15, 2011, email" and (2) MPD violated the CMPA "by permitting Tidline's email and denying Chairman Baumann use of MPD's email system to clarify information contained in Sergeant Tidline's email. . . ." Opinion No. 1370 at p. 2. The second of those two unfair labor practice claims actually constitutes FOP's entire claim as set forth in its Complaint. The first claim was not alleged by FOP.

Although FOP did not make that claim, Opinion No. 1370 dismissed it on the ground that Tidline was acting in her capacity as a union member when she sent the e-mail and her act as a union member cannot be imputed to MPD. *Id.* at p. 3. FOP objects that in reaching that decision the Board made factual determinations without a hearing. We need not consider that objection as the Board should not have addressed the issues of whether Tidline was acting in her capacity

[1] FOP dismissed Respondents Porter and Lanier, and the Board dismissed Respondent Tidline. In Opinion No. 1370, the Board stated, "As FOP has filed under § 1-617.04(a) for liability of the District for prohibited conduct, the Executive Director has removed Sergeant Tidline as an individual respondent from the caption consistent with the Board's precedent requiring individual respondents named in their official capacities to be removed from the complaint for the reason that suits against District officials in their official capacities should be treated as suits against the District." Opinion No. 1370 at p. 1 n.2. FOP's motion for reconsideration does not object to the removal of Tidline as a respondent.

as a union member and whether her act can be imputed to MPD. Addressing those issues was erroneous because FOP's Complaint does not allege that the sending of the e-mail was itself an unfair labor practice and does not impute any vicarious liability to MPD for that act. Instead, FOP's claim with respect to the March 15, 2011 e-mail is that MPD *allowed* or *permitted* Tidline to send the e-mail while disallowing Baumann's e-mail. (Complaint ¶¶ 12, 13, 16.)

With regard to the manner in which MPD allowed Tidline to send her e-mail, FOP alleges that MPD, and specifically Inspector Porter, did not investigate Tidline's e-mailing until Baumann brought it to Viehmeyer's attention. (Complaint ¶¶ 8, 12.) There is no allegation that Tidline sought permission to send the e-mail. [2]

As Opinion No. 1370 addressed an issue not raised by the pleadings, the Board grants FOP's motion for reconsideration and vacates paragraphs 1 and 3 of the Order issued with Opinion No. 1370. FOP's unfair labor practice Complaint, which does not include a claim that MPD violated the CMPA when Tidline sent her March 15, 2011 e-mail, will be referred to a hearing examiner for an unfair labor practice hearing.

B. MPD's Motion for Reconsideration

As discussed, FOP contends that MPD violated its statutory rights under the CMPA by allowing Tidline to send an e-mail critical of a proposed union dues increase on the MPD's e-mail system while disallowing the chairman of FOP to use MPD's e-mail system to e-mail a response to union members. In its motion for reconsideration, MPD contends that "[t]his issue was specifically negotiated over and agreed upon by the parties, as reflected in Article 11 of the CBA (Use of Department Facilities)." (MPD's Motion for Reconsideration 7.) Article 11, section 4 of the collective bargaining agreement states, "With specific approval by the Commanding Officer, the Union may utilize Departmental mailboxes, teletype, and electronic mail." (Complaint Ex. 1 p. 9.) Citing *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department Labor Committee*, 60 D.C. Reg. 2585, Slip Op. No. 1360 at p. 4, PERB Case No. 12-U-31 (2013), and *Government of District of Columbia v. District of Columbia Public Employee Relations Bd.*, No. 2012 CA 005842P (Super. Ct. June 10, 2013), MPD argues that the Board lacks jurisdiction over contractual matters covered by the parties' collective bargaining agreement. MPD asserts that the subject matter of this case is covered by article 11, section 4 of the collective bargaining agreement and on that basis urges the Board to reconsider its decision and to dismiss the Complaint.

---

[2] Since Tidline was originally a respondent, the Complaint technically alleged that Tidline also permitted Tidline to send the e-mail. ("In permitting the Respondents to send an email on the Department's email system . . . , the Respondents have violated the exclusivity provision in the CMPA. . . ." (Complaint ¶ 16.)) Similarly, in another of the FOP-MPD e-mail cases, the Board noted that "[t]he Complaint asserts that 'the Respondents' permitted 'the Respondents' (presumably different Respondents) to send an e-mail on MPD's e-mail system containing false information about FOP while at the same time preventing FOP from using MPD's e-mail system." *F.O.P. /Metro. Police Dep't Labor Comm. v. D.C. Metro. Police Dep't*, 60 D.C. Reg. 10816, Slip Op. No. 1395 at p. 2, PERB Case Nos. 11-U-35 and 11-U-44 (2013).

Assuming without deciding that FOP had a statutory right under the circumstances of this case to use MPD's e-mail system, the Board observes that the contractual provision cited by MPD does not necessarily remove the alleged violation of that statutory right from the Board's jurisdiction. The contractual provision would remove the alleged violation of the statutory right from the Board's jurisdiction only if it contains a clear and unmistakable waiver with respect to that statutory right. *See AFGE Locals 872, 1975, & 2553 v. D.C. Dep't of Pub. Works*, 49 D.C. Reg. 1145, Slip Op. No. 439 at p. 2 n.2, PERB Case No. 94-U-02 (1995). The D.C. Superior Court recognized this principle in its decision cited by MPD. The court said that "a party to a collective bargaining agreement can waive a right that its members would have under the CMPA or another statute, although it must use clear and unmistakable language to do so." *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).

MPD has the burden of proving that FOP has clearly and unmistakably waived the asserted statutory right. *See AFGE, Local Union No. 3721 v. D.C. Fire Dep't*, 39 D.C. Reg. 8599, Slip Op. No. 287 at p. 22, PERB Case No. 90-U-11 (1991). Allowing MPD the opportunity to meet its burden of proof at an unfair labor practice hearing is consistent with the Board's practice in cases that present this issue. *See AFGE, Local 872 v. D.C. Water & Sewer Auth.*, 52 D.C. Reg. 2474, Slip Op. 702 at pp. 2-3, PERB Case No. 00-U-12 (2003); *AFGE Local Union No. 2725 v. D.C. Dep't of Pub. & Assisted Hous.*, 43 D.C. Reg. 7019, Slip Op. No. 404 at p. 2 n.4, PERB Case No. 92-U-21 (1994); *Int'l Bhd. of Police Officers, Local 446 v. D.C. Gen. Hosp.*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1992).

As referring this issue to a hearing examiner is consistent with the Board's precedent and appropriate in this case, MPD's motion for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. FOP's motion for reconsideration is granted.

2. MPD's motion for reconsideration is denied.

3. Paragraphs 1 and 3 of the Order issued with Opinion No. 1370 are vacated.

4. FOP's unfair labor practice Complaint will be referred to a hearing examiner for an unfair labor practice hearing.

5. 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 Keith Washington.

Washington, D.C.

July 24, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 11-U-38 was transmitted to the following parties on the 28th day of July 2014.

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/s/ Adessa Barker

Adessa Barker
Law Clerk

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725, Petitioner,	PERB Case No. 14-A-01
v.	Opinion No. 1480
District of Columbia Housing Authority, Respondent.	

DECISION AND ORDER

I. Statement of the Case

Petitioner American Federation of Government Employees, Local 2725 ("AFGE") filed the instant arbitration review request ("Request"), seeking review of Arbitrator Gail Smith's Supplemental Opinion and Award ("Supplemental Award"), issued October 13, 2013[1]. In its Request, AFGE alleges that the Supplemental Award exceeds the Arbitrator's authority and is contrary to law and public policy because it imposed a time-served suspension on Grievant Fahn Harris ("Grievant") for the offense of incompetence. (Request at 1-2). AFGE contends that the time-served suspension conflicts with an express term of AFGE's collective bargaining agreement ("CBA") with the Respondent District of Columbia Housing Authority ("DCHA"), does not rationally derive from the CBA, and is arbitrary and capricious. (Request at 1-2).

DCHA filed an Opposition to the Supplemental Award ("Opposition"), disputing AFGE's characterization of the Supplemental Award's discipline as a time-served suspension and contending that the Arbitrator did not exceed her authority. (Opposition at 2).

[1]An arbitration review request of the initial award in this case was filed as PERB Case No. 13-A-11.

II. Discussion

A. Background

In the Supplemental Award, the Arbitrator found the following facts: on April 10, 2009, DCHA issued a Notice of Removal to the Grievant for "Incompetency: Inability to satisfactorily perform one or more major duties of his or her position." (Supplemental Award at 2). The Notice of Removal listed several incidents where the Grievant allegedly performed her work in an incompetent manner. *Id.* AFGE filed a grievance, which proceeded to arbitration. *Id.* In her initial Award, the Arbitrator upheld the Grievant's termination for incompetence, but found that DCHA failed to consider mitigating circumstances which may have warranted a penalty short of termination, as required by the parties' CBA to establish just cause for termination. (Supplemental Award at 2-3). Specifically, the Arbitrator considered Article 10, Section C1.(2), which stated: "In selecting the appropriate penalty to be imposed in a disciplinary action, consideration shall be given to any contributing mitigating or aggravating circumstances. The results of such consideration shall be in writing and shall be placed in the disciplinary action file." (Supplemental Award at 3). Article 10, Section C1.(2) also incorporated the Table of Appropriate Penalties in Appendix A of the CBA, which lists the range of penalties that may be imposed for specific offenses. *Id.* The Arbitrator noted that the Table of Appropriate Penalties provides that the penalty for the first offense of proven incompetency may be a reduction in pay, grade, and/or rank or removal, but first required the consideration of mitigating factors. *Id.*

In her initial Award, the Arbitrator instructed DCHA to:

> Immediately ascertain whether there were mitigating circumstances that should have been considered by the Agency in assessing the appropriate penalty in this case, including whether the Agency has another position available and appropriate for the Grievant, one that is not necessarily at the same rank or grade that the Grievant previously held. The Agency is directed, consistent with the CBA, to provide the results of its assessment in writing to the Union, within thirty (30) days of the date of this Opinion and Award. *Id*; citing initial Award at p. 23.

DCHA subsequently submitted a declaration of Ronnie Thaxton, the Labor and Employee Relations Manager at DCHA. (Supplemental Award at 4). The DCHA did not submit a statement from the Grievant's supervisor, who left DCHA in 2009 and did not testify at the arbitration hearing[2]. *Id.*

The Arbitrator found that in his declaration, Mr. Thaxton listed several neutral and aggravating factors on which he relied to conclude that the Grievant's termination was

[2] The Arbitrator noted that Mr. Thaxton discussed the proposed termination with the Grievant's direct supervisor, but did not make the decision to terminate the Grievant, nor did he examine any mitigating factors at the time of the Grievant's termination. (Supplemental Award at 4).

warranted, but that the factors were listed "in a perfunctory manner without describing the source of those conclusions or how he arrived at the same," and that Mr. Thaxton "failed to demonstrate that he made an original or independent examination of the Grievant's record and past performance." (Supplemental Award at 4). The Arbitrator also found that Mr. Thaxton had listed two aggravating factors that were contrary to the record established at the arbitration hearing, and expressed concern that DCHA terminated the Grievant for reasons that should not have been considered. (Supplemental Award at 4-5). For those reasons, the Arbitrator concluded that DCHA failed to establish by a preponderance of the evidence that it had considered mitigating, neutral, or aggravating factors when deciding on the Grievant's penalty for incompetence. *Id.*

In his declaration, Mr. Thaxton also stated that DCHA is currently under a hiring freeze and had no appropriate positions available for the Grievant at the same grade or rank. (Supplemental Award at 6). However, the Arbitrator noted that the hiring freeze did not affect the Grievant, as she was a "reinstatement" instead of a new hire. *Id.* Additionally, AFGE submitted to the Arbitrator numerous job vacancy announcements from the time of the Grievant's termination, as well as in 2012 and 2013, leading the Arbitrator to conclude that DCHA did not prove that it had considered any alternative positions for the Grievant, including the job vacancies submitted by AFGE. (Supplemental Award at 7).

Ultimately, the Arbitrator concluded that DCHA had not complied with her initial Award, and instead "devoted no more than a perfunctory effort to comply with the Award." (Supplemental Award at 7). She further found that DCHA "made no effort to review the Grievant's personnel record and past performance for the purpose of determining which alternative positions might be appropriate in which to place the grievant," and that to remedy DCHA's non-compliance, it was instructed to reinstate the Grievant to employment "at a lower rank than is suitable for her." *Id.* Due to DCHA's "undue delay" in complying with the initial Award, the Arbitrator awarded the Grievant back pay "at the salary grade she last held prior to her termination, less any interim earnings or unemployment insurance compensation," for the period from June 10, 2013 (the date of the initial Award) to the date of the Grievant's reinstatement in compliance with the Supplemental Award. *Id.*

B. AFGE's Position Before the Board

In its Request, AFGE contends that the Arbitrator exceeded her authority by issuing a time-served suspension of four years and one month to the Grievant – a discipline award which fails to draw its essence from the parties' CBA. (Request at 3). AFGE asserts that the Supplemental Award conflicts with the express terms of the CBA, which permits only two possible disciplines for the offense of incompetence, and is without rational support, as time-served suspensions are inherently arbitrary. (Request at 4).

AFGE argues that the two penalties for incompetence expressly authorized by the CBA are removal or reduction in pay, grade, or rank. (Request at 5). In the Supplemental Award, the Arbitrator not only ordered that the Grievant should be reduced in rank (by ordering her reinstated at a lower grade), but also a time-served suspension of four years and one month (by

ordering back pay only from the date of the initial Award until reinstatement, instead of from the date of the Grievant's termination). *Id.* AFGE contends that the time-served suspension is arbitrary, and thus conflicts with the "just cause" requirement of the parties' CBA, as it does not involve a "careful assessment of whether the penalty is commensurate with the offense, among many other factors, including an assessment of mitigating and aggravating circumstances." (Request at 5-6).

In support of its argument, AFGE cites to *Greenstreet v. SSA*, 543 F.3d 705 (Fed. Cir. 2008), in which the Federal Circuit reviewed an arbitration award issued 342 days after an employee's termination, where the arbitrator determined that termination was excessive and ordered the employee reinstated without back pay. (Request at 6). The court determined that when the length of a suspension is based solely on the time already served by an employee, such a decision is arbitrary and capricious, and must be vacated and remanded for appropriate consideration. *Id.*

AFGE notes that in reaching its holding in *Greenstreet*, the Federal Circuit reviewed the history of the law regarding time-served suspensions, going back to *Cuiffo v. United States*, 131 Ct.Cl. 60 (1955). In *Cuiffo*, a grievance review board ordered that a terminated employee be reinstated, but not compensated for the time between his termination and his reinstatement as "just punishment for his attempt to remove Government property without proper authority." (Request at 6; citing *Cuiffo*, 131 Ct.Cl. at 63). The court found that the 320 day suspension without pay was arbitrary, stating that it was "out of all proportion to the offense," and that it was "determined by accident, and not by a process of logical deliberation and decision." (Request at 7; citing *Cuiffo* 131 Ct.Cl. at 68-9). AFGE also states that the Merit Systems Protection Board consistently relies on *Cuiffo* to find that mitigating a termination to a time-served suspension without articulating a basis for the length of the of the suspension is inherently arbitrary. (Request at 8; citations omitted). Finally, AFGE contends that the District of Columbia statutes and regulations equate the absence of just case with arbitrary and capricious action. (Request at 8).

C. DCHA's Position Before the Board

In its Opposition, DCHA disputes AFGE's contention that the award of back pay from the date of the initial Award until the date of reinstatement constitutes a time-served suspension, and states that in reaching her decision to award back pay, the Arbitrator did not exceed her authority or commit fraud, have a conflict of interest, or otherwise act dishonestly. (Opposition at 5-6). DCHA asserts that the award of back pay was "specifically related to the Arbitrator's belief that the Agency failed to comply with her previous Award," and that the decision to award back pay is consistent with the federal Back Pay Act ("BPA"). (Opposition at 6). DCHA notes that nothing in the CBA prohibits the remedy ordered in the Supplemental Award. *Id.* Further, DCHA calls AFGE's argument that the Supplemental Award contravenes District law a disagreement with the Arbitrator's evidentiary findings and application of relevant law and the CBA. *Id.*

DCHA argues that AFGE's reliance on *Cuiffo* and *Greenstreet* are misplaced, stating that the Federal Circuit in *Greenstreet*:

> could not have been clearer regarding their interpretation of *Cuiffo* and "time served" suspensions generally: *Cuiffo* did not expressly hold that any "time served" suspension is necessarily arbitrary. Rather, the court reasoned that Cuiffo's "time served" suspension was "arbitrary and unfair" because it was solely 'determined by accident, and not by a process of logical deliberation and decision.

(Opposition at 7; citing *Greenstreet*, 543 F.3d at 708). Thus, DCHA contends, a petitioner must prove more than that a remedy was a time-served remedy; he must prove that the remedy was "solely determined by accident, and not by a process of logical deliberation and decision." *Id.* DCHA argues that the Supplemental Award was based on a process of logical deliberation and decision consistent with the essence of the parties' CBA. *Id.* DCHA also notes that one of the Merit Systems Protection Board cases relied upon by AFGE has been treated negatively by the Federal Circuit, which determined that an arbitrator may mitigate a removal penalty to a time-served disciplinary suspension without pay if the petitioner was at least partially responsible for the removal action, and a personnel action was justified. (Opposition at 8; citing *Ollett v. Dep't of the Air Force*, 253 F.3d 692, 694 (Fed. Cir. 2001)).

Additionally, DCHA contends that the BPA prohibits an agency from including in a back pay award time during which the employee was not "ready, willing, and able" to perform his or her duties. (Opposition at 10; citing 5 CFR § 550.805(c)(1)). DCHA notes that if an agency produces "concrete and positive evidence" that an employee was not ready, willing, and able to work during all or part of the period during which back pay is claimed, the burden shifts to the employee to prove her entitlement to back pay. (Opposition at 10). DCHA asserts that based upon the Arbitrator's initial Award finding the Grievant to be incompetent, the Grievant would not be entitled to back pay because she was unable to perform one or more major functions of her job. (Opposition at 11). Therefore, DCHA concludes that the award of back pay from June 10, 2013, until the time of reinstatement "is not a time served suspension as an award of back pay is not allowed in a case, such as this, where the employee has been determined to be incompetent." *Id.* Instead, had the Arbitrator awarded back pay dating back to the date of the Grievant's termination, the Arbitrator would have been acting outside of her authority by issuing an Award that was expressly prohibited by the BPA. *Id.*

D. Analysis

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Official Code § 1-605.02(6) (2001 ed.).

One of the tests the Board uses in determining whether an arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement. *Dist. of Columbia Pub. Schools v. AFSCME,*

Dist. Council 20, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987); *Dist. of Columbia Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401, AFL-CIO*, 60 D.C. Reg. 15960, Slip Op. No. 1025 at p. 5, PERB Case No. 08-A-07 (2010). *See also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 813 F.2d 85 (6th Cir. 1987). The Board has adopted the U.S. Court of Appeals for the Sixth Circuit standard in determining if an award "draws its essence" from a collective bargaining agreement:

> (1) Did the arbitrator act "outside his authority" by resolving a dispute not committed to arbitration?; (2) Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?; and (3) In resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made serious, improvident, or silly errors in resolving the merits of the dispute.

Dist. of Columbia Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401, AFL-CIO, 60 D.C. Reg. 15960, Slip Op. No. 1025 at p. 5, PERB Case No. 08-A-07 (2010) (citing *Mich. Family Res., Inc. v. Serv. Emps. Int'l Union Local 517M*, 475 F.3d 746 (6th Cir. 2007)) (citations omitted).

In the instant case, the Arbitrator clearly acknowledged, and neither party disputes, that the parties' CBA provides for two penalties for a first offense of incompetence: termination, or a reduction in pay, rank, or grade. (Supplemental Award at 3). Equally clear is the CBA's directive that the DCHA consider any mitigating or aggravating circumstances when making a disciplinary decision. *Id*; citing Article 10, Section C1.(2). In ordering the Grievant be reinstated at a lower grade, the Arbitrator unquestionably acted within the bounds of the CBA. The more difficult issue is whether, in awarding back pay only for the period between the issuance of the initial Award and the Grievant's reinstatement exceeds the authority granted to the Arbitrator by the party's CBA.

AFGE characterizes the back pay award as a time-served suspension – in AFGE's view, the Grievant should have received back pay dating back to the date of her termination, and the gap between termination and the date of the initial Award is an unpaid suspension. DCHA characterizes the back pay award as an award constrained by the requirements of the BPA – if the Grievant was incompetent between the time of her termination and the date of the initial Award, then she could not legally receive back pay for that time.

When examining the Supplemental Award, however, it becomes apparent that what the back pay award *actually* represents is punitive damages. The evidence of this is clear on the face of the Award:

> Based on the record submitted to me by the Agency and the Union, I conclude that the Agency did not comply with my prior

> Arbitrator's Opinion and Award dated June 10, 2013. Instead, from the record submitted, the Agency devoted no more than a perfunctory effort to comply with the Award.
>
> The Agency made no effort to review the Grievant's personnel record and past performance for the purpose of determining which alternative positions might be appropriate in which to place the Grievant. In order to remedy the Agency's past non-compliance with my Award, I instruct the Agency to reinstate [the Grievant] to employment at a lower grade or rank that is suitable for her.
>
> **Because of the Agency's undue delay in performance as I had instructed**, I direct the Agency to pay backpay to [the Grievant] and to make her whole at the salary grade she last held prior to her termination, less any interim earnings or unemployment insurance compensation. The period of this backpay award shall be from June 10, 2013, the date of my previous Opinion and Award, to the date of the Grievant's reinstatement in compliance with this Award.

(Supplemental Award at 7) (emphasis added).

However, Article 9, Section E(12) of the parties' CBA grants the Arbitrator "full authority to award appropriate remedies." The CBA does not prohibit punitive damages, and the only limitation placed upon an arbitration award is that "[t]he arbitrator shall not have the power to add to, subtract from, or modify the provisions of [the CBA] through the award." Article 9, Section E(11). An arbitrator does not exceed her authority by exercising her equitable power, unless it is expressly restricted by the parties' CBA. *See D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-01 (1992); *see also D.C. Metropolitan Police Dep't v. Fraternal Order of Police/Metropolitan Police Dep't Labor Committee*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (upholding an arbitrator's award when the arbitrator concluded that MPD had just cause to discipline the grievant, but mitigated the penalty). Arbitrators bring their "informed judgment" to bear on the interpretation of collective bargaining agreements, and that is "especially true when it comes to formulating remedies." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).

Given the wide latitude in crafting a remedy afforded to the Arbitrator by the parties' CBA, the Board finds that the Arbitrator was arguably construing the contract when crafting the back pay portion of the Award. The Award thus draws its essence from the CBA, and will not be disturbed. *Dist. of Columbia Pub. Schools*, Slip Op. No. 156 at p. 5.

The portion of the Supplemental Award reinstating the Grievant at a lower grade, though also done for the stated reason of remedying DCHA's noncompliance with the initial Award, is

one of the permissible disciplinary actions contemplated by the CBA. The order of reinstatement will not be disturbed.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 2725's Arbitration Review Request is denied.

2. The District of Columbia Housing Authority will reinstate Ms. Harris at a suitable lower rank within thirty (30) days of the issuance of this Decision and Order.

3. The District of Columbia Housing Authority will issue back pay for the period of June 10, 2013, until Ms. Harris' reinstatement.

4. Pursuant to Board Rule 559.1, this Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

July 24, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 14-A-01 was transmitted to the following parties on the 29th day of July 2014.

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VIA FILE & SERVEXPRESS

/s/ Adessa Barker

Adessa Barker
Law Clerk

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 2725 (Fahn Harris)	PERB Case No. 13-A-11
Petitioner,	
v.	Opinion No. 1481
District of Columbia Housing Authority	
Respondent.	

DECISION AND ORDER

I. Statement of the Case

On July 1, 2013, Petitioner American Federation of Government Employee, Local 2725 ("Petitioner" or "Union"), filed the above-captioned Arbitration Review Request ("Request"), pursuant to the CMPA and D.C. Code §1-605.2(6), on behalf of Fahn Harris ("Grievant" or "Harris"), seeking review of Arbitrator Gail Smith's Arbitration Award ("Award") issued on June 10, 2013[1]. Petitioner seeks review of the Award on its merits because:

> (1) the Award violates existing District of Columbia law because it attempts to redefine the charge of "incompetency" under D.C. law, and the charge of incompetency was not and could not be found on the basis of this Award; and (2) the Arbitrator exceeded her jurisdiction because (a) she failed to decide a primary issue the parties submitted to her for determination, specifically the remedy in the case of a finding that the Agency did not have just cause to terminate the Grievant; and (b) to the extent she addressed remedy, her statements do not derive their essence from the collective bargaining agreement.

(Request at 1-2).

Respondent District of Columbia Housing Authority ("Respondent" or "Agency") filed an Opposition to Union's Arbitration Review Request ("Opposition") on July 31, 2013. Agency

[1] An arbitration review request of the supplemental award in this case was filed as PERB Case No. 14-A-01.

reasons that the Union's Request is an interlocutory appeal, and thus, shall not be permitted because the Award is not final. (Opposition at 6-8). However, even assuming, *arguendo*, that the Board determines that the Award is final, the Agency asserts that the Union: (1) failed to establish that the Award violates existing District of Columbia law as it relates to the definition of the charge of "incompetency;" (2) failed to demonstrate that the Arbitrator exceeded her jurisdiction by failing to decide a primary issue the parties submitted to her for determination; (3) failed to establish that the Award's remedy does not 'derive its essence' from the parties' CBA; and (4) failed to demonstrate that the Arbitrator's authority was limited by terms in the contract between the parties or that her decision regarding remedy was inappropriate or exceeding her jurisdiction. (Opposition at 2).

The Union expressly does not seek review of the Award regarding the first issue regarding arbitrability, which was a procedural argument raised by the Agency. (Request at 1; Opposition at 2). As it relates to this issue, the Agency posits that the Arbitrator did, in fact, exceed her authority as it pertains to the arbitrability issue. (Opposition at 2).

The Union filed an Unopposed Motion to Stay Case Proceedings on January 23, 2014, which was granted by Interim Executive Director Keturah Harley on January 24, 2014. The parties were instructed to provide an update to PERB, due no later than March 24, 2014. On March 24, 2014, the Union filed its second Unopposed Motion to Stay Case Proceedings. Executive Director Clarene Martin granted the second Unopposed Motion to Stay Case Proceedings in part, until May 1, 2014. The Union filed its third Unopposed Motion to Stay Case Proceedings on May 16, 2014. Executive Director Clarene Martin granted the stay in part, until May 31, 2014; she also advised the parties that this will be the final stay granted in this matter, and in the absence of notice from the parties, independently or jointly, that this matter has been resolved by the end of the stay period, PERB will proceed with this case.

The Request and Opposition are now before the Board for disposition. Upon consideration of the pleadings and the record as a whole, and consistent with Board precedent, the Board affirms the Award and denies the Request.

II. Discussion

A. Award

On April 10, 2009, the Agency issued a letter ("Removal Letter") to the Grievant, removing the Grievant from her position of Financial Reporting Analyst for reasons of incompetency. (Award at 2). The Removal Letter listed five incidents where the Grievant allegedly performed her work in an incompetent fashion in 2008. *Id.* The disciplinary action became effective on May 10, 2009, at which time the Agency officially terminated the Grievant. *Id.* On June 23, 2009, the Union filed a Step 3 grievance ("Grievance") on the Grievant's behalf, alleging that the Grievant had worked as a Financial Reporting Analyst for the Agency's Office of Finance Management since August 8, 2005, during which time the Agency did not issue any disciplinary actions against the Grievant prior to the Removal Letter. *Id.* As a remedy, the

Union requested in the Grievance that the Agency rescind the Grievant's discharge, that the Grievant be permitted to return to work in another capacity, or that she be allowed to submit her resignation with an effective date that allows her to participate in the Voluntary Severance Incentive. (Award at 3). The Agency, through Paulette Campbell, Director of Human Resources, responded to the Grievance on July 13, 2009, upholding the Grievant's termination and denying the Grievant's request to work in another capacity at the Agency. *Id.* Subsequent attempts to settle the grievance were unsuccessful. *Id.* On September 1, 2009, the Union filed a Notice of Intent to proceed to Arbitration on September 1, 2009, which is thirty-six (36) business days subsequent to the Agency's response to the Grievance on July 13, 2009. *Id.*

Article 9, Section D(4) of the CBA provides: (a) The Union may appeal an unresolved grievance to Arbitration after receipt of an unsatisfactory Step 3 Decision. (b) The Union shall provide the Executive Director with written notice of its intent to arbitrate a grievance within twenty (20) workdays of receipt of the unsatisfactory Step 3 response. (Award at 4-5). The Agency has raised the issue of the Union's untimely filing of the Notice of Intent to arbitrate, alleging that the Union's untimeliness constitutes a procedural bar to arbitration, precluding consideration of the Grievance on its merits. (Award at 3). The Union posits that the parties were in the midst of trying to settle the Grievance, and that it was not until the settlement discussions proved unfruitful that the Union filed a Notice of Intent to arbitrate the Grievance. *Id.*

The Award addresses two issues:

> (1) Did the Union file the Notice of Intent to arbitrate the grievance in this case in an untimely manner pursuant to the provisions of the parties' CBA? If so, is the grievance procedurally arbitratable or is the Union precluded from arbitrating the merits of the case?
> (2) Did the Agency have just cause to terminate the Grievant? If not, what is the remedy?

(Award at 4).

i. Arbitrator's Award on the Timeliness Issue

On the first issue, the Arbitrator found that the Agency is estopped from challenging the Union's untimely filing of the Notice of Intent to proceed to arbitration as a procedural bar that precludes arbitrating the merits of this case, and she rejected the Agency's timeliness defense. (Award at 20-21).

The Union did not file the Notice of Intent to proceed to arbitration until September 1, 2009, thirty-six (36) business days after the Agency's Step 3 response on July 13, 2009. (Award at 19). Article 9, Section D.4 of the parties' CBA states that the Union shall file the Notice of Intent to arbitrate a grievance within twenty (20) business days of receipt of an unsatisfactory Step 3 response. *Id.* However, Eric Bunn, the Union's President, testified that the parties never enforced or adhered to this deadline. *Id.* Moreover, Bunn, who has been the Union's President for twenty (20) years, testified that the Agency has **never** challenged the timeliness of a Notice

of Intent to arbitrate and produced five (5) cases where the Union failed to file a Notice of Intent to proceed to arbitration within twenty (20) business days of an unsatisfactory Step 3 response but the Agency did not raise a timeliness issue. *Id.* The Arbitrator found that Bunn had established that it was commonplace for the Agency to fail to timely issue a Step 3 response to the Union, and that at times, the Union even submitted a Notice of Intent to arbitrate prior to the Agency providing the Step 3 written decision to the Union. *Id.* Additionally, the Agency often failed to meet with the Union within fifteen (15) days after the filing of the Step 3 grievance, as required by Article 9, Section D.3.b of the CBA. *Id.* The Agency failed to present any evidence or witnesses to refute the facts presented by the Union, despite having two months of a delay between the second day and the third day of the arbitration. (Award at 20).

The Arbitrator found "compelling" evidence that "both sides, and not just the Union, repeatedly failed to adhere to the time deadlines in the CBA." (Award at 20). "Moreover, it is apparent that both sides often missed time limits with enough frequency that if the Agency intended to enforce or strictly adhere to the time deadlines in the parties' CBA in this case, that it was incumbent on the Agency to provide notice of the same to the Union." *Id.* Accordingly, the Arbitrator found that the Agency is now estopped to challenge the Union's untimely filing of the Notice of Intent to proceed to arbitration in this case, as a procedural bar that precludes arbitrating the merits of this case. (Award at 20-21). The Agency's timeliness defense was rejected. (Award at 21).

ii. Arbitrator's Award on the Merits of the Case

As to the merits of the case, the Arbitrator found that "the Agency established that the Grievant performed her duties listed in the Removal Letter (incidents one, two, four, and five) in an 'incompetent' fashion or that the Grievant demonstrated 'an inability to satisfactorily perform one or more major duties of her position.'" (Award at 21). There are five incidents listed in the Removal Letter that are used as the basis of the Grievant's termination. (Award at 11).

In the first incident, the Grievant allegedly hid variances in other numbers when performing bank reconciliations for the Advances-Unlimited Revolving Fund account. (Award at 11). As a result, $1,034,145.00 was not recognized as a reconciling item and therefore was not posted to the general ledger, even though the reconciliation reflected the correct amount of funds. *Id.* The Agency alleged that this was clear evidence that the Grievant intentionally plugged the number in order to complete the reconciliation. *Id.* The Agency did not present any evidence to support this allegation. (Award at 12). At the arbitration hearing, the Grievant denied this allegation. (Award at 12-13). The Arbitrator found that while the Agency established that the Grievant did not list the checks on the corporate books, and thus performed her duties in a negligent fashion, the Agency failed to establish that the Grievant acted intentionally or willfully. (Award at 21).

The second incident arose from the Grievant's preparation of a schedule entitled "Notes & Mortgages Receivable – Non Current FDS #171 Low Rent Program" that listed Notes receivable as of September 30, 2007 that: "consists of amount advanced to various partnerships

and other entities in mixed finance deals related to DCHE's Hope VI Program."[2] (Award at 14). Daniel McLean, on behalf of the Agency, alleged that the Grievant used the previous year's FDS 171 Schedule created by an independent auditor to represent the notes' current worth, without calculating the amount of interest accrued from the prior year. *Id.* The Grievant testified during the arbitration that she was not assigned the responsibility of calculating the interest on the notes receivable listed on the FDS 171 schedule nor was she ever trained to perform this job, despite the fact that she was the only individual responsible for the Low Rent Income Program's financial records. (Award at 15).

The third incident in the Removal Letter arose from a document created by the Grievant titled "Other Assets FDS #174 Low Rent Program." (Award at 16). Daniel McLean, on behalf of the Agency, testified that this third incident is the "least egregious and most subjective," but "it adds color and validity to the overall case." *Id.* The Grievant testified that the adjustments or entries listed under "description" were taken from the Agency's general ledger, and she was trained to adopt from the general ledger. *Id.*

The fourth incident is similar to the second incident where the Grievant allegedly failed to update the value of an asset. (Award at 17). In this instance, the Agency's insurance company provided the value of the Agency's surplus accounts. *Id.* The Grievant failed to include the information from the insurance company in the value of the asset in the workpaper. *Id.* As a result, the Agency's income was understated. *Id.* The Grievant acknowledged that the Agency properly attributed poor performance in her handling of this assignment. *Id.*

The fifth incident in the Removal Letter, the Grievant allegedly used the same information or same workpaper as the year prior, without making any changes to the information. (Award at 17-18). The Grievant asserted that she updated the information on the workpaper for the FDS line 143 Schedule, but it was another employee who failed to include the updated workpaper. (Award at 18).

Incidents two, four, and five involve the Grievant's failure to calculate or include interest accrued from the prior year when presenting the current value of the assets listed in the three Schedules. (Award at 21). The Grievant's reasons for her failure to accurately prepare the three Schedules were that the information was not readily available to her: the information was kept at DCHE (incident two); the HAIG letter "slipped through the cracks" (incident four); and someone else placed the wrong workpaper in the binders for the auditors (incident five). (Award at 21-22). The Arbitrator found that those reasons do not absolve the Grievant of her responsibilities. (Award at 22). "The Agency had a right to believe that once submitted, the information was correct, that it was dependable and that Mr. Coffey need not verify the Grievant's work, particularly as the Grievant failed to alert or point out any problems to Mr. Coffey when she submitted her work product or material. In submitting the Grievant's work product, the Grievant was inherently representing the Schedules were complete and up to date, when such in fact was not the case." *Id.* For those reasons, the Arbitrator concluded that the Grievant was not qualified

[2] The DCHE Hope VI Program is a separate entity from the District of Columbia Housing Authority. *See* Award at 14.

or was unable to perform one or more major duties of her position as a Financial Reporting Analyst. *Id.*

The Arbitrator notes that the Agency bears the burden of proof to establish 'just cause' to terminate the Grievant. (Award at 22). The parties' CBA Article 10, Section C.1.d establishes just cause for removal of an employee; it includes a Table of Appropriate Penalties ("Table"), which specifies the range of penalties that may be imposed for specific offenses. *Id.* The Arbitrator specifically declares that she will follow this Table. *Id.*

In the instant matter, the Agency's removal action is based on a single offense, "Incompetency," as listed in the Table. *Id.* For a first offense of proven incompetency, the penalty specified in the Table is a reduction in pay, grade, and/or rank, or removal. *Id.* The Arbitrator found that the Agency established that the Grievant was "incompetent" and unable to perform one or more major duties of her position, but that the Agency failed to provide any evidence or explanation as to why the Agency selected the penalty of removal, rather than the penalty of a reduction in pay, grade, or rank, particularly because the Agency had not issued any disciplinary measures to the Grievant prior to her termination. (Award at 22-23). The parties' CBA, in Article 10, Section C.1.e.(2), also requires the Agency to consider mitigating circumstances in assessing the appropriate penalty and to document the Agency's Assessment. (Award at 23).

The Arbitrator concluded that the Grievant was "incompetent" and unable to perform one or more major functions of her job, and thus, the Grievant was not qualified to remain in the position of Financial Reporting Analyst. (Award at 23). However, because the Agency failed to consider mitigating circumstances that may have resulted in a disciplinary measure short of termination, the Arbitrator held that the Agency failed to establish that it had just cause to terminate the Grievant. *Id.*

As for the remedy, the Arbitrator directed the Agency to "immediately ascertain whether there were mitigating circumstances that should have been considered by the Agency in assessing the appropriate penalty in this case, including whether the Agency has another position available and appropriate for the Grievant, one that is not necessarily at the same rank or grade that the Grievant previously held." (Award at 23). "The Agency is directed, consistent with the CBA, to provide the results of its assessment in writing to the Union, within thirty (30) days of the date of this Opinion and Award. *Id.*

B. PERB's Review

The CMPA authorizes the Board to modify or set aside an arbitration award in three limited circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award on its face is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means. D.C. Code § 1-605.02(6) (2001 ed.).

The Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator. *Dist. of Columbia Dep't of Corrs. v. Int'l Bhd. Of Teamsters, Local*

Union No. 246, 34 D.C. Reg. 3616, Slip Op. No. 157 at p. 3, PERB Case No. 87-A-02 (1987). An arbitrator's decision must be affirmed by a reviewing body "as long as the arbitrator is even arguably construing or applying the contract." *United Paperworkers Int'l Union AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987). By submitting the grievance to arbitration, "the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based." *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. No. 633 at p. 3, PERB Case No. 00-A-04 (2000); *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 D.C. Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

i. PERB's Review on the Timeliness Issue

"It is well-settled that arbitrators are permitted to decide questions involving procedural arbitrability." *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 52 D.C. Reg. 8591, Slip Op. No. 784 at p. 5, PERB Case No. 04-A-13 (2005) (quoting *UDC v. AFSCME Council 20, Local 2087*, 36 D.C. Reg. 3344, Slip Op. No. 219 at p. 3, PERB Case No. 88-A-02 (1989)). "An arbitrator possesses the jurisdictional authority to interpret the parties' agreement to determine issues of procedural arbitrability." *Dist. of Columbia Dep't of Recreation & Parks v. Am. Fed'n of Gov't Emps., Local 2741, AFL-CIO*, 46 D.C. Reg. 4844, Slip Op. No. 579 at p. 2, PERB Case No. 99-A-01 (1999). Thus, it cannot be said that the Arbitrator exceeded his authority by making a determination that the grievance was timely. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 52 D.C. Reg. 8591, Slip Op. No. 784 at p. 5, PERB Case No. 04-A-13 (2005). As we have explained, by submitting a matter to arbitration, the parties agree to be bound by the Arbitrator's interpretation of the parties agreement and related rules and regulations as well as his evidentiary findings and conclusions upon which the decision is based. *Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 52 D.C. Reg. 8591, Slip Op. No. 784 at p. 5, PERB Case No. 04-A-13 (2005); *Univ. of the Dist. of Columbia v. Univ. of the Dist. of Columbia Faculty Ass'n/NEA*, 39 D.C. Reg. 9628, Slip Op. No. 320 at p. 2, PERB Case No. 92-A-04 (1992).

Notwithstanding, this issue is not under review by this Board. "A party to grievance arbitration proceeding who is aggrieved by the arbitration award may file a request for review with the Board . . . ." Board Rule 538.1. The Union expressly did not seek review of the Award regarding the timeliness issue. (Request at 1; Opposition at 2). Though the Agency posits that the Arbitrator did, in fact, exceed her authority as it pertains to the arbitrability issue, it does not specifically request the Board to review the Award as it relates to this issue. (Opposition at 2). Because neither party has asked the Board to review this issue, the Board will not review the timeliness issue.

ii. PERB's Review on the Merits of the Case

The Union alleges that the Award is "contrary to law because the charge of 'incompetency' could not be and was not established in the Award and the Award attempted to alter the legal definition of 'incompetency.'" (Request at 7).

One of the tests the Board uses in determining whether an arbitrator has exceeded his jurisdiction and was without authority to render an award is "whether the Award draws its essence from the collective bargaining agreement. *Dist. of Columbia Pub. Schools v. AFSCME, Dist. Council 20*, 34 D.C. Reg. 3610, Slip Op. No. 156 at p. 5, PERB Case No. 86-A-05 (1987); *Dist. of Columbia Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401, AFL-CIO*, 60 D.C. Reg. 15960, Slip Op. No. 1025 at p. 5, PERB Case No. 08-A-07 (2010). *See also Dobbs, Inc. v. Local No. 1614, Int'l Bhd. Of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 813 F.2d 85 (6th Cir. 1987). The Board has adopted the U.S. Court of Appeals for the Sixth Circuit standard in determining if an award "draws its essence" from a collective bargaining agreement. *Dist. of Columbia Child & Family Servs. Agency v. AFSCME, Dist. Council 20, Local 2401, AFL-CIO*, 60 D.C. Reg. 15960, Slip Op. No. 1025 at p. 5, PERB Case No. 08-A-07 (2010) (citing *Mich. Family Res., Inc. v. Serv. Emps. Int'l Union Local 517M*, 475 F.3d 746 (6th Cir. 2007)).

> (1) Did the arbitrator act "outside his authority" by resolving a dispute not committed to arbitration?; (2) Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?; and (3) In resolving any legal or factual disputes in the case, was the arbitrator arguably construing or applying the contract? So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made serious, improvident, or silly errors in resolving the merits of the dispute.

Id. (citations omitted).

The Board's scope of review, particularly concerning the public policy exception, is extremely narrow. *Am. Fed'n of Gov't Emps., Local 2725 v. Dist. of Columbia Dep't of Consumer & Regulatory Affairs*, Slip Op. No. 1444, PERB Case No. 13-A-13 (2013). The petitioning party has the burden to specify "applicable law and definite public policy that mandates that the Arbitrator arrive at a different result." *Id.* (citing to *D.C. Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 47 D.C. Reg. 717, Slip Op. No. 633 at p. 2, PERB Case No. 00-A-04 (2000); *see also Dist. of Columbia Pub. Schools v. Am. Fed'n of St. Cnty. & Mun. Emps., Dist. Council 20*, 34 D.C. 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." *Am. Fed'n of Gov't Emps., Local 2725 v. Dist. of Columbia Dep't of Consumer & Regulatory Affairs*, Slip Op. No. 1444, PERB Case No. 13-A-13 (2013) (citing to *Fraternal Order of Police/Dep't of Corrs. Labor Comm. v. Pub. Emp. Rels. Bd.*, 973 A.2d 174, 177 (D.C. 2009)).

The Union, while heavily citing to the Federal Labor Relations Authority ("FLRA") and the District of Columbia Office of Employee Appeals ("OEA"), argues that the Award is contrary to law because the charge of "incompetency" could not be and was not established in

the Award, and the Award attempted to alter the legal definition of incompetency. (Request at 7). The Union states that the 'contrary to law' exception requires the Board to conduct a *de novo* review for legal sufficiency, citing to *NTEU, Chapter 24 and U.S. Dep't of the Treasury, IRS*, 50 FLRA 330, 332 (1995); *see also Teamsters, Local Union 1714 v. D.C. Dep't of Corrs.*, 38 D.C. Reg. 5080, Slip Op. No. 284, PERB Case No. 87-A-11 (1991) (contrary to law exception granted). The Union asserts that under District of Columbia law, the offense of "incompetency" holds a specific legal definition: "the physical inability, the legal inability or likely the mental inability to satisfactorily perform one or more major duties of the position." (Request at 8 (citing to *Dist. of Columbia v. Brown*, 738 A.2d 832 (D.C. Ct. App. 1999) (addressing an "incompetence" charge against attorney due to his disbarment))). "The theme of District of Columbia law in defining 'incompetency' is the 'inability' to perform the major duties, rather than a simple failure to do so on particular dates and times. The offense of 'incompetency,' because it means inability and lack of capacity to perform, therefore[,] carries a high level of discipline for the first infraction: 'reduction in pay/grade/rank or removal.'" (Request at 11 (citations omitted)). The Union asserts that when an employee has failed to carry out his duties, as opposed to being incapable to do so, the appropriate charge is "inefficiency," which is either "negligent or careless work performance," or "failure to satisfactorily perform one or more major duties of his or her position." (Request at 11 (citing to *Palmer v. D.C. Metro. Police Dep't*, 545 D.C. Reg. 8116, OEA Matter No. 1601-0048-05, pp.7-8 (2007))). In the parties' CBA, the charge of "inefficiency" results in a first offense penalty of a "reprimand to suspension for 14 days," and does not call for removal until the third offense. (Request at 11). The Union argues that while the Award may be sustainable for "inefficiency," or failure to perform or negligent performance, the Award does not support a determination for "incompetency," as the Award does not support that the Grievant was physically, legally, or mentally unable to perform satisfactorily one or more major duties of her position. *Id.*

"PERB is a different agency than OEA, and does not share the same statutory authority." *Dist. of Columbia Office of Chief Fin. Officer v. Am. Fed'n of State, Cnty., & Mun. Emps., Dist. Council 20, Local 2776 (Robert Gonzales)*, 60 D.C. Reg. 7218, Slip Op. No. 1386, PERB Case No. 12-A-06 (2013). "The Board finds [an] analogy to a case involving [OEA] to be in error. The Board has regularly held that nothing in the CMPA sets forth a requirement of consistency or conformity between decisions of OEA and contractual arbitral determinations. These are two completely separate procedures with two different bodies of authorities." *Dist. of Columbia Metro. Police Dept' v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (Darrell Best)*, 59 D.C. Reg. 12689, Slip Op. No. 1325, PERB Case No. 09-A-14 (2010); *See Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 38 D.C. Reg. 6101, Slip Op. No. 228, PERB Case No. 89-A-02 (1989). When the Board lacks precedent on an issue, it looks to the decisions of other labor relations authorities, such as the National Labor Relations Board ("NLRB") or the FLRA. *Am. Fed'n of Gov't Emps., Local 631 v. Dist. of Columbia Water & Sewer Auth.*, 60 D.C. Reg. 16462, Slip Op. No. 1435, PERB Case No. 13-N-05 (2013).

In the present case, it is clear that the Arbitrator was "arguably construing or applying the contract" when she defined "incompetent" to mean "unable to perform one or more major functions of her job." *See Mich. Family Res., Inc. v. Serv. Emps. Int'l Union Local 517M*, 475

F.3d 746 (6th Cir. 2007); *see also* Award at 23. The Agency correctly states that the language is taken nearly verbatim from the CBA, which defines "incompetency" as the "inability to satisfactorily perform one or more major duties of his or her position." (Opposition at 11). The Union incorrectly cites to *Brown*, 739 A.2d 832, as a case that "address[es] [the] 'incompetence' charge against attorney due to his disbarment." (Request at 8). *Brown* is a case where an employee sought enforcement OEA's decision that he was unlawfully terminated; the Superior Court ruled that he was entitled to interest on his back pay award, and the Court of Appeals held that, as a matter of first impression, the amendment to the Federal Back Pay Act did not entitle a pre-1980 District of Columbia employee to interest on a back pay award. In essence, this case does not regard or define incompetency, as it relates to the present case. In fact, the term "incompetency" is used once in the entire opinion, in footnote three, and the term is never defined or "addressed," as asserted by the Union in its Request at 8.

The Union next cites to *Boswell v. D.C. Fire & Emergency Med. Servs. Dep't*, 54 D.C. Reg. 6129, OEA Matter No. 1601-0155-06, p. 4 (2007) ("incompetence is defined as the physical inability [of an employee] to satisfactorily perform the major duties of his or her position"); *Browner v. D.C. Taxicab Comm'n Agency*, 54 D.C. Reg. 6112, OEA Matter No. 1601-0071-06, p. 4 (2006) (employee was properly removed for the offense of "incompetency" because he was legally unable to perform his duties); and *Jackson v. D.C. Office of Contracting & Procurement*, 55 D.C. Reg. 1161, OEA Matter No. 1501-0024-05, pp.2, 7 (2008) (OEA "appeared to believe that instances of work deficiencies which have not previously been criticized or counseled against did not rise to the level of incompetency"). (Request at 8-11). As stated above, the Board has regularly held that PERB and OEA are "two completely separate procedures with two different bodies of authorities." *Dist. of Columbia Metro. Police Dept' v. Fraternal Order of Police/Metro. Police Dep't Labor Comm. (Darrell Best)*, 59 D.C. Reg. 12689, Slip Op. No. 1325, PERB Case No. 09-A-14 (2010); *See Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 38 D.C. Reg. 6101, Slip Op. No. 228, PERB Case No. 89-A-02 (1989). The Board does not find the cases to which the Union has cited to be persuasive or instructive.

The Board finds that the Award drew its essence from the parties' CBA when it adopted the language from the CBA nearly verbatim to define "incompetency" and applied it to the facts in this case—reviewing each incident listed in the Removal Letter. (Award at 21-23).

The Union attempts to point to the Award's mere mention of the phrase "negligent fashion" to mean that it redefined "incompetency." (Request at 14 (citing to Award at 10, 21)). The sentence in question in (Award at 10) is: "The Removal Letter sets forth five areas or incidents as the basis for the Agency's conclusion that the Grievant performed her work in an incompetent manner." The sentence in question in (Award at 21) is: "While the Agency established the Grievant did not list the checks on the corporate books and hence performed her duties in a negligent fashion, the Agency failed to establish the Grievant 'hid' this information or that there was any intentional or willful misconduct on the Grievant's part." The Union attempts to say that if the Award is reviewing each of the five incidents to find whether the Grievant was incompetent (Award at 10), but the Award uses a standard of "negligent fashion" (Award at 21), then this must mean that the Award has redefined "incompetency." (Request at 14). The Board

does not find this argument to be persuasive. In fact, the sentence in question in (Award at 21) uses the phrase "negligent fashion," not to establish a standard on which to judge the five incidents, but rather to express its findings: the Agency has established the Grievant performed her duties in a negligent fashion in the first incident.

The Union also argues that the Arbitrator must and should have used the "District of Columbia legal definition of incompetency." (Request at 14). The Union states that "PERB must ensure that a contractual definition that mirrors a statutory or regulatory definition remain consistent with the statutory or regulatory definition." (Request at 14-15 (citing to D.C. DPM § 1-1603.3(f)(5); D.C. Code § 1-616.51; *Dep't of Defense, DMA, Aerospace Ctr. & NFFE, Local 1827*, 43 FLRA 147, 153 (1991); *Cornelius v. Nutt*, 472 U.S. 648, 660 (1985)). As an initial matter, the Board notes that there is no general "District of Columbia legal definition of incompetency." D.C. Code §1-616.51 does not support the Union's statement; this statute address the policy for general discipline and grievances, as it relates to the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia. The Union does, however, correctly cite to 43 FLRA 147, 153 (1991), as it provides:

> As a general proposition, we will not disturb an award that is based solely on a contract interpretation. However, where [ ] that contract provision is a reiteration of the management rights provision of the Statute, we must exercise care to ensure that the interpretation is consistent with the Statute, as well as the parties' agreement. If parties intend that a contractual management rights provision which is identical to the language set forth in [the Statute] be interpreted in a manner that differs from, but is not inconsistent with, the Statute, that should be made known to the arbitrator, who can then clearly specify the basis for an award.

Notwithstanding, in the present case, the Board does not find this argument persuasive. We do not find that the Agency attempted to re-define the meaning of "incompetency." Furthermore, the Board has reviewed *Cornelius*, 472 U.S. at 660, as the Union cited, but does not find it relevant to the present case here.

Next, the Union alleges that "the Arbitrator exceeded her jurisdiction because the remedy she ordered is subject to the Agency's predilection and possible negotiation, and therefore does not comport with the parties' submission for a specific remedy following a finding that there was not just cause for termination." (Request at 15). Simply stated, the Union asserts that the Arbitrator exceeded her jurisdiction when she failed to issue a determination on a primary issue submitted to her by the parties for determination, specifically the issue of remedy here. (Request at 15) (citing to *D.C. Dep't of Human Servs. v. FOP*, 50 D.C. Reg. 5028, PERB Case Nos. 02-A-04 and 02-A-05, Slip Op. No. 691 (2002)). The Board in *D.C. Dep't of Human Servs. v. FOP*, 50 D.C. Reg. 5028, considered the parties' disagreement regarding the arbitrators' resolutions of the issue of arbitrability and ultimately denied the Arbitration Review Requests. Thus, this case is not on point to the issue raised by the Union in the present case. The Agency correctly argues that while the Union may not agree with the remedy ordered, this does not mean that the Arbitrator exceeded her jurisdiction, and, in fact, as it relates to this issue, the Arbitrator "arguably construed and applied the contract" when directing the remedy in this matter and the remedy ordered by the Arbitrator is not contrary to the express language of the CBA. (Opposition at 13).

The Union argues that the Arbitrator exceeded her jurisdiction because the alleged remedy does not derive its essence from the parties' CBA. (Request at 17). The Union states, "An arbitration award *fails* to derive its essence from a collective bargaining agreement when there is no argument that the Arbitrator applied the contract." (Request at 17) (citing to *Major League Players Ass'n v. Garvey*, 532 U.S. 509 (2001) (emphasis in original)). The Board finds that the Arbitrator did not exceed her jurisdiction or otherwise act outside of her authority. The Arbitrator did not exceed her jurisdiction by ordering the Agency to provide an assessment regarding the circumstances that were considered by the Agency, including whether there is another position available and appropriate for the Grievant. Moreover, the Union is incorrect in arguing that the Arbitrator exceeded her authority by failing to issue a determination on a primary issue submitted to her by the parties for determination. The Arbitrator did make a determination as she sustained the grievance, in part, finding Harris incompetent and ordered an assessment by the Agency as a remedy. The Board finds that the remedy derives its essence from the parties' CBA.

The Board has held that an arbitrator does not exceed her authority by exercising her equitable power, unless it is expressly restricted by the parties' CBA. *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police Metro. Police Dep't Labor Comm. (Charles Jacobs)*, 60 D.C. Reg. 3060, PERB Case No. 12-A-04, Slip Op. No. 1366 (2013); *see Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 39 D.C. Reg. 6232, Slip Op. No. 282, PERB Case No. 92-A-04 (1992); *see also Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (upholding an arbitrator's award when the arbitrator concluded that MPD had just cause to discipline grievant, but mitigating the penalty, because it was excessive). The Union has not provided any provision of the parties' CBA that restricts the Arbitrator's exercise of equitable power.

The Board finds that the Union's position and Request is merely a disagreement with the Arbitrator's finding and conclusions. The Board has previously held that a "disagreement with the Arbitrator's interpretation . . . does not make the award contrary to law and public policy." *Dist. of Columbia Metro. Police Dep't v. Fraternal Order of Police/Metro. Police Dep't Labor Comm.*, Slip Op. No. 933, PERB Case No. 07-A-08 (2008) (quoting *AFGE, Local 1975 v. Dep't of Public Works*, 48 D.C. Reg. 10955, Slip Op. No. 413, PERB Case No. 95-A-02 (1995)).

The Union's Request on the grounds that the Arbitrator exceeded her authority when she considered subsequent disciplinary actions of the Grievant is denied.

III. Conclusion

The Board has reviewed the Arbitrator's conclusions, the pleadings of the parties, and applicable law. The Board concludes that the Award does not violate existing District of Columbia law, and the Award derives its essence from the parties' CBA.

ORDER

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 2725, Arbitration Review Request is denied.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.
July 24, 2014

CERTIFICATE OF SERVICE

This is to certify that the attached Decision in PERB Case No. 13-A-11 was transmitted to the following parties on the 29th day of July 2014.

Mashanda Mosley
Associate General Counsel
D.C. Housing Authority
1133 North Capitol Street N.E., Suite 210
Washington, D.C. 20002

VIA FILE & SERVEXPRESS

Leisha A. Self
Attorney, District 14
AFGE, AFL-CIO
444 North Capitol Street N.W., Suite 841
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

Gail Smith
Arbitrator
P.O. Box 94
Stevenson, Maryland 21153

VIA U.S. MAIL

/s/ Adessa Barker

Adessa Barker
Law Clerk

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. 1482
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"), alleging that the Fraternal Order of Police/Department of Corrections Labor Committee ("Union" or "FOP") violated D.C. Official Code § 1-617.03(a)(1) and (4). Complainants appeared to allege irregularities in the procedures leading up to the Union's May 16, 2014 election. In addition, the Complainants requested that the Board grant preliminary injunctive relief to prevent the May 16, 2014 election from moving forward. On June 4, 2014, FOP filed an answer to the Complaint, denying the allegations and asserting affirmative defenses that (1) Complainants had not asserted any particularized harm, and (2) Complainants failed to state a claim for which the Board could grant relief.

On June 11, 2014, the Board denied the Complainants' motion for preliminary injunctive relief, and ordered an investigatory conference be held to clarify the Complainants' Standards of Conduct Complaint allegations. *Keith Allison, et al. v. Fraternal Order of Police/Department of Corrections Labor Committee*, Slip Op. No. 1477, PERB Case No. 14-S-04.

II. Results of the Investigatory Conference

Pursuant to Board Rule 544.8, an investigatory conference was held with the Complainants in order to clarify the allegations in the Standards of Conduct Complaint. According to the Complainants, during the General Union meeting held in September 2012, FOP Chairman Rosser nominated both Julia Broadus and Almeada Allen to serve on the May 16, 2014, Election Committee. On December 28, 2013, a General Union meeting was held, and Ms. Broadus stated that both she and Ms. Allen would be part of the Election Committee.

Ms. Broadus further stated that she and Ms. Allen heard rumors at the end of February 2014, that Chairman Rosser was removing them from the Election Committee. In a phone call from Ms. Broadus to Chairman Rosser, Ms. Broadus alleged that Chairman Rosser informed her that at a February 12, 2014, FOP Executive Board meeting, it was ratified by the FOP Executive Board that Ms. Broadus and Ms. Allen be removed from the Election Committee. During the investigatory conference, the Complainants alleged that the meeting and ratification of Ms. Broadus and Ms. Allen's removal from the Election Committee may not have been in accordance with the Union's bylaws. According to the Complainants, the Executive Board must ratify the decision to remove and appoint committee members with five board members present to establish a quorum. Only four members were alleged to have been present at the meeting with a fifth vote by Phyllis Grimes via telephone. Complainants alleged that Former Vice Chairman Marr had stated that no votes or phone calls ever occurred during this meeting.

In addition, during the investigatory conference and in the Complaint, the Complainants alleged that Chairman Rosser resigned from the Election Committee on March 28, 2014, which violated the Union's bylaws, requiring an election candidate to resign from the Election Committee ninety (90) days prior to an election. (Complaint at 5). The Complainants asserted that Chairman Rosser claimed he resigned from the Election Committee on October 1, 2013, which would prevent him from making any appointments or removals from the Election Committee after this date. Complainants asserted that a March 2014 newsletter, which was attached to their Complaint, showed that Ms. Broadus and Ms. Allen were removed from the Committee in February of 2014 by Chairman Rosser, and consequently, evidences that Chairman Rosser did not properly resign in accordance with the Articles 9.2 and 9.3 of the Union bylaws.

During the investigatory conference, the Complainants also asserted that the appointed Election Committee Chairman Theresa Capers was ineligible to serve on the Election Committee because she was not a union member in good standing. Phyllis Grimes's standing was also questioned. Complainants alleged that they requested verification on the standing issues, but did not receive the requested information from Chairman Rosser.

The Complainants provided additional information regarding the election conducted on May 16, 2014, which occurred after the filing of the Standards of Conduct Complaint. The Standards of Conduct Complaint was not amended to include allegations regarding the election.

For their remedy, the Complainants requested that the May 16, 2014, election results be overturned and a new election conducted at the "Jail Armory" with poll monitors from outside

the agency. They also requested that Ms. Broadus and Ms. Allen be reinstated as part of the Election Committee.

III. Discussion

Complainants do not need to prove their case on the pleadings, but they 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.* The Complainants are *pro se* litigants, who are entitled to a liberal construction of their 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).

Pursuant to Board Rule 544.8, the Board conducted an investigatory conference with the Complainants to clarify the allegations in the Standards of Conduct Complaint. The Board has determined that the allegations in this Complaint are (1) that FOP violated D.C. Official Code § 1-617.03(a)(1), which requires labor organizations to maintain "democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization," and (2) that the Union has violated D.C. Official Code § 1-617.03(a)(4) requiring fair elections. Specifically, the Complainants allege that the removal of Ms. Broadus and Ms. Allen from the Election Committee by Chairman Rosser violated Articles 9.2 and 9.3 of the Union's bylaws. In addition, the Complainants alleged that Chairman Rosser did not properly resign from the Election Committee during the time period prescribed by the Union bylaws.

The Respondent argues that the Complainants have not identified how they are aggrieved nor have the Complainants provided information that the Complainants have been denied any rights under the Union's bylaws. (Answer at 6). In addition, the Respondent asserts that, even if the Union's bylaws were violated, that breach is not sufficient alone to find a standards of conduct violation. (Answer at 8).

Rule 544.2 provides: "Any individual(s) aggrieved because a labor organization has failed to comply with the Standards of Conduct for labor organizations may file a complaint with the Board for investigation and appropriate action." This rule requires that Complainants not only be individuals but also "aggrieved" individuals. *Dupree v. F.O.P./Dep't of Corrs. Labor Comm.*, 43 D.C. Reg. 5130, Slip Op. No. 465 at p. 2 n.2, PERB Case No. 96-U-05. In order to state a claim that they are aggrieved, complainants must allege an actual injury. *See Durant v. F.O.P./Dep't of Corrs. labor Comm.*, 43 D.C. Reg. 5130, Slip Op. No. 430 at p. 1 n.2, PERB Case Nos. 94-U-18 and 94-S-02 (1998).

The Complainants have not alleged actual injuries that they suffered from the allegations for which a remedy can be granted by the Board. Specifically, the Complainants failed to indicate how the removal of Ms. Broadus and Ms. Allen from the Election Committee and the alleged improper notice of candidacy of Chairman Rosser would result in a violation of the standards of conduct provisions of the CMPA that created an actual injury to the Complainants. As the alleged violations are unsupported by any information of an actual injury by an aggrieved person, the Standards of Conduct Complaint fails to state a claim under the CMPA. As a result, the Board must dismiss the Complaint.

IV. Conclusion

Viewing the pleadings in the light most favorable to Complainants, the Board's review of the allegations in the Standards of Conduct Complaint reveals that even accepting the Complainants' allegations as true, the Complaint fails to state a cause of action under the standards of conduct provisions in D.C. Official Code § 1-617.03. Therefore, the Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Standards of Conduct Complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy, Member Donald Wasserman, and Member Keith Washington

Washington, D.C.

July 24, 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 July 29, 2014.

Julia Broadus
1527 Monroe St., N.W.
Washington, D.C. 20010

via U.S. Mail

J. Michael Hannon
Laura N. Kakuk
Hannon Law Group
1901 18th Street, N.W.
Washington, D.C. 20009

via File&ServeXpress

/s/ Adessa Barker
Adessa Barker
Public Employee Relations Board
1100 4th Street, S.W.
Suite E630
Washington, D.C. 20024
Telephone: (202) 727-1822
Facsimile: (202) 727-9116

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF APPROVED ISSUANCE OF STOCK OR EVIDENCES OF INDEBTEDNESS

FORMAL CASE NO. 1122, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR A CERTIFICATE OF AUTHORITY AUTHORIZING IT TO ISSUE DEBT SECURITIES AND PREFERRED STOCK

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice,[1] pursuant to D.C. Code §§ 2-505, 34-502 (2001), and 15 DCMR § 3501.8 (2000), of its approval of the Application of Washington Gas Light Company ("WGL" or "Company") for a certificate authorizing the Company to issue and sell debt securities and preferred stock in an aggregate amount not to exceed $725.0 million.[2]

2. In its Application, filed on June 30, 2014, WGL requests authority to issue up to $725.0 million of long-term debt or preferred stock, and any combination thereof, during the three-year period beginning October 1, 2014 and ending on September 30, 2017.[3] The Company states that it plans to use the proceeds from the financing for four primary purposes: (1) for the refunding of maturing long-term debt; (2) for advance refunding of long-term debt as market conditions permit; (3) for general corporate purposes, including capital expenditures, acquisition of property, working capital requirements and retirement of short-term debt; and (4) for the reimbursement of funds actually expended for any of those purposes.[4] WGL 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] On May 16, 2014, the Commission announced a change in the nomenclature used to give public notice of its processing of applications for tariff changes from "Notice of Proposed Rulemaking" and "Notice of Final Rulemaking" to "Notice of Proposed Tariff" and "Notice of Approved Tariff," respectively. 61 D.C. Reg. 5150 (2014). The Commission is using a similar new nomenclature in this matter as well because the subject matter here, processing of applications for issuing stock or evidences of indebtedness, is governed by the same Commission rules as the applications for proposed tariff changes (15 DCMR §§ 3500-3505 (2000)). Therefore, going forward, these published notices will be titled "Notice of Proposed Issuance of Stock or Evidences of Indebtedness" and "Notice of Approved Issuance of Stock or Evidences of Indebtedness."

[2] *Formal Case No. 1122, In the Matter of the Application of Washington Gas Light Company for a Certificate of Authority Authorizing it to Issue Debt Securities and Preferred Stock* ("*Formal Case No. 1122*"); Washington Gas Light Company's Application for Authority to Issue Debt Securities and Preferred Stock, filed June 30, 2014 ("WGL's Application").

[3] WGL's Application at 2.

[4] WGL's Application at 2-3.

[5] WGL's Application at 1, 7.

3. A Notice of Proposed Issuance of Stock or Evidences of Indebtedness ("NOPI") was published in the *D.C. Register* on July 11, 2014, inviting public comments or objections to the Application.[6] No public comments or objections were filed in response to the NOPI. Thereafter, the Commission, at its open meeting held on August, 20, 2014, took final action to approve WGL's Application as filed.[7] Pursuant to 15 DCMR § 3501.8 (2000), the Commission's approval shall become effective upon publication of this Notice in the *D.C. Register*.

4. WGL's Application and supporting documentation are on file with the Commission and may be reviewed at 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 1122" in the field labeled "Select Case Number." Copies of the Application are available, upon request, at a per-page reproduction fee.

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6 61 D.C. Reg. 7144 (2014).

7 *Formal Case No. 1122*, Order No. 17599, rel. August 21, 2014.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF COMMUNITY HEARINGS

PUBLIC INPUT SOUGHT ON TRIENNIAL UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS PLAN (THE "TRIENNIAL PLAN") and **APPLICATION REQUESTING ISSUANCE OF A FINANCING ORDER**

FORMAL CASE NO. 1116, IN THE MATTER OF THE APPLICATIONS FOR APPROVAL OF TRIENNIAL UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS PLAN; and

FORMAL CASE NO. 1121, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR ISSUANCE OF A FINANCING ORDER UNDER THE ELECTRIC COMPANY INFRASTRUCTURE IMPROVEMENT FINANCING ACT

This Notice informs the public that the Public Service Commission of the District of Columbia seeks input on the Potomac Electric Power Company ("Pepco") and the District of Columbia Department of Transportation ("DDOT") joint Application requesting (a) authority to implement a project to underground certain electric distribution feeders in the District of Columbia, to commence with the first three years of the undergrounding project (2015-2017), and (b) approval of the Underground Project Charge to be assessed by Pepco with respect to the costs it incurs for the underground project. The entire undergrounding project is expected to extend for a period of 7-10 years at a total cost of approximately $1 billion.

The public hearing will also address Pepco's August 1, 2014, application requesting that the Commission issue a financing order that (a) authorizes the creation of the DDOT Underground Electric Company Infrastructure Improvement Property and (b) approves the imposition, billing and collection of the DDOT Underground Electric Company Infrastructure Improvement Charge. DDOT will undertake the construction and other civil work necessary to place conduit underground thereby facilitating the undergrounding of electric distribution feeders. The cost of the work to be performed by DDOT and related costs will be funded partially from the proceeds of the sale of Bonds.

The Commission will convene a final community hearing to receive comments from the public on:
September 9, 2014 - 6 p.m.
D.C. Public Service Commission
Hearing Room
1333 H Street, NW, 7th Floor East Tower
Washington, DC 20005

Those who wish to testify at the community hearing should contact the Commission Secretary by the close of September 4, 2014, by calling (202) 626-5150. Representatives of organizations shall be permitted a maximum of five minutes for oral presentations. Individuals shall be permitted a maximum of three minutes for oral presentations. If an organization or an individual is unable to offer comments at the community hearings, written statements may be submitted **by September 15, 2014** to the Public Service Commission of the District of Columbia, 1333 H Street, NW, Suite 200, West Tower, Washington DC 20005.

Any person who is deaf or hearing-impaired, and cannot readily understand or communicate in spoken English, and persons with disabilities who need special accommodations in order to participate in the hearing, must contact the Commission Secretary by close of seven business days prior to the date of the hearing. Persons who wish to testify in Spanish, Chinese, Amharic, or Korean must also contact the Commission Secretary by close of business three business days before the day of the hearing. **The number to call to request special accommodations and interpretation services is (202) 626-5150.**

FC 1116 – Community Hearings

Both Applications are available for viewing on the Commission's website (www.dcpsc.org) and inspection at the Public Service Commission's Office of the Commission Secretary, 1333 H Street, NW, 2nd Floor - West Tower between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Applications can be purchased at the Commission at a cost of $0.10 per page, actual reproduction cost. The Applications may also be inspected at the following public libraries:

Martin Luther King Jr. Memorial Library
901 G Street, NW
Washington, DC 20001

Ward 1
Mount Pleasant Library
3160 16th Street, NW
Washington, DC 20010

Ward 2
Southwest Library
900 Wesley Place, SW
Washington, DC 20024

Ward 3
Cleveland Park Library
33 l0 Connecticut Avenue, NW
Washington, DC 20008

Ward 4
Petworth Library
4200 Kansas Avenue, NW
Washington, DC 20011

Ward 5
Woodridge Library
1790 Douglas Street, NE
Washington, DC 20018

Ward 6
Southeast Library
403 7th Street, SE
Washington, DC 20003

Ward 7
Capitol View Library
5001 Central Avenue, SE
Washington, DC 20019

Ward 8
Washington-Highlands Library
115 Atlantic Street, SW
Washington, DC 20032

THE DISTRICT OF COLUMBIA COMMISSION ON THE MARTIN LUTHER KING, JR. HOLIDAY

NOTICE OF PUBLIC MEETING

Wednesday, September 3, 2014
200 I Street SE Washington, DC 20001

The District of Columbia Commission on the Martin Luther King, Jr. Holiday will hold its open public meeting on Wednesday, September 3, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission on the Martin Luther King, Jr. Holiday will be in attendance to discuss program events being planned for January 2015.

The regular monthly meetings of the District of Columbia Commission on the Martin Luther King, Jr. Holiday are held in open session on the first Wednesday of the month. If you have any questions or concerns, please feel free to contact Sharon Anderson at sharond.anderson@dc.gov.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BUDGET AND FINANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Budget and Finance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Thursday, September 4, 2014 at 6:30 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Remitted Tuition Funding for the David A. Clarke School of Law

III. Faculty Union Agreement

IV. Closing Remarks

Adjournment

UNIVERSITY OF THE DISTRICT OF COLUMBIA

JOINT MEETING OF THE BUDGET AND FINANCE COMMITTEE AND STUDENT AFFAIRS COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Joint Meeting of the Budget and Finance Committee and the Student Affairs Committee of the Board of Trustees of the University of the District of Columbia will be held on Thursday, September 4, 2014 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Approval of Minutes – May 15, 2014

III. Tuition Increase

IV. Closing

Adjournment

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18595 of Eva R. Sanchez, pursuant to 11 DCMR § 3103.2, for a variance[1] from the definition of yard under § 199, to allow a rear deck addition to a row dwelling occupying more than 50% of the rear yard area in the R-4 District at premises 620 9th Street, N.E. (Square 913, Lot 846).

HEARING DATES: September 17, 2013, November 19, 2013, April 29, 2014
DISMISSAL DATE: April 29, 2014

DISMISSAL ORDER

This self-certified application was submitted on May 1, 2013 by Eva R. Sanchez (the "Applicant"), the owner of the property that is the subject of the application. The application requested variance relief from the definition of yard under § 199, to allow a rear deck addition to a row dwelling that would occupy more than 50% of the rear yard area in the R-4 District at premises 620 9th Street, N.E. (Square 913, Lot 846). Following a public hearing, as well as two continuances at which the Applicant failed to appear, the Board voted to dismiss the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated May 6, 2013, the Office of Zoning ("OZ") provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6A, the ANC in which the subject property is located; and Single Member District/ANC 6A02. Pursuant to § 3113.13, the Office of Zoning mailed letters on May 16, 2013 providing notice of the hearing to the Applicant, ANC 6A, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on May 17, 2013 at 60 DCR 6986.

Party Status. The Applicant and ANC 6A were automatically parties to this proceeding.

FINDINGS OF FACT

1. The property is a rectangular lot located on the west side of 9th Street, N.E. between G Street and F Street at 620 9th Street, N.E. (Square 913, Lot 846) (the "Subject Property"). The Subject Property has access to a six foot wide rear alley.

[1] Initially, the Zoning Administrator's memorandum to the Applicant indicated that special exception relief was required; however, a revised memorandum from the Zoning Administrator explained that, instead, the Applicant must seek variance relief. (Exhibit 29.)

2. The Subject Property is located within the R-4 Zone District.

3. The Subject Property is improved with a row dwelling that includes a landing at the rear of the property.

4. The existing dwelling is nonconforming, with a lot occupancy of 79%. In the R-4 District, the maximum lot occupancy permitted as a matter of right is 60%. (11 DCMR § 403.2.)

5. The Applicant proposed to remove the landing and to construct, in its place, an 84 square foot wooden deck.

6. The proposed deck would measure 12 feet wide by seven feet deep, with a maximum height of three feet and 10 inches.

7. The Zoning Administrator ("ZA") noted that the proposed addition would not add building area because the structure would be less than four feet in height and, therefore, would not contribute to lot occupancy.

8. The ZA also indicated that variance relief from the definition of yard under § 199.1 was necessary because the proposed addition would occupy more than 50% of the yard. The definition of yard provided in § 199.1 states that "[n]o building or structure shall occupy in excess of fifty percent (50%) of a yard required by [Title 11]."

9. At the Board's public hearing on September 17, 2013, OP noted that relief from the definition of "yard" would not be necessary if the Applicant were to decrease the proposed depth of the deck by one foot. In response, the Applicant agreed that this was a desirable option and asked for further information about how to proceed after revising the plans.

10. The Board continued the matter in the event that the Applicant decided not to revise the plan and continued to pursue variance relief. The Board scheduled the continued public hearing for November 19, 2013.

11. In advance of the November 19, 2013 public hearing, the OZ staff testified that the Applicant communicated her intent to withdraw the application; however, no notice of withdrawal was filed in the record.

12. The Applicant did not appear at the public hearing on November 19, 2013. Accordingly, the Board continued the hearing until December 17, 2013 and directed OZ staff to contact the Applicant to obtain an explanation for her failure to appear. The Board also indicated that, in the absence of an explanation, the application would be considered for dismissal at the public hearing on December 17, 2013.

13. By letter dated December 5, 2013, the Applicant requested a three month postponement of the hearing date. The Board granted the request and scheduled the continued public hearing for April 29, 2014.

14. The Applicant made no further filings and did not appear at the public hearing on April 29, 2014.

CONCLUSIONS OF LAW AND OPINION

The Board has "broad authority and reasonable latitude to perform its function," including, when necessary, authority to dismiss an application for failure of the Applicant to prosecute her case. *See, e.g., Coumaris v. D.C. Alcoholic Beverage Control Board*, 660 A.2d 896, 903 (D.C. 1995). Further, pursuant to 11 DCMR § 3100.6, "the Board may dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation."

At the initial public hearing on September 17, 2013, the Board continued the matter after the Applicant expressed a desire to revise the design to eliminate the need for zoning relief. In advance of the continued hearing, OZ staff received communications from the Applicant indicating her intent to withdraw the application. The Board nonetheless provided additional opportunities for the Applicant to seek the requested relief, as no formal notice of withdrawal had been filed. The Applicant failed to appear at the hearing on November 19, 2013 and again on April 29, 2014, despite being given notice that the application would be considered for dismissal at the latter hearing. Further, the Applicant provided no explanation for her failure to appear, aside from the prior communications generally noting her intent to withdraw the application. Therefore, the Board exercises its authority to dismiss the application for failure to prosecute and for failure to appear without explanation, pursuant to § 3100.6 of the Board's Rules of Practice and Procedure (Title 11 DCMR).

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) In this case, both the OP and the ANC reports addressed the merits of the application. (Exhibits 26 and 27.) Because the Board did not reach the merits of the application, OP's recommendation and the ANC's issues and concerns are not legally relevant. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) (The ANC's views as to whether a variance should be granted became irrelevant once the Board concluded that the use was permitted as a matter of right.)

Accordingly, it is **ORDERED** that the application is **DISMISSED**.

VOTE: **3-0-2** (Lloyd J. Jordan, Anthony J. Hood, and Marnique Y. Heath to Dismiss; S. Kathryn Allen and Jeffrey L Hinkle not present, not voting.)

BZA APPLICATION NO. 18595
PAGE NO. 4

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: August 21, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18679 of Richard and Janet Barnes, pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure provisions under § 2001.3 to allow an elevated rear deck addition to an existing one-family row dwelling in the R-4 District at premises 3150 17th Street, N.W. (Square 2600, Lot 87).

HEARING DATE: December 17, 2013
DECISION DATE: February 11, 2014

DECISION AND ORDER

This application was submitted on October 8, 2013 by Richard and Janet Barnes (the "Applicant"), the owners of the property that is the subject of the application. The application requests variance relief from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure provisions under § 2001.3 to allow an elevated rear deck addition to an existing one-family row dwelling in the R-4 District at premises 3150 17th Street, N.W. (Square 2600, Lot 87) (the "Subject Property"). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 10, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1D, the ANC in which the subject property is located; and Single Member District/ANC 1D01. Pursuant to § 3113.13, the Office of Zoning mailed letters on October 15, 2013 providing notice of the hearing to the Applicant, ANC 1D, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on October 18, 2013 (60 DCR 14788).

Party Status. The Applicant and ANC 1D were automatically parties to this proceeding. The Board also granted party status in opposition to Frank O. Agbro, an adjacent property owner.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed rear deck addition and asserted that the application satisfied the requirements for area variance relief.

OP Report. By memorandum dated December 11, 2013, OP indicated that it did not support the application. OP's opposition to the relief requested was based on its finding that no exceptional

circumstance exists on the Subject Property that would create a practical difficulty. (Exhibit 27.) In the report and during testimony, OP noted that a patio could be constructed in the rear yard without zoning relief, but such a patio would displace the parking spaces in that area.

DDOT Report. By memorandum dated December 11, 2013, the District Department of Transportation expressed no objection to the requested relief. (Exhibit 26.)

ANC Report. By letter dated November 22, 2013, ANC 1D indicated that it discussed the application at its properly noticed meeting on November 19, 2013. With a quorum present, the ANC voted 4-0 in support of the application. ANC 1D found that denying the relief would cause undue hardship to the Applicant and that the proposed rear deck would not cause substantial detriment to the public good. (Exhibit 25.)

Party in opposition. Frank Agbro, owner of the adjacent property, argued that the proposed addition would have a negative effect on the surrounding properties, chiefly citing concerns about safety and visibility in the public alley to the rear of their properties. Mr. Agbro noted that the proposed deck may provide a hiding place for criminals and make it more difficult for neighbors to be vigilant for criminal activity. Mr. Agbro also claimed that his own rear deck, similar to the one proposed on the Subject Property, does not contribute to the problem of crime in the alley, because he has been able to observe and report criminal activity from his deck. During the public hearing, the Applicant raised the issue that Mr. Agbro's own rear deck was constructed in 2004 without the necessary relief from the Board. Similarly, OP noted that it could find no record that Mr. Agbro had sought or received the requisite zoning relief for his deck. Mr. Agbro admitted that he was unclear about the zoning relief process, but now understands that he should have requested relief from the Board. Finally, Mr. Agbro submitted a petition in opposition to the proposed addition, signed by nine other residents of 1702 and 1706 Kilbourne Place, N.W. The petition, however, incorrectly states that the Applicant's proposed project will be constructed on public space. (Exhibit 28.)

FINDINGS OF FACT

The Subject Property

1. The Subject Property is located at 3150 17th Street, N.W. (Square 2600, Lot 87). The Subject Property is a rectangular lot measuring 18 feet wide and 67.5 feet long.

2. The Subject Property lot is improved with a three-story row dwelling with a basement, constructed in 1906. On the southern side of lot, the space between the dwelling and the public alley is a paved parking area for the owner and guests. To the west of the parking area, there is a small concrete pad where two air conditioning compressors are enclosed by a chain link fence.

3. The Subject Property is situated at the corner of 17th Street and Kilbourne Place, N.W. and abuts a 15 foot wide public alley to the south. The Subject Property is therefore bound by public space on three sides, which contributes to its exceptional condition.

4. Though the adjacent row dwellings face north toward Kilbourne Place, N.W., the dwelling on the Subject Property faces east toward 17th Street, N.W.

5. The Subject Property is nonconforming in terms of lot occupancy and lot area. Although the maximum lot occupancy permitted in the R-4 District is 60% under 11 DCMR § 403.2, the structure occupies 69% of the lot. Additionally, § 401.3 requires a minimum lot area of 1,800 square feet, but the lot area of the Subject Property is 1,275 square feet. Because the lot predates the adoption of the Zoning Regulations in 1958, it is a legally nonconforming lot. (See, 11 DCMR § 2000.4.) Nonetheless, a building located on such a lot may not be enlarged or replaced by a new building unless it complies with all other provisions of [Title 11]." (11 DCMR § 401.1.)

The Applicant's Project

6. The Applicant proposes to construct an unenclosed deck measuring 16 feet wide and 16 feet deep at the second level of the dwelling. The deck would be constructed in the rear yard to the south of the dwelling.

7. The deck would be supported by iron beams and surrounded on three sides by ornamental iron fencing, consistent with existing iron fencing on the Subject Property. The chain link fence enclosing the utilities pad would also be replaced with ornamental iron fencing.

8. The concrete pad beneath the deck would be repaved and retained as a parking area.

9. The proposed deck would increase the lot occupancy of the Subject Property to 93%. Lot occupancy in the R-4 District is limited to 60% as a matter of right under § 403.2 and 70% by special exception under § 223. Therefore, the project requires variance relief from the requirements of § 403.2.

10. The Applicant proposed to provide a rear yard measuring 4.5 feet deep; however, the R-4 District requires a minimum rear yard of 20 feet. (*See* 11 DCMR § 404.1.) Therefore, the project requires relief from the provisions of § 404.1.

11. Because the dwelling is nonconforming in terms of lot occupancy and lot area, the project requires variance relief from § 2001.3(a)(b)(1)&(2).

12. As OP suggested, the Applicant could install a patio in the rear yard that does not require zoning relief; however, construction of a patio would displace the parking spaces at the rear of the dwelling and require the Applicant to seek on-street parking.

13. On-street parking in the Mount Pleasant neighborhood is highly utilized, such that, compelling the Applicant to remove existing off-street parking would amount to an unnecessary burden.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests variance relief from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure provisions under § 2001.3 to allow an elevated rear deck addition to an existing one-family row dwelling in the R-4 District at premises 3150 17th Street, N.W. (Square 2600, Lot 87). The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3) (2012 Repl.) to grant variance relief from the strict application of the Zoning Regulations. As noted by the District of Columbia Court of Appeals:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan. *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C.1987).

When determining whether the property is subject to an exceptional condition, the Board must find that there are "unique circumstances peculiar to the applicant's property" and that these circumstances are not merely "the general conditions of the neighborhood." *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (D.C. 1972). Additionally, the "exceptional situation or condition" of a property can arise out of a confluence of factors, which together affect this property in an exceptional way. *See Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1169 (D.C. 1990). The "exceptional situation or condition" can also arise out of the structures existing on the property itself." *See, e.g., Clerics of St. Viator v. Bd. of Zoning Adjustment*, 320 A.2d 291, 293-94 (D.C. 1974). In order to prove "practical difficulties," an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *See Association For Preservation of 1700 Block of N St., N.W., and Vicinity v. Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

Applying this test to the requested relief, the Board finds that the Applicant has met the burden of proof and that the application should be granted. In this case, the Subject Property is affected by a confluence of factors that, together, create an exceptional condition. The Board found in a prior order for Application No. 17919 that the Subject Property is not exceptional in terms of size, shape or location, but those findings do not foreclose its conclusion here. Certain unique circumstances were overlooked by the Board during its previous analysis, and, as a result of the Applicant raising these factors through its filings and testimony, the Board now concludes that the Subject Property is affected by an exceptional situation. First, the Board previously found

that the Subject Property's corner location was not, in itself, exceptional; however, the Board did not consider the exceptional nature of the Subject Property being bound on three sides by public space, as it is located on a corner and abuts a public alley to the south. Further, the Board did not consider the unique orientation of the dwelling's façade. Although the structure is connected to a series of row dwellings that face Kilbourne Avenue, N.W. the Subject Property faces east and fronts on 17th Street, N.W. Such inconsistent orientation is uncommon in the neighborhood. These unique circumstances, when considered together with the lot's relatively small size and corner location, affect the Subject Property and amount to an exceptional condition.

The Board finds that the unique condition of the property creates practical difficulties to the Applicant in this case. When considering Application No. 17919, the Board found that the size of the lot does not constrain the Applicant's ability to design an interior dining room space. This finding dealt specifically with the Applicant's prior proposal to construct an enclosed sunroom addition. As the Applicant's design has changed substantially, so has their argument regarding the practical difficulty he faces as a result of the property's exceptional condition. Accordingly, the Board is not bound by its prior finding that there existed no practical difficulty. In the present case, the Applicant's plans to construct an open-air deck are constrained by the public space that borders the lot and the unique eastward orientation of the dwelling's façade.

Due to these conditions and the resulting lack of side yards, the nonconforming rear yard remains the only feasible space in which to construct a deck addition. In its report, OP suggests that the installation of a first floor patio in this rear yard space would be possible without zoning relief. This alternative plan, however, would displace the Applicant's parking spaces in a neighborhood where on-street parking is limited. Though it is possible to create outdoor patio space without variance relief, forcing the Applicant to permanently seek on-street parking would amount to an unnecessary burden. Therefore the Board concludes that the Applicant has shown that the unique conditions of the Subject Property create a practical difficulty.

Finally, the Board finds that granting the relief requested would cause no harm to the public good or the zoning plan. The deck addition is unenclosed, and therefore, it does not impose on the adjacent property to create the same "towering" effect. Further, the size of the proposed deck addition is similar to that of the deck maintained on the adjacent dwelling by the party in opposition. As noted by ANC 1D, the proposed deck is also consistent with similar deck additions in the Mount Pleasant area and is not out of character for the neighborhood. Additionally, the deck addition is a low, unenclosed structure, which ensures visibility in the alley. Mr. Agbro, the party in opposition, argued that the deck addition would provide a hiding place for criminals; however, Mr. Agbro also represented that his own deck has allowed him to be vigilant for criminal activity in the alley and has accordingly benefitted the neighborhood. The Applicant suggested, and the Board agrees, that an open-air deck would similarly allow the Applicant to have an increased presence in the alley, further discouraging criminal activity in the area. Therefore, the party in opposition's argument is without merit. Thus, the Board concludes that granting the requested variance would not cause a substantial detriment to the public good or to the zoning plan.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, OP recommended denial of the application based on their finding that no exceptional circumstance exists on the Subject Property that would create a practical difficulty. OP also suggested that the proposed increase in lot occupancy would impair the zoning plan, but noted that the proposed addition would not cause any detriment to the public good, as other similar decks exist on the subject square. The Board did not find this recommendation persuasive for two reasons. First, OP considered only the size of the lot and the dwelling's existing nonconformities when making its determination that the Subject Property is not unique. As previously discussed, the Board's finding that the property is exceptional was based upon a confluence of factors, including the relationship of the property to public space and the eastward orientation of the dwelling's façade. These factors were not included within OP's analysis. Second, OP found that the Applicant faced no practical difficulty, as a ground-level patio could be installed without zoning relief. As the Board previously noted, such a patio would eliminate the Applicant's existing parking pad and would require the Applicant to seek on-street parking. Because the neighborhood's on-street parking is highly utilized, this alternative suggested by OP would cause a practical difficulty to the Applicant and is therefore not a persuasive argument.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) In this case, ANC 1D voted 4-0 in support of this application. For the reasons discussed, the Board concurs with the ANC's recommendation to approve the requested relief.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has satisfied the burden of proof with regard to the request for variance relief from the lot occupancy requirements under § 403.2, the rear yard requirements under § 404.1, and the nonconforming structure provisions under § 2001.3 to allow an elevated rear deck addition to an existing one-family row dwelling in the R-4 District at premises 3150 17th Street, N.W. (Square 2600, Lot 87). Accordingly, it is **ORDERED** that the application, subject to plans at Exhibits 3 and 8, is hereby **GRANTED.**

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen (by absentee vote), Jeffrey L. Hinkle, and Michael G. Turnbull to Approve; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: August 25, 2014

BZA APPLICATION NO. 18679
PAGE NO. 7

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
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

Order No. 18681-A on the Motion for Rehearing and Reconsideration in the Application of Shirley H. Cox, pursuant to 11 DCMR § 3104.1, for a special exception to establish a child development center (15 children and 3 staff) under § 205 (last approved under BZA Order No. 18074[1]) in the R-2 District at premises at premises 3008 K Street, S.E. (Square 5482, Lot 8).

HEARING DATE: December 17, 2013

DECISION DATE: December 17, 2013

ORDER DATE: December 19, 2013

DECISION DATE FOR MOTION FOR RECONSIDERATION AND REHEARING: February 4, 2014

ORDER DISMISSING MOTION FOR REHEARING AND RECONSIDERATION

On December 19, 2013 the Board of Zoning Adjustment (the "Board") issued an order (the "Order") granting the application of Shirley Cox (the "Applicant"). Specifically, the Order granted the Applicant's request for a special exception allowing the conversion of a one-family dwelling to a child development center ("CDC"), with a maximum of 15 children and three staff. The site is located within the jurisdiction of the Advisory Neighborhood Commission ("ANC") 7B, and the ANC received notice of the Board hearing. For reasons to be explained later, the ANC did not file a written report with the Board nor did a representative attend the hearing. On January 10, 2014, the ANC filed a letter with attachments (the "Motion"), requesting a rehearing and reconsideration of the matter, as well as an "extension of time" for filing the Motion. (Exhibit 30.) On January 17, 2014, the Applicant filed a letter opposing the Motion, stating she would suffer a significant hardship if the case were reopened. (Exhibit 33.) For reasons explained below, the Board voted on February 4, 2014 to deny the requested extension and to dismiss the ANC's Motion as untimely.

Subsection 3126.2 of the Board's Rules of Practice and Procedure (Chapter 31 of Title 11 DCMR) provides that a motion for reconsideration or rehearing of any Board decision be filed within 10 days from the date of issuance of the final written order reflecting that decision (hereafter, "the filing requirement"). The Board's Order was issued on December 19, 2013 and was sent that day to the ANC by first class mail. Subsection 3110.3 of the Board's Rules of Practice and Procedure provide that "[w]henever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper, and the paper or notice

[1] The caption in the Board's Summary Order, BZA Order No. 18681, incorrectly identifies the case number in the previous Order as 18079 instead of 18074.

is served upon the party by mail, three days shall be added to the prescribed period." That would result in the Motion being due on January 1, 2014, which was a holiday. Therefore, pursuant to § 3110.2, the motion was due by the end of the next business day, which was January 2. The motion was not filed until January 10.

Mindful of its late filing, the ANC requested that the Board grant an "extension of time". The Board treats the ANC's request for an "extension of time" as a request to waive the 10 day filing requirement embodied in § 3126.2. Subsection 3100.5 authorizes the Board to waive most provisions of its Rules of Practice and Procedure including § 3126.2, provided there is "good cause" for the request to waive, and the waiver will not prejudice another party.

The Board finds that the ANC has not established the "good cause" that is required to waive the Filing Requirement. The ANC's explanation for its late filing is somewhat confusing. First, the motion states that the ANC's staff receives its mail at the ANC's office, but then later states that its mail arrives at its meeting space and is picked up by its Secretary. It is not clear why the ANC's staff did not receive the Motion on December 24th, which according to the ANC would have been the first opportunity to do so, or why the ANC's Secretary did not pick up the mailed Order even before that. The inclement weather complained of occurred in early January well after the mailed motion should have been received. Finally, the fact that the ANC's Executive Committee's meeting was postponed from New Year's Day to January 8 is not relevant. As a party to a contested case, the ANC should have designated a representative who was authorized to make decisions of this kind. The Board is not required to extend its deadlines to accommodate an ANC's meeting schedule. *See e.g. Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3, 10 -11 (D.C (1997) (ANC not entitled to greater time to respond to submissions).

Furthermore, the Board finds that allowing the belated consideration of the Motion would result in prejudice to the Applicant. On January 17, 2014, the Applicant filed a timely Response to the ANC's Motion. (*See,* 11 DCMR § 3126.5.) The Applicant states therein that she is a small business owner who is attempting to get the CDC "up and running", and she describes the various steps she must take to do so; for instance, obtaining a certificate of occupancy, and submitting an application to the Office of the State Superintendent for Education ("OSSE"). She asserts that preparing for rehearing or reconsideration would interrupt these steps.

The Board has no doubt that the Applicant would be prejudiced were the Board to entertain the Motion at this late date.

Since the ANC has demonstrated neither good cause nor the absence of prejudice, the Board cannot grant a waiver to the Filing Requirement and therefore must dismiss the Motion as untimely.

However, even had the motion been timely filed, it states no basis for a rehearing or reconsideration.

As to the request for rehearing, § 3126.6 provides that no request for rehearing shall be considered unless new evidence is submitted that could not reasonably have been presented at the original hearing. No such evidence has been submitted.

The ANC essentially requests that the Board now consider its undated "Resolution" in opposition to the continuation of the CDC.[2] The ANC notes that the resolution was approved on November 21, 2013, but was inadvertently sent to the Office of Planning rather than the Office of Zoning. The ANC did not present the resolution at the hearing because it mistakenly thought the hearing date was on December 18 instead of December 17. Thus there is nothing "new" about the evidence. In fact, OP and the Applicant advised the Board that the ANC opposed the application. (Hearing Transcript of December 17, 2014, pgs. 57–66.) Thus, the Board was mindful of the ANC's position, but granted the application based upon the case presented by the Applicant, along with support from OP, OSSE, and the Department of Transportation. Although the Board understands why the ANC was not able to present the resolution, its explanation does not form a basis for the Board to rescind its vote and grant a new hearing.

Similarly, the ANC has not stated any basis for its request for reconsideration. Subsection 3126.4 of the Board's Rules of Practice and Procedure requires that a motion for reconsideration must "state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought." On its face, the ANC motion alleges no error in the Board's decision. The ANC acknowledges its *own* errors in connection with the missed hearing date and the failure to submit its Resolution in Opposition. But these errors in no way amount to errors made by the Board in reaching its decision.

For the reasons stated above, it is **ORDERED** that the Motion for Rehearing and Reconsideration is **DISMISSED.**

VOTE: **4-0-1** (Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Michael G. Turnbull to Dismiss the Motion; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: August 22, 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.

[2] A copy of the Resolution is attached to the Motion. (Exhibit 30)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18686 of Ajaib Toor, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under § 2101.1 to establish an auto-repair garage in the LO/C-M-1 District at premises 1859 Edwin Street, N.E.[1] (Square 4106, Lot 144).

HEARING DATES: January 7, 2014 and April 8, 2014
DECISION DATE: April 8, 2014

DECISION AND ORDER

On October 16, 2013, Ajaib Toor (the "Applicant") filed an application with the Board of Zoning Adjustment (the "Board") requesting variance relief from the requirement under § 2101.1 to provide 12 parking spaces in order to allow the establishment of a four-bay auto repair garage where five parking spaces would be provided. After a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 17, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 5; Advisory Neighborhood Commission ("ANC") 5C, the ANC in which the subject property is located; and Single Member District/ANC 5C02. Pursuant to § 3113.13, the Office of Zoning mailed letters on August 22, 2013 providing notice of the hearing to the Applicant, ANC 5C, and the owners of all property within 200 feet of the subject property. Notice of hearing was published in the *D.C. Register* on November 1, 2013. (60 DCR 15211).

Party Status. The Applicant and ANC 5C were automatically parties to this proceeding. The Board granted the request for party status in opposition of George Rodgers and Mark Uhar, owners of the adjacent property and operators of Rodgers Brothers Service, Inc. and Innovative Recyclers, Inc. (Exhibit 23.)

Applicant's Case. The Applicant provided testimony regarding the proposed auto repair facility and the impact of parking variance relief on the surrounding neighborhood. The Applicant testified that the auto repair operation would offer same-day service and repairs and therefore would not create additional traffic congestion or issues with overflow parking.

[1] The Subject Property's address in the application was listed as 2001 Lawrence Avenue, N.E. At the hearing, the Applicant indicated that the address had been changed to 1859 Edwin Street, N.E. Although the original address was used in the notice of hearing, the square and lot number were also provided.

OP Report. By memorandum dated December 31, 2013, the Office of Planning indicated its support of the requested relief. OP found that the narrow, triangular nature of the lot was an exceptional condition that precluded the Applicant from provided the required parking spaces. Despite determining that the proposal would not cause a substantial detriment to the public good, OP did express concerns about traffic congestion and parking in the area. Specifically, OP noted that the Applicant "should ensure that vehicular traffic and parking resulting from operations does not obstruct circulation on adjacent streets." (Exhibit 27.)

DDOT Report. By memorandum dated December 31, 2013, the District Department of Transportation indicated that it had concerns with the requested relief after conducting several site visits. First, DDOT noted that the area has existing issues of traffic congestion and on-street parking. DDOT also noted the presence of recently installed "No Parking or Standing Either Side of the Roadway" signage on Lawrence Avenue and Edwin Street and the prevalence of illegal parking, despite these signs. Finally, DDOT indicated that the Applicant must obtain approval from the Public Space Committee for the improvements needed to access the site and for any additional vehicle parking on the unimproved roadway. (Exhibit 28.)

ANC Report. The Board did not receive a report from ANC 5C.

Party in opposition. George Rodgers and Mark Uhar, owners of the adjacent property and operators of Rodgers Brothers Service, Inc. and Innovative Recyclers, Inc., provided evidence showing the existing parking problems in the area caused by insufficient off-street parking at similar auto repair facilities. Further, the party in opposition testified that cars in the area frequently violate the "No Parking" ordinances on both streets and argued that granting the variance would serve to intensify these problems and cause significant safety concerns.

FINDINGS OF FACT

1. The property is a narrow, triangular lot located at the address 1859 Edwin Street, N.E. (Square 4106, Lot 144) (the "Subject Property"). The Subject Property is situated where Edwin Street, N.E. meets Lawrence Avenue, N.E. and where both streets terminate.

2. The Subject Property is an unimproved lot, currently used for car storage by the Applicant.

3. The Subject Property is bordered by railroad tracks to the south, Montana Avenue to the west, a garage and parking lot to the north, and an excavation and demolition company to the east.

4. The Subject Property is zoned Commercial Light Manufacturing (C-M-1) and is also mapped within the Langdon Overlay. The area is characterized by industrial uses, including several auto repair facilities.

5. The C-M-1 District is intended to provide a site for low-bulk commercial and light manufacturing activities. (*See* 11 DCMR § 800.2.) Heavy truck traffic and loading and unloading operations are expected to be characteristics of the C-M Districts. (11 DCMR § 800.3.)

6. The Langdon Overlay is intended to encourage retention of existing commercial and light manufacturing uses and allow new businesses under special controls designed to protect the quality of life and neighborhood character of the adjacent residential neighborhood. (11 DCMR § 806.2(b).)

7. The Applicant proposed to construct a four-bay auto repair garage with accessory office space. The facility would operate 10 hours a day for six days a week and would be staffed by two mechanics and one owner. The Applicant estimated that the garage would receive 16 customers per day.

8. Subsection 2101.1 requires the proposed facility to provide 12 accessory parking spaces. The Applicant proposed to provide five spaces.

9. The services offered at the facility would be limited to same-day auto repair and that vehicles needing overnight storage for longer repairs would be parked in one of the four garage bays. The Applicant would encourage customers not to park on the street and not to queue while waiting for service.

10. The Applicant, along with his business partner Ved Gupta, also owns and operates other auto repair facilities in the vicinity, including one operating on Edwin Street, N.E. and one on Lawrence Avenue, N.E.

11. On Edwin Street, N.E. and Lawrence Avenue, N.E., signage reading "No Parking or Standing Either Side of the Roadway" is installed on both sides of the street. During daytime hours, vehicles often park on both sides of these streets, in violation of these signs. In addition, during daytime hours, designated public space is also unlawfully used as vehicle parking.

12. Customers of the auto repair facilities operated by Mr. Toor and Mr. Gupta commonly park their vehicles on the street, in violation of the "No Parking" ordinance, despite efforts of the owners to discourage this activity. Employees of these auto repair garages sometimes service vehicles that are parked on the street due to insufficient off-street parking at these facilities.

13. Traffic circulation on Edwin Street, N.E. and Lawrence Avenue, N.E. is impeded by illegally parked vehicles. OP testified that, based on parking congestion, Edwin Street, N.E. would likely be impassable for an emergency vehicle, such as a fire truck.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3) (2012 Repl.) to grant variance relief from the strict application of the Zoning Regulations. As noted by the District of Columbia Court of Appeals:

> An applicant must show, first, that the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; second, that strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and third, that granting the variance will do no harm to the public good or to the zone plan. *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941 (D.C. 1987).

In this case, the Board need not address whether there exists an exceptional condition that creates a practical difficulty, as the Board finds that granting the requested relief would cause a substantial detriment to the public good. The Board was persuaded by the concerns raised by OP, DDOT, and the party in opposition regarding existing congestion and illegal street parking in the area. During business hours, a high volume of vehicles currently park on Edwin Street, N.E. and Lawrence Avenue, N.E. in violation of the "No Parking or Standing Either Side of the Roadway" ordinance. In addition, customers of the auto repair facilities in the neighborhood frequently park in public space. These parking issues cause significant concerns for neighboring property owners, as the congestion of Edwin Street, N.E. often makes the street impassable. As noted in OP's testimony during the public hearing, the existing parking conditions in the neighborhood could potentially prevent the passage of emergency vehicles, creating a substantial public safety concern for neighboring businesses, their customers, and property owners in the area. The Board finds that the existing problems of congestion and illegal parking in the area would be exacerbated by permitting the Applicant to operate the proposed auto repair facility with insufficient off-street parking.

Further, the Board was persuaded by the evidence provided by the party in opposition, showing that the Applicant, as owner of several other auto repair facilities in the neighborhood, has been unable to mitigate the existing parking problems in the area. The Applicant confirmed that he has made efforts to discourage customers at his other auto repair garages from parking illegally and from obstructing traffic. Testimony from the party in opposition, corroborated by testimony from DDOT, indicated that serious parking and traffic problems persist in the area, despite the Applicant's efforts. Therefore, the Board finds that it would be dangerous and inappropriate to permit the Applicant to operate the proposed facility without providing the required amount of off-street parking. The Board concludes that granting the requested relief would result in a substantial detriment to the public good. Because the application fails the third requirement of the standard for variance relief, the Board will not address whether an exceptional condition of the property creates a practical difficulty and, instead, must deny the application.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, OP recommended that the Board grant the relief requested, but also noted that the Applicant "should ensure that vehicular traffic and parking resulting from operations does not obstruct circulation on adjacent streets." As previously discussed, the Board found that, based on the Applicant's pattern of practice operating similar repair facilities, the Applicant could not credibly ensure that the traffic and parking issues resulting from the new facility would be properly mitigated. The Board finds that granting the relief requested would likely intensify the existing problems with obstructed circulation and illegal parking in the area and would cause a substantial detriment to the public good. Therefore, the Board was not persuaded by OP's recommendation to grant the requested variance relief.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) The Applicant testified that ANC 5C voted in support of the proposed variance relief; however, the Board did not receive a written report from the ANC. Although the Applicant asserted that the ANC voted to support his application, the Board can only great weight to ANC 5C's written report.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has not satisfied the burden of proof with regard to the request for a variance from the off-street parking requirements under § 2101.1 to establish an auto-repair garage in the LO/C-M-1 District at premises 1859 Edwin Street, N.E. (Square 4106, Lot 144). Accordingly, it is **ORDERED** that the application is **DENIED.**

VOTE: **4-0-1** (Lloyd J. Jordan, Peter G. May, Jeffrey L. Hinkle, and Marnique Y. Heath; to Deny; S. Kathryn Allen not participating, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: August 20, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 13-17
Z.C. Case No. 13-17
Brownstein Commons, LP
(Consolidated Planned Unit Development and Related Map Amendment @ Square 5933, Lots 46, 47, 48, and 49 and Square 5934, Lots 17, 18, and 806)
June 30, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on May 22, 2014 to consider an application from Brownstein Commons LP ("Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. The project site consists of Lots 46, 47, 48, and 49 in Square 5933 and Lots 17, 18, and 806 in Square 5934 ("Subject Property" or "Property"). The Subject Property includes approximately 7.46 acres (324,780 square feet), is currently zoned R-5-A, is located within the boundaries of Advisory Neighborhood Commission ("ANC") 8C and abuts the boundaries of ANC 8E. (Exhibit ["Ex."] 3, p. 1.)

2. The Applicant filed this application on December 13, 2013. The PUD application sought approval for a development that consisted of 71 for-sale townhouses and approximately 190 rental apartments. The approximately 190 residential units are provided in two multi-family buildings located along Mississippi Avenue, S.E. which are connected by a one-story amenity building. Ten of the residential units in the multi-family buildings will be reserved as permanent supportive housing units which will be managed by Community of Hope. The townhouses are located along 10th Place, S.E., 11th Place, S.E., Trenton Place, S.E., and Mississippi Avenue, S.E. (Ex. 3, pp. 1-2.)

3. The Commission set the application down for a public hearing at its February 10, 2014 public meeting. In response to the comments made at the February 10, 2014 public meeting, the Applicant made modifications to the site plan, changed the number of townhouses (to a total of 74) included in the project and made all of the townhouses 16 foot-wide models. The Applicant also made significant enhancements to the overall architectural quality of the townhouses and the multi-family buildings. The Applicant filed a pre-hearing statement on March 6, 2014, and a public hearing was timely scheduled for May 22, 2014. Prior to the public hearing, the Applicant supplemented its application with additional information on April 30, 2014. (Ex. 12, 21.)

4. A public hearing was held on May 22, 2014. Testimony was presented by the Applicant's project team, including representatives of the Applicant, the project architect and the project's landscape architect. On May 22, 2014, the Applicant submitted into the record a LEED Checklist for the multi-family portion of the project, updated zoning information for the project, a site plan which noted the location of the townhouses that will be reserved as Inclusionary Zoning ("IZ") units, and information on the location of bicycle parking spaces inside and outside of the multi-family buildings. (Ex. 26, 29.)

5. ANC 8C submitted a resolution in support of the application, dated May 7, 2014, into the record. There was no opposition to the application. One resident submitted an e-mail to the Office of Zoning noting his support of the application and one resident testified in support of the project at the public hearing. (Ex. 24, 19.)

6. At the conclusion of the public hearing on May 22, 2014, the Commission took proposed action to approve the application.

7. On May 29, 2014, the Applicant submitted information into the record in satisfaction of 11 DCMR § 2403.16 - 2403.18.

8. On June 9, 2014, as requested by the Commission at the May 22, 2014 hearing, the Applicant supplemented its application with the following information:

   - Representative images of previous projects which show how the exhaust vents on the multi-family buildings will be treated;
   - Representative images of the proposed treatment of the Hardie panels and Hardie siding that will be used on the multi-family buildings;
   - Additional thoughts on the treatment of the architectural brackets on the multi-family buildings; and
   - The time period in which the Applicant will be required to file the final building permit applications to complete development of the project. (Ex. 34.)

9. On June 12, 2014, the Applicant submitted its final proffers and conditions. (Ex. 35.)

10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC did not provide a report in this case.

11. The Commission took final action to approve the application in Z.C. Case No. 13-17 on June 30, 2014.

The Subject Property and the Surrounding Area

12. The Subject Property consists of two parcels. The larger parcel is bound by Mississippi Avenue, S.E. to the south, 13th Street, S.E. to the east, Trenton Place, S.E. and 11th Place, S.E. to the north, and 10th Place, S.E. to the west. The smaller parcel is located immediately to the west of the larger parcel across 10th Place, S.E. The smaller parcel is bound by Mississippi Avenue, S.E. to the south, 10th Place, S.E. to the east, the M.C. Terrell/McGogney Elementary School to the west, and the Eagle Academy Charter School to the north. (Ex. 3, p. 5.)

13. The Subject Property was formerly the site of the Trenton Terrace apartment complex, which was razed, and is currently vacant. Both of the parcels include significant topographic changes. The high point of the larger parcel is found along Trenton Place and the lower portion of the larger parcel, along Mississippi Avenue is approximately 60 feet below that highest elevation. The smaller parcel has a similar slope with a grade change of approximately 30 feet. (Ex. 3, p. 5.)

14. Residential, academic, institutional, and park uses are the predominant land uses in the immediate area surrounding the Subject Property. Single family detached and semi-detached homes are located to the north of the Subject Property. Garden apartment buildings are located to the east and to the north. Academic uses are located to the east, and the Oxon Run Park is located to the south, across Mississippi Avenue, S.E. The Town Hall Educational Arts and Recreation Campus ("THEARC") is located approximately six blocks east of the Subject Property. The Congress Heights Metro Station is located approximately four blocks to the north of the Subject Property. This area is generally zoned R-1-B. (Ex. 3, pp. 5-6.)

Existing and Proposed Zoning

15. The Property is located in the R-5-A Zone District and the moderate-density residential land use category on the District of Columbia's Future Land Use Map. The Zoning Map Amendment application sought to rezone the Property to the R-5-B Zone District. (Ex. 3, p. 1.)

Description of the PUD Project

Site Plan and Landscaped Elements

16. The Applicant designed the project to account for the significant grade changes on the Property and line the street edges with buildings that were appropriate in use, size, and scale with the surrounding community. The townhouses all have front entrances on the adjacent public streets with access to the parking spaces provided by either a 15-foot-wide private alley in the rear of the townhouses accessed from 13th Street, S.E. or a public

alley between 10th Place, S.E. and 11th Place, S.E.; or from parking areas accessed from 10th Place, S.E. Access to the parking and loading facilities for the multi-family buildings are provided from 10th Place, S.E. and 13th Street, S.E. (Ex. 3, p. 15; Ex. 12, p. 2.)

17. The Applicant noted that the project's design team spent considerable time and energy on designing and locating the buildings to account for the significant grade changes on the Property. The townhouses and the multi-family buildings themselves accommodated the grade changes on the Property, which allowed the Applicant to minimize the number and size of visible retaining walls that are necessary. In order to minimize the appearance and size of the retaining walls, the Applicant created a tiered set of landscaped retaining walls which minimize their visual impact. The first retaining wall is set back approximately 29.5 feet from the rear of the multi-family building. Directly in front of this nine-foot-tall retaining wall will be a five-foot planting strip which will permit the planting of shrubs and other landscaped material. A second retaining wall, which will only be approximately three feet tall, is located ten feet behind the first retaining wall. This 10-foot area between the retaining walls allows for the planting of larger trees and shrubs. This second retaining wall is located approximately 43 feet from the private alley which will service the townhouses. (Ex. 12, p. 3; Ex. 21A1.)

18. Due to the significant grade change on the Property, the Applicant did not propose extensive plantings or landscaping in the large interior area of the Property located between the rear of the multi-family building and the private alley servicing the townhouses. The Applicant concluded that significant problems would result in trying to maintain these materials. The Applicant envisioned this area as a natural regeneration area, which will be surrounded by a fence that will be approximately seven feet tall. In addition, the Applicant is creating approximately 7,500 square feet of micro-bioretention and bio-swale areas in the natural regeneration area. After construction of the multi-family and townhouses are complete, the Applicant intends to plant some native trees and vegetation throughout this area that will not require significant on-going maintenance from either the management company of the multi-family building or the townhouse homeowner's association. Whatever maintenance that is required will be provided by the property management company for the multi-family building. (Ex. 12, p. 2; Ex. 21, p. 3.)

Townhouses

19. In response to issues raised by the Commission and the Office of Planning ("OP"), the architecture of the townhouses was enhanced and improved through the course of the PUD application process. The final townhouses presented by the Applicant included more brick and a more simplified and refined window pattern and door surrounds than the initial townhouses proposed by the Applicant. The Applicant presented renderings to the Commission which showed additional architectural details (iron railings on the front entrances, brick sided stoops, and downspouts) that will be provided on each of the townhouses. The Applicant presented the Commission with images of the decks that will

be located on some of the townhouses and included the decks in the zoning calculations for each of the townhouse lots. (Ex. 12, p. 3; Ex. 21, p.1.)

20. Each of the 74 townhouses will include three stories and two or three bedrooms. These townhouses also provide the purchaser with the option to add a "loft". The standard unit townhouse will include approximately 1,935 square feet. If the loft option is selected, the townhouse will include approximately 2,320 square feet. However, the loft option is not available for the end units. (Ex. 3, pp. 7-8; Ex. 12, p. 3.)

21. The Applicant is proposing that the townhouses will be Energy Star rated. Energy Star homes are 30% more energy efficient than standard new homes that are constructed in the DC market and the Energy Star rating is certified by a third party. Similar to LEED, Energy Star focuses on improving energy performance in buildings as a method of reducing green house gas emissions and reducing energy costs for building occupants. (Ex. 12, pp. 4-5.)

Multi-Family Buildings

22. Due to the significant length of the Subject Property along Mississippi Avenue, the Applicant's design team was faced with a design challenge to break up the appearance of any buildings along Mississippi Avenue. The Applicant determined that the best way to address this issue is to design two separate, yet compatible four-story buildings which are connected by a one-story structure in the middle of the two buildings. Each of these buildings will be approximately 55 feet tall, will include approximately 95-102 residential units, and approximately 65 parking spaces. The one-story central lobby structure which connects these buildings serves as the principal entrance to both residential buildings and includes the front desk/reception area for the residents, as well as leasing office, a computer room/business center, and a workout facility for the residents of the multi-family buildings. During the course of the application review process, the height of the connector building increased in order to provide a more balanced transition to the four-story components of the multi-family building. This additional building height allowed for the introduction of clerestory windows and a light well to the connector building which permits natural light to penetrate into the building and daylight the interior uses. (Ex. 3, p. 9; Ex. 21, p.2.)

23. The appearance of the four-story buildings are broken down through a series of six bay elements which are each approximately 75 feet wide and are delineated by alternating patterns of darker and lighter sections which project and recede along Mississippi Avenue. The building façades are predominantly masonry, which allow the differences in the various bay sections to be manifested through the use of different fenestration rhythms, brick color and detailing, window trim, cornices, and architectural brackets along the roof line. (Ex. 3, p. 9; Ex. 12 p. 3; Ex. 21, p. 2.)

24. In response to concerns raised by the Commission regarding the appearance of the garage doors on the ends of the multi-family buildings, the Applicant provided elevations which show the garage door for the entrance/exit to the parking garage has been broken down into two separate doors. The face of this portion of the building is set back approximately 37 feet from the sidewalk on 10th Place and 13th Streets and these doors are set back an additional three feet from the building façade. The loading dock façade has been pushed back an additional three feet from the face of the building, so that this façade is located approximately 40 feet from the sidewalk on 10th Place and 13th Streets. The color of the loading dock façade has been changed to a lighter brick (the color of the loading dock door will match this brick color) in order to minimize the appearance of this portion of the building. The revised elevations for the ends of the multi-family building reduce the appearance of the doors to the parking garage and loading areas and provide a much more attractive appearance along 10th Place and 13th Street. (Ex. 21, p. 2.)

25. The Applicant has agreed to design the multi-family building so that it could achieve a LEED-For Homes Gold rating, or an equivalent rating in the Green Communities rating system. There is no requirement that the Applicant complete the LEED or Green Communities commissioning process. (Ex. 27.)

26. The multi-family buildings will include 10 Permanent Supportive Housing ("PSH") units. PSH is the combination of long-term rental subsidies and intensive home-based support services for people who have a history of homelessness and difficulty in maintaining their housing. PSH is a nationally recognized best practice that generally has about a 98% success rate in people maintaining their housing. PSH is targeted towards families and individuals who have been homeless in the past, have barriers to finding housing such as poor credit history, and often include a family member with disabilities which makes it difficult for them to find employment. Families hold leases in their own names and are expected to comply with all terms of the lease, including paying rent monthly. A client in PSH has the same rights and responsibilities as any other tenant, with the added help of supportive services. The supportive services provided by COH include regular face-to-face meetings in the home to help families set and achieve goals that they set for themselves. Historically, COH has one case manager assigned to only 12 families, with supplemental assistance from an Employment Specialist, Wellness Coordinator, Youth Specialist, and a Housing Specialist. Interested children are also connected with volunteer mentors. (Ex. 3, p 11.)

27. The Applicant submitted a transportation impact study ("TIS") prepared by Gorove/Slade Associates. The TIS concluded that no significant vehicular impacts are expected in the surrounding area with the completion of this project, and the number of parking spaces and the size and number of the loading berths provided is sufficient to meet the parking and loading demand of the project. (Ex. 21, p. 3 and Ex. 21B.)

Applicant's Testimony

28. At the public hearing, Pam Askew - Senior Vice President at WC Smith, testified on behalf of the Applicant. Ms. Askew discussed the Applicant's community outreach process, and the housing, affordable housing and PSH components of the project. Ms. Askew also discussed the sustainability attributes of the project, including the inclusion of solar panels on the roof of the multi-family building. (May 22, 2014 Public Hearing Transcript ["Tr."] pp. 20-23.)

29. Matt Ritz, Vice President of Development at WC Smith, testified that the maintenance of the interior natural regeneration area on the Property will be performed by WC Smith, the property manager and owner of the multi-family building. Mr. Ritz also presented testimony about the Applicant's project amenity of signing First Source and CBE Agreements which are only applicable to the site development work and construction of the multi-family building. In his testimony, Mr. Ritz confirmed that the Applicant will satisfy the conditions proposed by DDOT, the construction of sidewalk on the west side of 13th Street between Trenton Place and Congress Street and the provision of transit information to residents of the multi-family building via the Building Link system or an equivalent system. In conclusion, Mr. Ritz discussed the Applicant's request for flexibility as to the period of approval for the construction of the final buildings in the project. (Tr. pp. 23-27.)

30. Abed Benzina, of SK+I Architect, the project architect, provided detailed testimony regarding the site planning for the project. Mr. Benzina noted the significant grade change on the Property, the drop from Trenton Place to Mississippi Avenue is 60 feet, and testified that the challenging topography doesn't lend itself to a traditional urban design solution, which would be extending the street network through the Property. Due to this topography, the buildings were placed on the edge of the site facing all four public streets and the middle of the Property was left open. This created an appropriate streetscape throughout the project and linked the project to the surrounding residential uses to the north and Oxon Run Park to the south. (Tr. pp. 12-15.)

31. Mr. Benzina also testified to the design and architecture of the townhouses and multi-family building. Mr. Benzina noted that the architecture of the townhouses is reminiscent of urban row houses and include a consistent use of brick masonry on the fronts and sides and simple details. In regard to the multi-family building, Mr. Benzina noted that in order to mitigate the length of the Mississippi Avenue façade the buildings were broken down into smaller sections through the use of recesses, projections and different materials to differentiate the building. (Tr. pp. 15-19.)

Density Proposed and Flexibility Requested

32. The total gross floor area included in the proposed PUD project is approximately 378,237 square feet of gross floor area for a total density of 1.16 floor area ratio ("FAR").[1] The multi-family building will have a measured building height of 55 feet and will include a maximum residential gross floor area of approximately 234,424 square feet. The heights of the townhouses will range from 28 to 35.5 feet based on the changing topography of the Property. As a matter-of-right, the R-5-B zone has a maximum density of 1.8 FAR and a maximum building height of 50 feet. The PUD guidelines permit a maximum FAR of 3.0 and a maximum building height of 60 feet. (Ex. 3, p.1; Ex. 28.)

33. The Applicant requested flexibility from the following requirements of the Zoning Regulations: (i) the rear yard requirements for four of the townhouse lots; (ii) the side yard requirements for one side of the multi-family buildings, and six of the townhouse lots; (iii) the lot occupancy requirement for three of the townhouse lots; and (iv) the parking space requirement for two of the townhouse lots. The Commission has the authority to grant this flexibility pursuant to § 2405.4, 2405.5, and 2405.7 of the Zoning Regulations. (Ex. 21, p. 4.)

34. The Applicant requested flexibility from the strict application of the roof structure requirements of the Zoning Regulations in order to allow multiple roof structures of varying heights on the multi-family buildings. The Commission has the authority to grant this flexibility pursuant to § 2405.7. (Ex. 21, p 4.)

35. The Applicant requested flexibility from the loading requirements of the Zoning Regulations for the multi-family building. Instead of providing a 55-foot loading berth, the multi-family building will include two 25-foot loading berths. These loading facilities will adequately serve the needs of the multi-family buildings. The Zoning has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 21, p. 4.)

36. The PUD will be constructed in phases. The Applicant expects that the overall site work and construction of the multi-family building will occur first, with construction of the townhouses to follow. Due to the different ownership structures (for-sale and rental) and residential unit types (townhouses and a multi-family building) provided in this project, as well as the significant number of townhouses that are included in the project, the Applicant requested that the Commission extend the period in which it will be required to file for the final building permit applications for the project. (Ex. 21, p. 4.)

[1] If all of the townhouse units (which are able to choose a loft option) decided to build the additional lofts, the maximum gross floor area would be 406,034 square feet with a maximum density of 1.25 FAR.

37. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:

(a) Housing and Affordable Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project provides both for-sale and rental residential units (74 for-sale townhouses and 190-205 units in the multi-family building). This project also includes a significant affordable housing component. Ten percent of the for-sale townhomes will be set aside as the required IZ units, half of these IZ townhomes will be reserved for those making up to 50% of AMI and the other half for those making up to 80% of AMI. The multi-family building will satisfy the IZ requirements of providing five percent of the units (in perpetuity) to residents making up to 50% of AMI and five percent of the units (in perpetuity) to residents making up to 80% of AMI. All of the remaining residential units in the multi-family building will be reserved for residents making up to 60% AMI for a period of 40 years; (Ex. 3, pp. 14-15; Ex. 12, p. 5.)

(b) Social Services/Facilities: Subsection 2403.9(g) lists social services/facilities as a public benefits and project amenities for a PUD project. This project will include 10 PSH units in the multi-family buildings which will be located throughout those buildings. The Applicant noted that PSH units have a 98% success rate in people maintaining their housing. The 10 PSH units are a social service benefit of this project and will be reserved in the project for a period of 40 years; (Ex. 3, pp. 14-15; Ex. 12, p. 4.)

(c) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Subsection 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The massing, height, and articulation of the buildings have been carefully studied in order to create a project that provides new housing opportunities for the surrounding community, yet is also in keeping with the scale of surrounding buildings and uses. The internal 15-foot-wide alley system for the townhouses along Trenton Place and 11th Place has been designed to minimize the amount of impervious surface area, yet provide for an effective vehicular access system for these units and also provide an attractive streetscape along Trenton Place. The large interior portion of the site, which includes the most significant grade changes, has been designed so that the landscaping can effectively grow and be maintained with a minimal amount of effort; (Exhibit 3, p. 15.)

(d) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, "site planning, and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Zoning Commission. The Applicant believes that the mix of for-sale townhouses and multi-family buildings are entirely appropriate for this large undeveloped property approximately four blocks from the Congress Heights Metro Station. The Applicant's design team has taken great steps to incorporate the significant grade changes into the siting of the proposed buildings as well as the unit types. The townhomes along Trenton Place, the highest point on the Subject Property, appropriately relate to the two-to-three story buildings across the street. The taller multi-family buildings are located on the lowest point of the Subject Property. Due to the location of Oxon Run Park, these multi-family buildings will have no adverse impacts on any existing or potential buildings to the south of the Subject Property; (Ex. 3, p. 16.)

(e) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that "effective and safe vehicular and pedestrian access" can be considered public benefits and project amenities. The vehicular and truck access points for the multi-family buildings have been designed and located to allow all truck turning movements to occur on private property and allow an appropriate distance to the Mississippi Avenue intersections. The Applicant has also created a private alley system that will provide access for the townhomes with frontage along Trenton Place and 11th Place; (Ex. 3, pp. 16-17.)

(f) Uses of Special Value: According to § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public benefits and project amenities. The Applicant proposes that the large amount of affordable and supportive housing provided in this project is the major amenity of this PUD application. This project is not seeking a significant amount of additional building height or density compared to the existing R-5-A Zone District. The Applicant noted that the public benefits and project amenities offered in this project are entirely consistent with the development incentives and design flexibility requested in the application; (Ex. 12, p. 5.)

(g) Employment and Training Opportunities: According to § 2403.9(e), "employment and training opportunities" are representative public benefits and project amenities. The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program ("First Source") to promote and encourage the hiring of District of Columbia residents. The Applicant will also enter into a Certified Business Enterprise ("CBE") Utilization Agreement with the Department of Small and Local Business Development. The Applicant also noted that it will work closely with the community to ensure economic opportunities for local residents and other District

of Columbia residents. The Applicant's property management group will advertise opportunities available for on-going property maintenance, janitorial staff, clerical, and administrative positions. In addition, the Applicant will have its Summer Youth Employment Program at Archer Park, hiring residents 16-22 years old to work at its properties during the summer months. The First Source and CBE Agreements will only be applicable to the site development work and construction of the multi-family building; (Ex. 3, pp. 20-21; Ex. 12, p. 5.)

(h) Comprehensive Plan: According to § 2403.9(j), public benefits and project amenities include "other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan." The Applicant noted that the proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan; and (Ex. 3, pp. 21-23.)

(i) Public Benefits of the Project: Subsections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Commission, including:

- Affordable housing;
- Exemplary/superior architecture;
- Employment and training opportunities; and
- Social services/facilities.

Comprehensive Plan

38. The Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

Policy H-1.1 - Expanding Housing Supply: Expanding the housing supply is a key part of the District's vision to create successful neighborhoods. Along with improved transportation and shopping, better neighborhood schools and parks, preservation of historic resources, and improved design and identity, the production of housing is essential to the future of our neighborhoods. It is also a key to improving the city's fiscal health. The District will work to facilitate housing construction and rehabilitation through its planning, building and housing programs, recognizing and responding to the needs of all segments of the community. The first step toward meeting this goal is to ensure that an adequate supply of appropriately zoned land is available to meet expected housing needs;

> Policy H-1.1.3 - Balanced Growth: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low-and moderate-density single family homes as well as the need for higher-density housing; and
>
> Policy H-1.2.1 - Affordable Housing Production as a Civic Priority: Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.

The mix of unit types, for-sale townhouses and rental multi-family units, and the range of market-rate and affordable units included in this project are entirely consistent with Policy H-1.1, H-1.1.3, and H-1.2.1. The project will provide homeownership and rental opportunities for a variety of household sizes and incomes. The PSH units provide housing and on-site counseling to formerly homeless or underserved residents. Moreover, the 264-279 residential units are proposed on a large (7.46 acres), underutilized site which is only four blocks from the Congress Heights Metro Station is also consistent with Policy H-1.1.3.

Ten of the units in the multi-family buildings are PSH units that are reserved for people that have a history of homelessness. Although families living in these units are not technically defined as "special needs", the families in this project and those of special needs share many similarities. The housing element stresses that housing for special needs should be permanent, integrated throughout the city instead of segregated and accompanied by services that support the population being housed (H-4.1.) This project meets each of those requirements. It is permanent, it is inconspicuously integrated into the other residential units, and the services that the residents need will be provided directly on the property. (Ex. 3, pp. 22-23; Ex. 22, p. 13.)

39. This project is located in the Far Southeast/Southwest area and is consistent with the Comprehensive Plan's goals and policies. The Comprehensive Plan's Far Southeast/Southwest Area Element includes the following policies that are supported by this project:

> Policy FSS-1.1.4: Infill Housing Development: Support infill housing development on vacant sites within Far Southeast/Southwest, especially in Historic Anacostia, and in the Hillsdale, Fort Stanton, Bellevue, Congress Heights and Washington Highlands neighborhoods; and
>
> Policy FSS-1.1.12: Increasing Home Ownership: Address the low rate of home ownership in the Far Southeast/Southwest by providing more owner-occupied housing in new construction of single family homes, and by supporting the

> conversion of rental apartments to owner-occupied housing, with an emphasis on units that are affordable to current tenants.

The proposed project is consistent with these Policies. The Applicant is proposing to create 264-279 residential units on a 7.46 acre vacant property located in the Congress Heights neighborhood. The creation of 74 for-sale townhomes with 10% of those units reserved as IZ units is consistent with Policy FSS-1.1.12. (Ex. 3, p. 23.)

40. The Comprehensive Plan's Land Use Element includes the following policies that are supported by this project:

> Policy LU-1.4.1: Infill Development: Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create "gaps" in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern.

The proposed development would replace a former rental housing community that became unfit for habitation and therefore had to be demolished. The redevelopment of the site will help in stabilizing the overall community by providing a variety of unit types, sizes and affordability and would be a significant contribution to the District's housing stock. (Ex. 22, p. 12.)

41. The Comprehensive Plan's Environmental Element includes the following policies that are supported by this project:

> Policy E-1.1.3: Landscaping: Encourage the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;
>
> Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff: Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces; and
>
> Policy E-3.2.1: Support for Green Building: Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities.

The project includes landscaping and public open spaces along each street frontage as well as around the buildings. The development would include sustainable features such

as bioretention and bioswale areas, and green roofs. The project is sensitive to the topography of the Property which varies from steep slopes to gently undulating areas. The buildings generally would be placed outside of the area with the steepest slope and many of the slopes have been integrated into the building's design to minimize extensive grading of the site. The multi-family building has been designed so that it could achieve LEED-For-Homes Gold rating, or an equivalent rating the Green Communities rating system and the townhouses will be Energy Star rated. (Ex. 22, p. 13.)

Government Agency Reports

42. By report dated May 12, 2014, OP recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, "The Office of Planning (OP) supports the proposed redevelopment of the former Trenton Terrace property as it is generally consistent with the requirements of the Zoning Regulations and elements of the Comprehensive Plan. The flexibility requested would allow for an improved development over that permitted by-right." (Ex. 22, p. 1.)

43. OP's report requested additional information from the Applicant regarding the LEED certification level and a LEED checklist for the multi-family building, more information regarding the location of bicycle parking spaces inside and outside the multi-family building, and information regarding the location of the townhouses that will be reserved as IZ units. At the public hearing, the OP representative testified that the information provided by the Applicant was sufficient to address OP's request for the additional information. (Ex. 22, pp. 1, 10; Tr. pp. 100-102.)

44. By its report dated May 12, 2014, the District Department of Transportation ("DDOT**"**) recommended conditional support of the PUD and related Zoning Map amendment. The DDOT report noted that after an extensive, multi-administration review of the case materials, DDOT found that:

- The site is well served by both Metrorail and Metrobus;
- Residents are likely to heavily utilize non-automobile modes of travel, in particular Metrorail;
- Estimated vehicle travel is likely over stated;
- A robust network of pedestrian and bicycle infrastructure does not exist in close proximity to the proposed development; and
- Proposed loading facilities and vehicle [*sic*.] are consistent with DDOT standards. (Ex. 23, pp. 1-2.)

45. DDOT's report concluded that "DDOT has no objection to the requested relief with the following conditions:

- The Applicant should complete the missing sidewalk link on 13th Street between Trenton Place and Congress Street; and
- The Applicant shall install a Transit Screen in the building lobby.

In testimony at the public hearing, the DDOT representative confirmed that the Applicant's testimony satisfied DDOT's conditions of approval. (Tr. p. 102.)

ANC 8C Report

46. ANC 8C submitted a resolution in support of the application on May 13, 2014. The letter stated that on May 7, 2014, the ANC voted to approve a resolution in support of the PUD and related Zoning Map amendment application by a vote of 5 in favor, 0 against, with 1 abstention. (Ex. 24.)

47. At the public hearing, ANC 8C Chairperson Mary Cuthbert represented ANC 8C and testified on its behalf. Ms. Cuthbert testified that she supported the location, the architecture, the affordable housing units and the townhouses, but she would like the project to have a name other than Archer Park. (Tr. pp. 105-106.)

Parties and Persons in Support

48. There were no parties in support of the application.

49. At the public hearing Sasha Forbes, a resident of the adjacent Park Vista apartment complex, testified in support of the project. (Tr. pp. 38-39.)

50. One person submitted an e-mail in support of the proposed PUD and related Zoning Map amendment. (Ex. 19.)

Party Status Requests

51. There were no requests for party status in this application.

Persons in Opposition

52. There were no letters in opposition to the project submitted into the record and no testimony in opposition to the project was presented at the public hearing.

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

53. In evaluating a PUD application, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." (11 DCMR § 2403.8.) The

Commission finds that the mix of housing types provided in this application (both for-sale and rental), the large amount of affordable housing provided, and the inclusion of the PSH units are significant amenities of the project. In addition, the Commission finds that the site planning and sustainability measures included in the project, as well as the job training and employment opportunities that will be provided during the construction of the multi-family building, are public benefits of the project. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project.

54. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, social services/facilities, landscaping and open space, site planning, job training and employment opportunities, and environmental benefits.

55. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the R-5-B Zone District is appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the R-5-B Zone District is appropriate given the Future Land Use Map designation of the Property (moderate density residential) and the project's satisfaction of numerous policies enumerated in the Comprehensive Plan. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.

56. The Commission has accorded ANC 8C the "great weight" to which it is entitled.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking and loading, and yards and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)

3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.

4. The application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The application meets the contiguity requirements of § 2401.3.

6. The proposed height and density of the buildings in the Project will not cause a significant adverse effect on any nearby properties.

7. The benefits and amenities provided by the Project are significant and appropriate especially when compared to the minimal amount of development incentives proposed in this application.

8. The application seeks a PUD-related Zoning Map amendment to the R-5-B Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding rear yard, side yard, and lot occupancy requirements for some of the proposed lots; parking relief for two of the townhouse lots; loading relief for the multi-family building; and roof structure relief for the multi-family building. The Commission finds the requested relief to be minimal and allows for the creation of a project that has numerous benefits and amenities.

9. The Commission finds that rezoning the site is consistent with the Comprehensive Plan. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Housing, Land Use, and Environmental Elements. The PUD is also consistent with the more specific goals and policies of the Far Southeast/Southwest Area.

10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-

309.10(d)) to give great weight to an affected ANC's written recommendation. As is reflected in the Findings of Fact, ANC 8C submitted a resolution in support of the application, dated May 7, 2014, into the record. The Commission concurs with ANC 8C's recommendation in support of the application and has given its recommendation the great weight to which it is entitled.

11. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Commission gives OP's recommendation to approve the application great weight, and concurs with OP's conclusions.

12. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

13. The applications for a PUD, related Zoning Map amendment and amendment to an approved Campus Plan are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for consolidated review of a planned unit development and related Zoning Map amendment to the R-5-B Zone District for the Subject Property (Square 5933, Lots 46, 47, 48, and 49; Square 5934, Lots 17, 18, and 806). The approval of this PUD is subject to the following guidelines, conditions, and standards.

A. PROJECT DEVELOPMENT

1. The PUD project shall be developed in accordance with the plans prepared by SK+I Architects marked as Exhibit 21A1–21A6 and Exhibits 28-29 of the record ("Approved Plans"), as modified by the guidelines, conditions, and standards herein.

B. PUBLIC BENEFITS

1. The multi-family building shall include a range of 190-205 residential units, with a maximum residential gross floor area of approximately 234,424 square feet and 130 parking spaces and 82 bicycle parking spaces (66 inside the building and 16 outside the building). In the multi-family building, 10% of its residential gross floor area will be set-aside pursuant to 11 DCMR § 2603 for low- and moderate-income households, as those households are defined by 11 DCMR § 2601. All of

the remaining residential gross floor area in the multi-family building will be reserved for households with a total annual income adjusted for household size equal to 60% or less of the Metropolitan Statistical Area Median for a period of 40 years (from the date of the issuance of the Certificate of Occupancy for the multi-family building).

2. The project shall include 74, for-sale, townhouses that will include 72 parking spaces. All of the townhouses, except for those located at the end of a string of townhouses, shall be permitted the option to include a loft/attic. Ten percent of the for-sale townhouses will be set aside as required by 11 DCMR § 2603 for low- and moderate-income households, as those households are defined by 11 DCMR § 2601.

3. The multi-family building will include 10 permanent supportive housing (PSH) units, operated by Community of Hope, in the multi-family building for a period of 40 years (from the date of the issuance of the Certificate of Occupancy for the multi-family building). If Community of Hope can no longer provide the required services to the PSH units, the Applicant will find a replacement service provider.

4. The Applicant shall provide evidence that the multi-family building will be designed to achieve a LEED-For Homes Gold rating, or an equivalent rating in the Green Communities rating system, prior to the issuance of a Certificate of Occupancy for the multi-family building. There is no requirement that the Applicant complete the LEED or Green Communities commissioning process. The Applicant shall provide evidence that the townhouses will be Energy Star rated prior to the approval of final building inspections for the townhouses.

5. Prior to the issuance of a building permit for the construction of the multi-family building, the Applicant shall provide evidence that it has signed a First Source Agreement with the D.C. Department of Employment Services, and has entered into a Certified Business Enterprise Agreement with the D.C. Department of Small and Local Business Development that will require the Applicant to achieve at least 35% CBE participation in predevelopment, closing and construction expenses. These Agreements will include language which requires that the Applicant will: (i) advertise opportunities available for on-going property maintenance, janitorial staff, clerical, and administrative positions; and (ii) have its Summer Youth Employment Program at Archer Park, hiring residents 16-22 years old to work at its properties during the summer months. These Agreements will only be applicable to the site development work and the construction of the multi-family building.

C. TRANSPORTATION MEASURES

1. The Applicant shall install a missing sidewalk link on the west side of 13th Street, S.E. between Trenton Place, S.E. and Congress Street, S.E., adjacent to DC owned property. The installation of this sidewalk shall be completed prior to the issuance of a certificate of occupancy for the multi-family building.

2. The Applicant shall provide transit information to residents of the building via its Building Link system (or similar system). The Building Link system (or similar system) shall be operational by the time of the issuance of a certificate of occupancy for the multi-family building and will remain for the life of the project.

D. MISCELLANEOUS

1. The Zoning Commission grants the requested flexibility from the Zoning Regulations with regard to:

   (a) Side yards for six of the townhouse lots and one side of the multi-family building;

   (b) Rear yard for four of the townhouse lots;

   (c) Lot occupancy for three of the townhouse lots;

   (d) Parking for two of the townhouse lots;

   (e) Loading for the multi-family building by providing two, 25-foot berths and two, 200 foot platforms; and

   (f) Roof structures on the multi-family building as it will include multiple stair towers and elevator penthouses.

2. The Applicant shall have flexibility with the design of the PUD in the following areas:

   (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;

(b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and

(c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;

3. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this Order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.

4. The change of zoning from the R-5-A Zone District to the R-5-B Zone District shall be effective upon the recordation of the covenant discussed in Condition No. D.3, pursuant to 11 DCMR § 3028.9.

5. The PUD shall remain valid for two years from the effective date of this Order, during which the Applicant must file for a building permit for the multi-family building, or for any of the townhouses, and construction must begin within three years after the effective date of this Order for the PUD to remain valid. The PUD shall be vested as to any building or buildings for which construction has timely begun. Thereafter, for the PUD to remain valid, the Applicant must file for a building permit or permits for all of the remaining buildings within five years after the effective date of this Order, and construction must begin within six years after the effective date of this Order.

6. 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On May 22, 2014, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at the conclusion of its public hearing by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On June 30, 2014, upon the motion of Commissioner Miller, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order to approve the PUD, related Zoning Map amendment by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to adopt; Michael G. Turnbull, not present, not voting).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 29, 2014.